businesscompanion
trading standards law explained

Part 4. When things go wrong

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Breach of contract

Sometimes things go wrong and one party to the contract may not carry out their responsibilities; this is called a breach of contract.

What if you breach your contract?

Where a breach of contract happens, the other party is often entitled to seek a remedy from the party that has not met their responsibilities under the contract. This prevents parties from entering into contracts and then not following through with the agreement made. The most common remedy for a breach of contract is to claim money to cover the loss that has been incurred by the other party. This remedy is called damages.

There may also be specific remedies set out in the law that would also apply to the breach of contract.

> **Example: breach of contract**
> If you have entered into a contract with a consumer, and the goods you have supplied are not of a satisfactory quality, this would be a breach of contract. The consumer would be entitled to a remedy such as a full refund or a price reduction under consumer law (although, in some circumstances, you may be able to offer a repair or a replacement first). If, for example, the goods also damaged the table they were placed on, the consumer may be able to claim damages to cover the cost of the damage to their table.

What if your customer breaches the contract?

You may be entitled to a remedy if a customer breaches their contract with you. The remedy must be a true reflection of the loss that you have actually incurred and must not be excessive. Businesses often protect themselves from breaches of contract by taking deposits and advance payments, but these must be used fairly and should not operate as a penalty.

Deposits and advanced payments

What is a deposit?

A deposit is a payment to reserve your goods and services, and should only be a small percentage of the total cost of the contract price.

What is an advanced payment?

These differ from deposits, as they reflect the costs that you are incurring at specific periods in the contract. They could be taken to purchase materials, for example. You should always leave the consumer with a reasonable amount to be paid upon completion of the contract.

Any deposit or advance payment that is retained must reflect your actual losses and you must take all reasonable steps to reduce any losses you have incurred. More information can be found in the Competition and Markets Authority's guidance on writing your terms and conditions.

Cancelling a contract

Where the customer has a legal right to cancel, or where they have a right to cancel set out in your returns policy or terms and conditions, this will not be a breach of contract.

This is a cancellation, and if the customer has complied with the law or your returns policy, they are entitled to either a full refund or, if they are outside their statutory cooling-off period, they are entitled to whatever rights your returns policy gives them. Where a statutory cooling-off period applies, the consumer may be entitled to cancel and receive a refund in line with the legal requirements. More advice about writing your returns policy can be found in the 'Writing a returns policy' guide.

Withdrawing from a contract

If either party to the contract changes their mind before the contract has been formed, then there is no contract.

Frustration of contract

A contract may also come to an end without either party being in breach. This can occur if an unexpected event, outside of the parties' control, causes any of the following:

- Makes it impossible to perform the contract
- Makes the performance radically different from what was agreed
- Makes the contract illegal to perform

This is known as frustration of contract. Frustration is not the same as cancellation, withdrawing from a contract or a breach of contract, and it will only apply in limited circumstances. The consequences can depend upon the terms of the contract and the circumstances of the case, so businesses should take care before relying on frustration as a reason for not performing a contract.

Payment methods

If your contract is with a consumer, they may also have rights against their card provider or finance company - for example, if they have paid for your goods or services with a finance agreement or on a debit or credit card. If you breach your contract with the consumer, they may also contact the finance company. Consumers can hold the finance company jointly and severally liable for your breach of contract and seek a remedy from them. They could also use services such as chargeback, where the card provider may charge back the payment that the customer has made to you, depending on the payment method used. You may, therefore, be contacted by the card issuer or finance company if a breach of contract is not resolved.

Resolving disputes

Having clear terms and conditions, which are fair to both parties, can often reduce the number of disputes that a business will have with their customers. However, if you do have a dispute, it is important to have a clear complaints policy in place and to have good communication with the customer.

If you have followed your complaints procedure and have been unable to resolve the dispute, you may wish to consider using alternative dispute resolution (ADR). ADR is a way of resolving disputes without going to court and may be provided by an independent body or scheme. Some sectors or trade associations may use approved ADR bodies or have their own codes of practice, which may require their members to engage in ADR where a dispute arises. Some regulated sectors, like the financial sector, have compulsory ADR, such as the Financial Ombudsman Service.

Where ADR requirements apply, you may need to provide the consumer with details of a relevant ADR provider and explain whether you are obliged or prepared to use ADR. You are also required to send a consumer a deadlock letter with certain information requirements in it. More advice about ADR and these information requirements can be found in the 'Alternative dispute resolution' Business in Focus guide.

< Part 3. Terms and conditions

> Legislation etc

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