

## What you can do to remedy a 'breach' of contract

A Contract forms the base of almost every business relationship, whether that be for the sale and purchase of goods, provision of services, or an agreement between Franchisor and Franchisee.

The Contract between the parties outlines acts each party shall perform and the terms upon which those acts should be made. So what happens when a party fails to carry out their side of the deal? Or acts against specific terms within the Contract?

Firstly, we will look at behaviour that constitutes breach of Contract, before exploring the remedies available.

### What constitutes a 'breach'?

Simply put, if a party to a Contract fails to follow through with their side of an agreement, or goes against a term within the Contract, they could be found to have 'breached' the Contract. Examples include a failure to pay for goods delivered or failure to provide specific services.

### What remedies are available?

There are a variety of remedies available for Breach of Contract and the appropriate remedy will depend on a number of factors, as well as the desired outcome of the injured party. Often, particularly in commercial scenarios, it is important to try and maintain the business relationship between parties so far as is practicable, to preserve reputations and ensure that the opportunity for the parties to work together in the future remains. It is therefore important to take time to consider the most appropriate remedy in the circumstances.

### **Damages**

Damages is the most common remedy found in a Breach of Contract case and is a monetary award intended to provide a form of compensation for the injured party.

Damages are most commonly awarded for financial losses which have arisen as a result of a breach, however in rare and exceptional circumstances, can be awarded for non-financial losses, such as mental distress and loss

of amenity although such awards are more common in personal injury cases.

It is important to note that the aim of an award for damages is to put the injured party into the position they would have been in, had the offending party acted in accordance with all terms of the Contract, rather than to serve as a merely a 'punishment' to the offending party.

### **Specific Performance**

Specific Performance is when an offending party is ordered to carry out his positive contractual obligations, or to put it simply, do what they had agreed to do in the first place. Specific Performance would usually only be ordered if damages would not be deemed a suitable remedy in the circumstances. It must also be proven that there is a valid and enforceable Contract between the parties for Specific Performance to be awarded.

An example of when Specific Performance could be appropriate would be when a skill or profession of an offending party is so rare or specialised, it would be difficult to find another person or company to enter into a like Contract with.

### **Rescission**

Rescission is a remedy used to set aside the Contract to restore the parties to the position they would have been in had the Contract never been entered into in the first place. The most common grounds for rescission include:

- Misrepresentation
- When a party entered into the Contract under Duress or Undue Influence
- A mistake had made by one or all of the parties as to a matter forming part of the Contract or relating to the surrounding factors of the Contract.

### **Contractual Liens**

It is possible for a Contract to contain a clause entitling a creditor to a lien over goods or possessions in the event that an offending party (or debtor) fails to comply with their part of the Contract. If such a clause is

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contained within a Contract, the Creditor would have the rights to seize certain goods which have been provided to the Debtor, to make up for the lack of payment for said goods.

### Arbitration Clauses

Often a Contract will contain an Arbitration or similar clause stating that the parties must attempt a suitable form or Alternative Dispute Resolution ("ADR"), prior to pursuing the other party for any alleged breach of the Contract. Failure to make reasonably steps to attempt ADR in the first instance could constitute a breach of Contract in itself and it is therefore important to identify and comply with such a clause.

### Limitation Period

If an injured party wishes to pursue an offending party for breach of Contract they must do so within a period of six years from the date on which the breach occurred, or from the earliest date upon which the injured party could reasonably have become aware that such a breach has occurred. It is important that such limitation periods are diarised to ensure that an opportunity to pursue any potential Claim is not lost.

### We are here to help

Our Dispute Resolution Department has vast experience with Breach of Contract disputes including disputes regarding Share Purchase Agreements, Franchise Agreements and Misrepresentation.

*Should you have any queries or concerns in relation to a potential Breach of Contract whether relating to a Commercial Agreement or an Individual Contract please do not hesitate to contact us on 01604 828282 or [litigation@franklins-sols.co.uk](mailto:litigation@franklins-sols.co.uk).*

For further information or to discuss your strategy in resolving a dispute, please contact:

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