



# Fact Sheet

## **A guide to contract disputes**

### **When a contract dispute arises, understanding your options will save you time and money**

There are no *good* aspects to a contract dispute; the mere fact that you are in this position indicates that one or more parties are unhappy. This in turn can damage or destroy a client/supplier relationship that may have taken years to establish. How you choose to deal with a dispute will have a direct affect on all parties - handled professionally, the dispute may be resolved without being time-consuming, unpleasant, stressful or expensive; handled poorly, the dispute can ultimately affect the existence of a business itself.

In general terms it is usually advisable to try and reach an amicable settlement without recourse to solicitors. However, you also need to identify the right time to instruct solicitors should the dispute prove difficult to resolve; in every case this will be 'the sooner the better', and certainly before any relationships have irretrievably broken down.

### **Is the contract enforceable?**

If a contract is to be disputed, it is important to establish its validity at the outset. A contract is an agreement made between two or more parties that can be verbal or written. The contract should represent an exchange of services, goods or other entitlements in return for consideration that is usually in the form of money but can be a barter or other such arrangements. Many transactions take place daily where if challenged, the terms of the contract itself may not be binding. Additionally, when an exchange of quotation and purchase order takes place, it is often unclear as to which party's terms and conditions have been adopted.

### **When does breach of contract occur?**

If one side, in the view of the other party(ies), fails to keep to the terms of the contract, a breach has occurred. There are several ways in which this can happen and if you have concerns about whether a breach has occurred, you should speak to a member of our Dispute Resolution Team.

### **The options to resolve a disputed contract**

There are several options that you can choose from but you should consider that if you agree to a particular course of action with the other parties involved you need to be open-minded about the outcome. If you are already pre-disposed to thinking that you are the aggrieved party and that nothing less than full settlement is acceptable, you may be wasting time by pursuing the wrong option.

### ◆ **Negotiate**

Agreeing to settle your differences in a particular way is probably the preferred option as this will be the quickest solution and may be achieved by a simple phone conversation. Competent managers may be able to resolve minor disputes without significant impact on time or cost. It also maintains confidentiality and should protect a relationship.

### ◆ **Mediate/conciliate**

If a negotiated settlement seems frustratingly close but cannot be agreed, mediation may be suitable. The role of a mediator is to facilitate negotiations beyond the point at which they have faltered. The mediator must be independent and should question and listen to the case of all parties. Use of an independent solicitor as a mediator means that they can both express the best commercial solution as well as point out the legal rights of all parties.

### ◆ **Legal evaluation**

Legal evaluation can be useful in that a confidential opinion can be sought from a solicitor/barrister/retired judge as to the likely decision should an outcome of the dispute be pursued through the court.

### ◆ **Expert evaluation**

This option may be selected in such cases where it is contested that equipment/services that are identified within the contract do not deliver the results that were expected or promised. The expert should not have any involvement with the parties or the manufacturer (if products are involved). The expert should be of suitable standing such that all parties agree to be bound by the decision before the expert is retained.

### ◆ **Litigation**

The ultimate fall-back position is to use the legal process. The principle benefit is that it guarantees an outcome where an otherwise non-communicative party is involved. It can be a lengthy process because, depending upon the complexity of the case, it may take several months getting the case to court. As a consequence, litigation may also be an expensive option although the court may see fit to grant costs. Often, a settlement can be agreed prior to reaching court. If it is not, any verdict reached can be challenged through appeal. It should be noted that a court ruling may be to refer the parties to mediation, yet another reason to consider alternative methods of resolving a dispute before litigation.

## **Dispute management**

Once a dispute arises, the objective is to resolve it quickly and effectively; this will best be achieved if the dispute is properly managed. Maintaining a watching brief on how long it is running, what damage is being made to relationships and what costs are accruing are all important. In certain industries, such as construction, disputes seem *de rigueur* so it is worthwhile considering whether the other party(ies) is practised at dealing with such issues as this may affect your choice of options to resolve the matter.

## **Dispute avoidance**

The best solution is to avoid disputes and this can be achieved by improving upon the wording of your contracts and other documentation. Similarly, you may choose to include

wording about your preferred method of resolving disputes and also that interest will be charged on late payment of invoices that remain unpaid whilst the dispute exists. Where a contract is for a period of time and renewal negotiations will need to take place, refer to the ongoing delivery and costs within the expiry wording contained in the current contract.

### **Who to contact for assistance**

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