

Handling breaches of contract whilst contracting

When agents or clients breach your contract, you should react with notification, and if appropriate and necessary, [termination of the contract](#). You may also have the right to damages if your contract is breached, but these damages could be limited by your "duty to mitigate--" you can't just sit around and collect damages, rather you have to make an effort to move on.

What is Breach of Contract

Remember that a contract is an agreement to provide goods or services in exchange for a consideration (which means money or something else that the party wants). This exchange is governed by terms: when will it take place, how will it take place, etc.

Breach of contract occurs when one of these terms is not honoured by one or more of the parties to the contract. There are two ways in which this can happen. One party can not do something they have promised to do. Or one party can interfere with the completion of the contract.

Major and Minor Breach

There are two types of breach of contract major and minor. "A major breach almost surely allows you to terminate immediately-- although this may not be your best option from a business point of view. If it's a minor breach, then you should certainly make a real effort to negotiate it before pursuing damages," says Jonathon Little, a contract law specialist with the London-based law firm [Jones Day](#).

Typical Breach of Contract in Contracting

For us contractors, typical examples of major breach of contract include:

- o Non-payment, or non-payment on time
- o Termination without sufficient notice
- o Accusation of breach on your part to justify early termination
- o Cancellation of contract before work begins
- o Client refuses to sign a time sheet when work has been completed
- o Failure to provide materials or other conditions promised by the contract
- o Demand for services not included in the contract

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Jonathon Little-Jones Day

What To Do

The first thing to do if you are subject to a breach of this kind is to talk to the person responsible. Always try to avoid legal action in any case: going to court is a time-consuming and expensive process, and the results are never predictable no matter how certain you are of being right. Bring the matter to the person's attention, and see if you can't work something out.

If that doesn't work, and you have to get formal, then here's what you do:

"If you feel you have been subject to a major breach of contract, notify the client or agent with a registered letter that you feel their actions constitutes a major breach of contract, and that you will terminate and seek damages if they do not correct their actions."

The next step is either to take the matter to small claims court, if it involves less than £5000 (you can do this online using the Government's [MoneyClaim](#) service) or to go get a lawyer.

What Damages You May Expect

If the party in question settles with you, or if you win in court, here's what you can expect: you will receive damages (and costs outside of small claims court) but these will be subject to what is called your "duty to mitigate." For example, if you have been terminated after three months for no reason on a six-month contract, you will not necessarily receive the full value of the contract. You have to show the court that you've made a real attempt to find more work after the early termination. Don't expect to just sit around and watch the telly for three months and to get paid for it.

So the rule is discretion: you don't have to accept breach of contract, but don't just race off to sue without very serious thought, and without trying to negotiate. It's easy to threaten to sue when you get mad, but doing it is a lot more trying. Understanding your rights and stating them clearly is

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the surest way to resolving most contracts disputes.

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Jonathon Little-Jones Day

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