

What's a Contract?

“ When my boiler broke down, one of my friends from work put me in touch with her mate, Mike, who was a plumber. Mike popped round the next day and did a couple of hours' work. When he finished the boiler seemed to be working fine, so I paid him the sixty quid we'd agreed on. A couple of weeks later the boiler broke down again. I called Mike but he didn't seem interested – he said he didn't have time to come and look at it. I had to call out an emergency plumber. I was told that Mike's botch repair job had damaged the boiler so badly that I would have to buy a new one. When I called Mike to complain, he said he didn't owe me anything because he'd only been doing a favour for a mate, and we hadn't signed a contract.

In the end, I took him to court. The court said I did have a contract – even though I hadn't signed anything. They said that Mike had broken the contract by doing poor quality work and damaging my boiler. I got compensation to cover the cost of a new boiler and the money I had to pay the emergency plumber.

Louise, Swansea



Contents

How do I know whether I've got a contract? _____	2
How contracts get made _____	4
What does my contract say? _____	4
Statutory rights _____	6
Unfair terms and conditions _____	6
Ending a contract _____	7
What to do when things go wrong _____	7
Useful contacts _____	7



We all make agreements with other people every day. But not all of those agreements are contracts. A contract is, very simply, a legally binding agreement. It's important to know when you've got a contract because:

1

A contract will give you the right to take the other person or company to court if they don't carry out their side of the bargain (and gives them the right to do the same to you).

2

Having a contract can also mean you get the protection of certain terms and conditions which the law says should be part of the contract whether they were agreed or not.

How do I know whether I've got a contract?

There are four basic building blocks needed for a contract and if they're not all there, there won't be a contract.

1 Making an offer

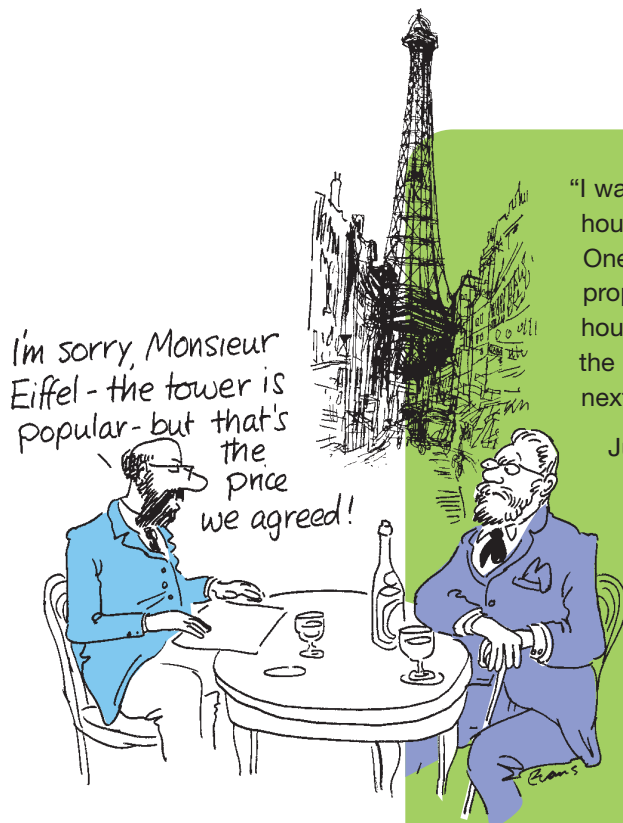
The first step towards creating a contract is for someone to make an offer – to mend a boiler, buy a car, give you a job, and so on. The offer needs to be clear, firm and final. It won't be a proper offer if it is too vague or if important information, like the price, is missing.

2 Accepting an offer

The next step is for someone to accept the offer. This is the moment when the contract is created. Usually it's obvious when this has happened. But sometimes it can be difficult to work out exactly when the contract is made. This matters because as soon as there is a contract, you can't get out of it or change it, unless the other person agrees.



A CONTRACT STARTS WHEN AN OFFER IS ACCEPTED.



ABOVE: HISTORY SHOWS YOU CAN'T CHANGE THE PRICE AFTER SIGNING.

"I wanted to get a conservatory built at the back of my house and was shopping around for the best deal. One glazing firm sent over a couple of builders to have a proper look at my house and measure up. After a couple of hours they gave me a written estimate of £12,500. This was the best quote I'd had and I liked the firm, so I rang up the next day to tell them to go ahead.

