

What To Do When Another Business Breaches A Contract Between You

Contracts are the lynchpin of the commercial world. Robust business to business contracts regulate the supply of goods and services, set out how much you have to pay and how payment is made, state when and where products will be delivered and remedies available if a service breaks down.

However, if you are in business, it is likely you will have to deal with a breach of contract at some point. No matter how carefully the provisions of a contract are drafted, disputes can and do arise.

If you are involved in a breach of contract dispute, the first thing you should do is try and sort the situation out informally, however there are times when you will have no choice but to take legal action for a breach of contract. In such situations, there are several points to bear in mind.

Has there been a breach of contract?

A breach of contract can be defined as the failure, without legal excuse, to perform a promise that you were supposed to perform. It can include not performing the work required or performing it poorly, failing to pay on time, not delivering goods or services, or delivering late.

Breaches are usually defined as minor, material, or fundamental. A minor breach is one that does not go to the heart of the agreement and can usually be remedied without involving solicitors.

A material breach of contract is more serious and can cause serious damage or adversely affect the contract's outcome, while a fundamental breach goes to the heart of the contract and is so serious it can justify termination.

There can also be an anticipatory breach of contract where one party realises it cannot complete their obligations and notifies the other party. The injured party may have the right to terminate the contract and sue for damages.

Under the Limitation Act 1980, you have six years from the date of the breach of contract to bring a claim. Note, time runs from the date of the breach, not when you suffered damage.

Was the damage you suffered caused by the breach of contract?

The three main remedies for breach of contract are injunctions, specific performance (where the court makes an order the defaulting party must perform their duties under the contract), and damages. Damages are designed to compensate a party for any loss sustained due to the breach.

To be awarded damages for breach of contract, you must prove, on the balance of probabilities, that there is a causal connection between the breach of contract and the loss you sustained, and this connection is not too remote.

The test for remoteness comes from the case of *Hadley v Baxendale* (1854). The claimants were millers who cleaned grain, ground it into meal and processed it into flour and bran. When a crankshaft of a steam engine at the mill broke, they engaged the defendants to deliver it to the manufacturers to fix. The defendant was late making the delivery, meaning the claimants lost business. A jury at first instance awarded the claimants a sum of £25 (around £2,500 in today's money). The defendant appealed, stating he did not know the late delivery would cause the claimant to suffer damages.

The court agreed with the defendant and allowed the appeal, concluding a claimant can only recover losses in a breach of contract that were genuinely foreseeable. Sending an item to be repaired would not lead to the defendants knowing that late delivery would lead to loss of profits.

In summary

Breach of contract can result in the affected party suffering anything from a minor inconvenience to the collapse of their own enterprise. If a contract you are party to has been breached, it is vital to act quickly.

With sensible, experienced legal advice, a breach of contract can be remedied, leaving you to move on with your commercial activities.

Bennett Griffin are award-winning solicitors based in West Sussex with offices in central Worthing and Ferring. Our commercial department is able to assist you in relation to all business contract matters. Please contact us on 01903 229 999 or by email at info@bennett-griffin.co.uk.