

How to resolve a contractual dispute

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Adam Grimwood, a solicitor at FSB Legal Hub, explains what to do in the event of a contractual dispute and how you can protect your business, reputation, and working relationships.



Whether it's landing a new client or securing a new supplier, signing on the dotted line is at the heart of doing business. A business contract is a legally binding agreement between parties buying or selling goods or services. Whilst most contracts can be verbal, a written agreement is advisable to help to protect your business and make sure all involved are aware of what has been agreed.

What is a contractual dispute?

A contractual dispute is usually when a party in a contract has a disagreement concerning its terms or definitions, whether it's you or your client. If handled poorly, contractual disputes can be costly and time-consuming, end up in court and damage your business relationships and reputation.

So, what should do if you're on the receiving end of a contract dispute involving your business?

What causes a contractual dispute?

A contract is only formed when four basic elements are satisfied. They are:

- an offer
- an acceptance of the offer

- a form of consideration (often by way of payment) for the goods or services in the offer
- an intention to create legal relations

All parties must have a solid understanding of the terms in the contract and mutually agree on them. Parties should also have the capacity to enter into a contract. During these stages, contractual disputes can often develop.

Common types of disputes

In business, a contractual dispute could involve anyone, including your client or suppliers.

Examples of disputes include:

- Issues when your client reviews your contract.
- Issues concerning an offer you've made in a contract.
- Disagreements regarding the meaning of a contract's technical terms.
- Mistakes and errors concerning the terms you've addressed in a contract.
- Fraud, such as a party claiming they've been forced into signing your contract.
- Disputes where those involved in a contract do not stand by their original agreements made months or years earlier.

The most common disputes involve the performance of a party's duties, or where they have failed to perform their contractual duties. This is known as a breach of contract.

Examples include:

- one party failing to deliver the agreed goods or to provide the agreed service to the other
- goods supplied not being of satisfactory quality, fit for purpose or as described
- A service not being carried out as agreed, or to an acceptable standard.

Working towards a resolution

In the event of a contractual dispute, the important thing is to aim to resolve the situation as best you can. [Legal support](#) can help you to find the right resolution.

You should aim to find a resolution that:

- Isn't time-consuming and doesn't affect the running of your company.
- Isn't costly and doesn't impact heavily on your finances.
- Doesn't result in the dispute going to court to avoid additional costs and time.

- Doesn't involve more people than necessary to help keep the dispute under control.

Handling the dispute with care can help you avoid damaging existing business relationships and your reputation.

What remedies are there to solve a dispute?

Clearly, whenever there is a dispute the parties should try to look at things objectively and dispassionately. Whether the customer is a private individual or a business, the law generally states that services need to be carried out properly and professionally and as per the agreement, and goods need to be of satisfactory quality, fit for purpose and again as per the contract. All contractual disputes can ultimately end up in court, but as a general rule this should, where possible, be seen as a last resort.

Most disputes arise because of a difference of opinion between the trader and their customer as to whether the goods and/or services provided are up to standard. You should always take steps to investigate complaints promptly and thoroughly, and if you accept that the work is defective you should look to rectify this swiftly in accordance with your legal obligations.

Clearly, if you do not accept that your work or materials are sub-standard, then you are entitled to hold the line and argue that you are not obliged to do anything further. You must be aware that issues with regard to the quality of your work or materials will always be a question of evidence, that is to say, if it gets to court, this will be up to the judge. As such you should look to accumulate as much evidence as possible that backs up your stance, so for example, if you feel that you have done the job properly despite what your customer says, ideally you would get an independent expert opinion to back you up on this. Ultimately, if it gets that far, the judge, who will not inherently know whether the job is a good or bad one, will be weighing up potentially contradictory evidence in order to reach a conclusion. It's their job to decide which party's evidence is more persuasive. Remember your own opinion will not be considered to be independent, so may not carry as much weight as an opinion which is.

If you want to settle the matter without going to court, and try to find a compromise, always ensure that you put your proposal in writing and mark it "without prejudice". This phrase only has an effect when you are attempting to settle a dispute – it does not simply allow you to say anything "off the record", but allows you to attempt to negotiate a settlement without anything you have said or conceded being revealed in court and therefore prejudicing your case. Without prejudice correspondence will only be looked at by the court, after the decision has been made, with regard to who pays the court/legal costs, depending on who has made or refused reasonable offers.

Failing to manage expectations can sometimes lead to a contractual dispute. Take advice as soon as a potential dispute arises. You need to know your legal position so that you can respond accordingly. Whilst you may feel that you are in the right, it's always advisable to get an objective legal opinion. **All FSB members have access to**

You may consider it a good idea to have a written complaints procedure setting out how you handle any customer issues. Clearly what is in this policy will depend on the size of your business, most policies will try to involve a fresh pair of eyes within the business in reviewing the matter. If your client is a Consumer you must at least make them aware of the possibility of Alternative Dispute Resolution (ADR) once you have finished any internal complaints process, even if you do not intend participating in ADR.

Getting the right support to handle a dispute

When handled without the right skill, knowledge, and approach, a contractual dispute can end badly, causing harm to your relationships, reputation, and finances. It's important to have professional support with the right expertise to help things run smoothly while saving you time, money, and stress. A solicitor, for instance, can collect and analyse relevant evidence and investigate details. They can also document and report essential information to find the best resolution to settle a dispute effectively.