Just before building started, they rang me and said that they were going to have to charge me £15,000 because the company supplying their materials had put its prices up. I took some legal advice and was told that I had a contract with the glazing firm for them to build the conservatory for £12,500. Their written estimate was an offer, which I had accepted, and it was too late for them to change their minds. When my solicitor wrote to the firm about it they said they would do the work for £12,500 as agreed."

Ahmed, Solihull

3

Price

An agreement won't be a legally binding contract unless **both** the person offering and the person accepting have to pay something. This is the 'price' paid under the contract. Lawyers sometimes call it the 'consideration'. The price doesn't have to be money, although it often is. So for example, in an employment contract, the 'price' paid by the employer to the employee is wages and the 'price' paid by the employee back to the employer is the work he or she does. The price might be a promise to do something for the other person in the future. For example, if you book tickets to see your favourite pop star in concert, you pay money to the ticket agency and in return they promise you will be let in to the concert.

If someone gives you something for nothing, or promises to, it's not a contract because only one person benefits. For example, if I promise you that I'll give you my old mobile phone, and then I give it to someone else instead, you will be pretty upset. But you don't have any legal right to the phone because I wasn't going to get anything from you in return (gratitude doesn't count!). If you agreed to pay me for it, no matter how little the amount, it would have been a contract.

Price tag myth

If you walk into a posh shop and see a designer jacket with a £5 price tag you might think your luck's in and the shop has to sell you the jacket at the marked price, even though it's obviously a mistake. In fact they don't have to – if the shop assistant realises the mistake before you pay, they can refuse to sell it at that price. This is because, legally speaking, you are offering to buy the jacket for £5 and the shop is free to accept or reject that offer. Sometimes this happens because a shop makes an innocent mistake with its labelling. But if you find that a shop is doing this regularly it might be a deliberate con and you could report them to Trading Standards (see **Useful Contacts**).



A PROMISE TO DO SOMETHING, FOR NOTHING, IS NOT A CONTRACT.

If you are under 18 or have mental health problems at the time you entered into a contract and you change your mind about it, you may be able to get out of it. If you are in this position, see a legal adviser at your local advice centre or **Citizen's Advice Bureau** (to find your nearest advice centre see **Useful Contacts**).

4

Intentions

Lastly, the people making the contract have to intend it to be legally binding. This means that they would want the right to take the other person to court if they don't keep their side of the bargain. This is why many of the everyday agreements we make with our families and friends aren't contracts, even if the other ingredients are there. You might agree with your friend in the pub "you buy this round and I'll get the next". Your friend might be pretty fed up if you go home without buying your round, but he wouldn't want to be able to take you to court over it!

How contracts get made

Sometimes it's obvious when a contract is made – like when you sign a lease or an employment contract. But it's not always so clear. We enter into contracts all the time without even thinking about it.

You're going to a football match: you walk through the turnstile and give the person behind the desk some cash. In return, they give you a ticket. Nobody has said a word to anyone else, let alone signed anything, but you've now entered into a legally binding contract with the football club; in exchange for your money, the football club has agreed to let you watch the game.

You probably won't have a problem with this – after all you paid to watch the match. But there are some situations where you can, unknowingly, get stuck with a contract that you don't really want.

Common situations where you may make a contract without realizing are:

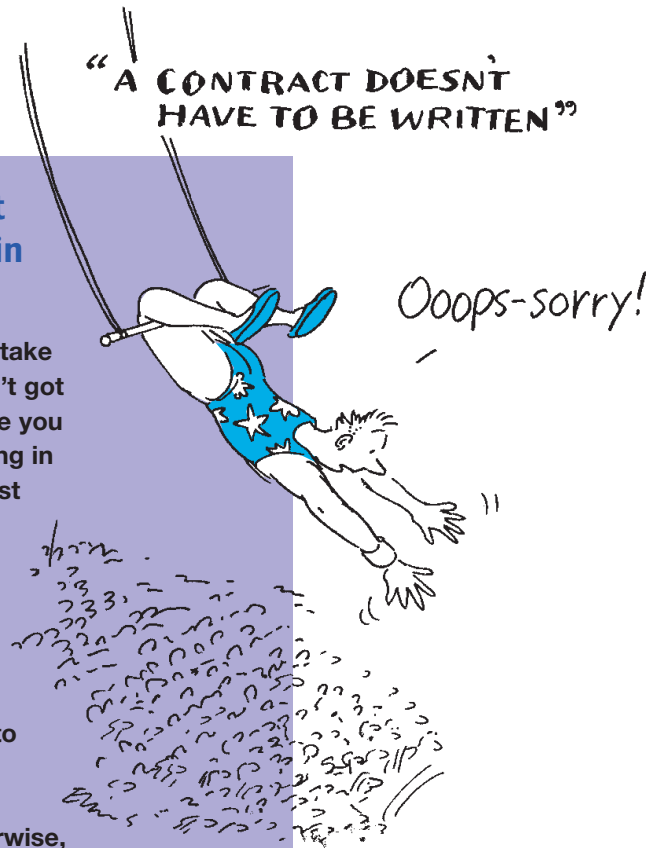
- Over the telephone – an agreement over the telephone can be a contract – it's as legally binding as a written contract.
- Any booking made on an automated telephone booking service will usually be a contract.
- Ordering something in a shop. **Always** check whether you will have to buy the item you have ordered, or if you will be free to change your mind.
- Ordering or booking over the Internet.

