businesscompanion
trading standards law explained

Part 1. Forming a contract

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Identifying a contract

Many business situations involve contracts. It can be helpful to know when a contract is in place between your business and a supplier or customer.

The traditional way to recognise whether a valid and enforceable contract has been formed is to identify whether the following elements of a contract are all present:

- An offer
- Acceptance of that offer
- Consideration
- An intention to create legal relations between the parties
- Certainty of terms
- Legal capacity of the parties

When deciding whether a contract is in place, the law takes the intentions of the parties into account by considering such factors as any verbal and written interactions, where the discussions took place and the actions and conduct of the parties. Contracts must also be entered into for a lawful purpose and with genuine and informed consent.

What is an offer?

An offer is a clear communication that one party is willing to enter into a contract on particular terms, such as where one party states they would like to buy or sell goods or services. The offer needs to have sufficient information to be capable of being accepted, and it needs to be clear that the party making the

offer, whether it is the business or the consumer, intends to be bound by it.

Quotations

Providing a quotation for home improvement work to a customer will usually involve an offer. Quotations will often be given to a customer after you have visited a consumer's home, and will include a detailed breakdown of the goods and services to be supplied, and the total cost for that work, inclusive of VAT.

A quotation should only be given when you are happy that you understand the customer's needs and that you have priced the job correctly. Once the customer accepts the quotation, it is likely that you will have a legally binding contract.

What is not an offer?

Sometimes communications do not provide enough information to be legally considered an offer. For example, goods displayed in a shop window are not usually considered to be offers. These communications are called 'invitations to treat'.

An invitation to treat is a communication whereby you are inviting consumers or other businesses to engage in further negotiations to purchase your goods or services. A common example would be where you have goods on display in your shop (whether on the shelf or in the shop window). The invitation to treat is therefore advising other people that you have goods or services that you may be willing to sell, and that further discussions or negotiations would be needed to form a contract. If the customer is interested in your goods, they may bring them to the till with the intention of purchasing them (in legal terms, this becomes the 'offer', which you can then choose to 'accept').

Estimates

Often, businesses will give estimates to customers who are looking to cost work that they may wish to have done. These are often given before a full site inspection or survey has been conducted, and at the early stages of a discussion between a business and a customer. An estimate is not usually deemed to be an offer because it will be based on incomplete information.

The estimate should clearly state that it is an approximation of costs, and a full survey or additional information would be needed to provide a full quotation. This makes it clear to the customer that the costs could increase or decrease once full details, measurements, etc have been obtained. However, to avoid infringing consumer protection legislation, it is very important that estimates are realistic and not misleading.

Advertising your services

Most businesses will advertise their goods and services online, whether that is via an online shop on a website, through influencers, or the use of general marketing campaigns. The general legal principle is that advertisements or goods on display in online shops are usually 'invitations to treat' (see above). The consumer makes the offer to purchase the goods and services when they put them into their virtual shopping basket and go through the process of purchasing the goods. The business accepts the offer (usually signified by taking payment from the consumer or otherwise stating that the order has been

accepted) and goes on to dispatch the goods to the consumer.

You also need to be aware that if you provide key information about your product and its price in a commercial communication that enables, or purports to enable, a consumer to decide whether to purchase your product or make another transactional decision in relation to the product, you may be making an 'invitation to purchase' under the Digital Markets, Competition and Consumers Act 2024 (DMCCA). This Act replaced most of the Consumer Protection from Unfair Trading Regulations 2008 (CPRs) on 6 April 2025; for commercial practices before 6 April 2025, the CPRs may still be relevant. For example, pages on your website displaying products that consumers can order, or prices on products in a shop, are likely to be 'invitations to purchase'. If you are advertising your business generally and no prices are supplied, this is unlikely to be an invitation to purchase.

