

## When a contractor signs a contract with terms they'd not agreed

Contractors should be aware of the implications of mistakes in their [contracts with agents](#) and clients. In some cases, the presence of the mistake invalidates the contract, but in others the contract is still binding.

Contracts are struck when the contractor exchanges their services for a 'consideration', which is usually money. The contract is determined when the offer has been accepted.

Contractors are at most risk from 'standard' or generalised contracts offered by agents and clients who are unwilling to negotiate changes or, for example, will not be prepared to allow the contractor to introduce a [right of substitution](#) clause.

### Unilateral mistake

Generally, according to the system of common law used in the UK, if one party, such as the contractor or the agent, makes a mistake in the terms of the agreement or is mistaken about the basis of the contract, and the mistake is known by the other party, the contract is not valid.

This is because although they appear objectively to have agreed terms, the parties clearly haven't, and technically the two parties are not really in agreement. Case law states that in this situation, there was never a contract to begin with.

A court would look at the real situation, at what was known and understood to have been agreed by both parties, rather than just what is written in the contract, and rule whether the contract is valid.

So, if the contractor's right of substitution clause had a mistake, and the agent knew this because they had, for example, failed to insert the full clause requested by the contractor, a court would most likely rule that the contract was invalid.

### Mistake not in the contract

A complication arises where the mistake is not in the actual contract terms, but the mistake forms part of the contractor's understanding of the agreement. In this case, it is possible that the contract could still be valid.

If the contractor made a mistake about a fact, which they then used to make the decision to enter into the contract, but the fact does not form a term of the contract itself, even if the client or agent knew about the mistake the contract would be binding.

For example, the contractor might have misinterpreted a discussion at the interview and assumed that expenses would be paid at a given rate. If, subsequently, the contractor signs the contract without a term relating to expenses, and the client or agent spotted this, the contract would still be valid.

### No substitute for professional advice

Although it adds up-front costs to the process of securing contracts, the investment in [professional legal advice](#) when negotiating contracts, particularly if they are complex or non-standard, is well worth it.

If a legal adviser spots a mistake before the contract is signed, which could relate to rates and expenses, the contractor will find the legal fee a small price compared to the consequences of the mistake.

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