If you make a contract over the phone or using the Internet, there are laws to protect you. You must be given clear and full information to help you make a decision about whether to buy and you usually get a 'cooling off' period. A cooling off period is a specified length of time when you can get out of the contract.

“But I haven't got anything in writing!”

It's a common mistake to think you haven't got a contract because you haven't got anything in writing. In fact most contracts don't *have to be in writing* and many are not. The exceptions are agreements like leases, contracts to buy property and consumer credit agreements. Otherwise, as long as you have a clear agreement and the basic ingredients for a contract are there, you will have a contract whether it's in writing or not. Having said that, it's always a good idea to get something in writing if you can – it helps to show what has been agreed if there is a dispute about it later on. If you haven't got anything in writing it often ends up being one person's word against another.

“A CONTRACT DOESN'T HAVE TO BE WRITTEN”



What does my contract say?

“I wanted a new phone and decided to switch to a cheaper network. I still had quite a bit of credit left on my old phone so I rang my old provider and asked them to refund it. I was surprised and upset when they refused. They pointed out a bit in their terms and conditions which said that once you pay for top up vouchers you cannot get a refund of any credit you don't use. In other words, I had to use it or lose it. I wish I'd read the terms and conditions in the first place because then I wouldn't have kept so much credit on my phone”.

Savita, Norwich

What are terms and conditions?

'Terms and conditions' is a phrase often used to mean the rights you have under the contract and also what obligations you have. For example, if you order a new cooker, it might be in the terms and conditions that the cooker will be delivered within a week (that's your right) but it might say that someone has to be at home to take the delivery (that's your obligation). Terms and conditions might be individually negotiated, for example if you bargain with each other over the price. Or they might be already set out, like when a company has a standard set of terms and conditions, which are the same for every customer. Every contract has terms and conditions – whether it's in writing or not!

If you've got a written contract you'd think it would be pretty easy to find out what the terms and conditions are. Sometimes it is, because all of the terms and conditions are usually written down in one place. But often, they are hidden away in "the small print".

The small print often contains the most important bits of your contract – for example, what you can do if you change your mind about what you've bought. If the small print has been drawn to your attention, when you make an agreement, it will usually be part of your contract. If you feel that you have been duped into a bad deal because you missed something in the small print, have a look at the section below on **Unfair terms and conditions**.

Sometimes, as well as being in small print, terms and conditions are found in places you might not think of looking. For example, if you turn a football ticket over you may find some of the terms and conditions on the back of it – it may tell you whether you are entitled to a refund



THE SMALL PRINT OFTEN CONTAINS IMPORTANT TERMS OF THE CONTRACT

if the match is postponed, or whether the club can throw you out if you get too rowdy.

Where to check for terms and conditions:

- If you are buying from a catalogue, the small print is often separate from the booking form – you may find it elsewhere in the catalogue.
- The back of an order form.
- On the Internet, the booking page may well have a link to standard terms and conditions – as long as they are mentioned on the booking page and are easily accessible they will be part of your contract.
- If you buy a ticket, check the back of it. There may be some terms and conditions printed on it, or it may refer to some that you can find elsewhere.

Notices displayed in places like shops, hotels, theatres and car parks



ALWAYS READ THE CONTRACT BEFORE YOU SIGN

can also be terms and conditions. Here are a few examples:

- "Refunds given only for returns made within 14 days of purchase"
- "We cannot accept liability for any damage to your vehicle while parked in this car park"
- "Latecomers will not be admitted until the interval"

Provided the notice is clearly visible when you are handing over your money, or parking your car, it will form part of your contract.

"Read before you sign"

Sometimes we're in too much of a hurry or too embarrassed to read through pages and pages of small print before signing something. But if you sign a contract you will normally not be able to claim later that you didn't agree to what is in it, even if you hadn't read it at the time. Reading before you sign is the only way to make sure you're not agreeing to something you don't want to.

Buying from abroad?

Be aware that if you make a contract with someone in a different country, a different law may apply. If you buy from a country within the EEA over the internet, most of your rights will be the same as ours. But if you buy something from a seller in New York, American law will usually apply.

Statutory rights

As well as the terms and conditions that you agree, the law sometimes puts other terms and conditions into your contract to make it fairer. These are often referred to as “statutory rights”. You can rely on these rights whether they have been agreed or not. Statutory rights usually come up when you are buying goods or when you pay someone for a service, like a holiday company or a builder. Here are a few examples of when your statutory rights would apply:

- You are buying a new TV – the law says it must be safe to use and of a quality that most people would be happy with.
- If you see a T-shirt advertised as 100% cotton, it mustn't be made out of anything else because goods have to match their description.
- If you have call in a plumber to sort out a drainage problem – they have to carry out the job to a standard you would expect of a decent plumber. So, if the plumber botches the job, they have broken the contract.

If you buy something and later realise it's faulty, it is your statutory right to take it back to the shop and get your money back, no matter what the shop's refund policy is. But if there is no problem with the goods and you simply change your mind, the shop only has to follow its own refund policy. This is often set out in a notice next to the till and is one of the terms of your contract.

To find out more about your statutory rights, have a look at **Useful Contacts** below.

Warning!

You have less statutory rights when you buy goods privately. This means that the seller is not acting in the course of their business. The difference is that the thing you are buying only needs to be 'as described'. For example, it's a private sale when you buy a car from an individual owner who is not in the car trade. Also, watch out for traders posing as private sellers – they are trying to make you think you don't have rights when you do!

Unfair terms and conditions

As well as adding terms and conditions to contracts to protect people, the law can also cancel out certain terms and conditions that are 'unfair'. For example, if the contract gives one person the right to end the contract whenever they like, but the other person can't do that, it is likely to be unfair. Contracts can often be unfair when they are between a company and a 'consumer' (a consumer is an individual who is buying for themselves, not for their business). If you feel you have got a raw deal from a contract, it may be worth seeking advice from an adviser at your local advice centre or calling Consumer Direct for advice – even if you've agreed to the terms and conditions you think are unfair.

“I was really busy making arrangements for my wedding last year. I'd ordered the bridesmaid dresses from a big department store – I had to pay for them when I made the order and they were due to be delivered a month before the big day. When the dresses arrived I was horrified – they were bright orange instead of pale pink! I immediately called the store to find out what was going on. They said that there had been a problem with their overseas supplier and that I could either keep the orange dresses or wait another 8 weeks for the right colour – too late for the wedding! They said that it was in their terms and conditions that they could change the colour or fabric of the dress without even telling me. I asked for my money back so I could try to find the right colour dresses somewhere else, but apparently it said on the back of the order form that prepayments would not be refunded. After a long fight I eventually got my money back and a little extra from the store because those terms were unfair.”

Liz, Cambridgeshire

“Is it legal?” Even if you have a contract, the courts may not be able to help you if your contract is 'illegal' – if it contains an agreement to break the law. A common example of an illegal contract is when a worker agrees to be paid 'cash in hand', knowingly avoiding tax and National Insurance. If you have an illegal contract you will almost certainly lose your right to get compensation from the other side if something goes wrong.



Ending a contract

When you buy something, the contract usually happens very quickly – you hand over your money and you take the item you bought. But some contracts can go on for a very long time, like a lease or an employment contract. These longer contracts can come to an end in a number of different ways; here is a summary of the most common:

- A contract could come to a natural end if both sides have fulfilled their sides of the bargain, for example, if building work has been completed and paid for.
- Contracts can finish at any time if both sides agree to it.
- The contract might give the parties a right to end or 'terminate' the agreement; this is often at a certain time, or with a period of notice.
- If one person doesn't carry out their side of the bargain, they have broken the contract. This can sometimes mean that the contract can't carry on and the other person can try to get compensation.

If you are stuck in a contract that you're not happy with and you don't know how to get out of it, you should get in touch with an adviser at your local advice centre or call Consumer Direct. There may be a way of ending the contract legally. If you just stop fulfilling your side of the bargain, the other person might be able to take you to court.



NO CONTRACT AFFECTS YOUR RIGHT TO THE MINIMUM WAGE.

What to do when things go wrong

- Act quickly – there is often a time limit on making a complaint.
- Stop using the goods as soon as you realize there is a problem.
- Collect all the relevant paperwork together. Even if you don't have a written contract you may have letters, invoices and receipts or copies of order forms which can tell you what has been agreed.
- Depending on the situation, it is usually worth raising any problems directly with a store manager or customer services to start with. Many businesses are happy to put things right. Don't always rely on manufacturer's warranties.
- If you don't get anywhere, you need to put your complaint in writing. Find out whether there is somebody responsible for customer complaints in the organization and, if so, address or copy your letter to them. Set out your complaint as clearly as you can and set a deadline for them to come back to you. It's a good idea to get some proof of postage. (It doesn't need to be Recorded delivery. A 'Certificate of Postage' is ok.)
- If you don't get a response send another letter making it clear that you will take legal action if they don't respond.
- Keep a note of any conversations you have and copies of all correspondence.
- Find out if the company belongs to a trade organization or is regulated. Some organizations are able to help resolve disputes. For example, if it is a dispute with a travel company, the travel regulator ABTA, may help.
- If all else fails you might consider legal action. A solicitor or legal adviser at your local law centre, Citizens Advice Bureau or other advice agency can advise you how to go about this. See **Useful Contacts** to find out how to locate your nearest adviser.

Useful Contacts

Advicenow – www.advicenow.org.uk

Consumer Direct – www.consumerdirect.gov.uk

Consumer Direct can give you consumer advice over the phone. Call them on **08454 04 05 06**.

Shelter – www.shelter.org.uk

Shelter can give confidential advice to people with all kinds of housing problems. Call **0808 800 4444**.

Acas – www.acas.org.uk

Acas is an organisation that gives advice on employment disputes. Call **08457 474747**.

Trading Standards Central – www.tradingstandards.gov.uk

You can find the details of your local trading standards office on this website. If you need to report a shop or business to trading standards, report them to your local office.

Find an adviser near you:

You can find an experienced adviser at your nearest advice centre, Citizen's Advice Bureau or law centre. Look in Yellow Pages or use the Community Legal Advice directory to find one close to you.

Community Legal Advice – www.communitylegaladvice.org.uk

You can also phone Community Legal Advice on **0845 345 4345**.

This information is produced by Advicenow. Other guides include:

- Parents apart
- Trouble at school
- LivingTogether
- Family Mediation
- Divorce – a Survival Toolkit
- Working parents (or parents to be)
- Young workers
- Unfair dismissal
- Is that discrimination?
- Homeless and young?
Get your foot in the door...
- How to get good asylum advice
- Support for asylum seekers in the UK
- How to handle an interview under caution
- Turned down for DLA/AA? Think you're not getting enough?
- Claiming compensation
- 10 steps to sorting out your debts
- Dealing with bailiffs
- Identity theft
- Dealing with discrimination at work
- Do I need a lawyer?
- Seven steps to solving a problem

You can read or download all these guides and more at www.advicenow.org.uk

“Advicenow is the liveliest, least stuffy, most accessible and understandable website on legal matters that I’ve ever come across.”

Marcel Berlins, The Guardian

Plain
English
Campaign

Plain English Web Award 2004

The information in this guide applies to England and Wales only.

The law is complicated and every case is different. Get advice.

Written by Rachel Horton
with material from Jane Bowers.

Published by Advice Services Alliance,
March 2009

If you have any comments on this guide,
please email us at feedback@advicenow.org.uk



advice
services
alliance

Advicenow is run by Advice Services Alliance, the co-ordinating body for all UK advice services. ASA members include advice^{UK}, Age Concern England, Citizens Advice, DIAL UK, Law Centres Federation, Shelter and Youth Access.

Advices Services Alliance
6th Floor, 63 St Mary Axe, London EC3A 8AA

The Advice Services Alliance is a company limited by guarantee, registered in England and Wales, no: 3533317, registered office 12th floor, New London Bridge House, 25 London Bridge Street, London SE1 9ST

Funded by

community
legal advice

advicenow.org.uk/contracts