If you make an 'invitation to purchase', certain information becomes 'material information' (a term used in the DMCCA) that the consumer needs to be given in order to make an informed choice. This includes:

- The main characteristics of the product (such as what it is and what it does)
- Your business details (including your identity, business address and details of anyone you are acting on behalf of)
- Information such as the total price (including all taxes and any mandatory fees or how the price will be calculated)
- Optional delivery charges
- Any rights to withdraw or cancel the contract
- Details of any differences in the trader's actions and their published practice
- Any other information required to be given by any other law

You may breach the DMCCA if you fail to give consumers the information that they need to make an informed choice in relation to your product, or if the information is provided in an unclear or untimely way (such as providing the information after they need it). More information about your responsibilities under the DMCCA can be found in the 'Unfair commercial practices' guide.

Accepting an offer

In order for an offer to be accepted, a party usually has to clearly communicate their acceptance of the offer. If any changes are made to the offer or if any further negotiations are entered into (such as offering a lower price), this is considered to be a 'counter-offer'.

Any counter-offers made will set aside the original offer, and the counter-offer will be making a new offer to the other party. The other party would then be free to accept or reject that offer.

> **Example: changing details in a quotation**
> Your business provides a quotation to a customer. This is an 'offer', as discussed above. The customer is unhappy with the quotation, so they come back to you with their suggested changes. This is a counter-offer, and they have made you a new offer. You can choose to either accept or reject the customer's proposed changes to the quotation. If you accept them, you have a contract with the customer. If you reject the changes, there is no contract, and either you or the customer would need to make a new offer / quotation if you wished to continue with your transaction.

Offers can also be set aside in other circumstances - for example, if they are rejected or if they are not accepted after a reasonable amount of time has passed.

Time limits for offers

If you are making an offer, you may wish to put a time frame on any quotations or other offers made to customers. This should be a reasonable time frame to enable them to carefully consider your offer. Doing this will clearly show what you consider to be a reasonable time frame for accepting your offer.

Once acceptance has taken place, there is usually a legally binding contract between you and the other party. This is known as the formation of the contract.

When does acceptance take place?

This depends on how the acceptance has been sent. For most forms of communication, acceptance takes place when it has been communicated to the party who made the offer. If the acceptance is given verbally, it takes place at the time of the conversation.

If the acceptance is communicated by instantaneous communication methods (via email or a text message, for example), then acceptance is deemed to be received when it would be reasonable for the other party to receive it. For businesses, this is usually during their normal business hours, when the recipient could reasonably be expected to have read it. It does not matter whether the communication has actually been read. The contract would therefore be formed from this time.

There is an exception to the general rule about acceptance being received by the person who has made the offer. This exception is called the postal rule.

The postal rule

This is an area of law that was developed when the postal system was predominantly used for business contracts. It states that acceptance takes place when a correctly addressed and stamped letter is placed in the post box, not when it is received by the party. However, this area of law is rarely applied.

It is therefore advisable for businesses to specify in any offers made that acceptance takes effect only when it is communicated to and received by them. This helps to demonstrate the intention to exclude the operation of the postal rule and ensure that a contract is formed only when the acceptance has been received.

Contracts made online

Many online businesses will state in their terms and conditions the point at which acceptance of a customer's offer takes place. It is therefore advisable to make it clear to your customers at which point you are accepting their offer to purchase your goods, services or digital content. You must not mislead consumers about when you are accepting their offer, and you must make it clear when your business intends to be legally bound by a contract entered into online.

Consideration

Consideration is a right, interest, profit or benefit; or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other. For example, this is often the goods, services or digital content that you are supplying in exchange for the money being paid for them. For contracts in England and Wales, sufficient consideration must be present for there to be a contract.

However, the consideration given does not need to be adequate. This means that the law requires parties

to have entered into a bargain where each side has provided something of value, but the value does not have to be equivalent to what they are getting in return. It is usually left to the parties to determine the appropriate value, as long as this agreement has been reached fairly and the price agreed is clear, transparent and not misleading. It is also important that you calculate the cost of your goods and services carefully and ensure that you are happy with any quotations or prices that you give to customers before a contract is formed.

Intention to create legal relations

Parties to a contract must have intended to create a legally binding contract with each other. The law presumes that agreements made in a social or domestic context, such as with your friends and family, are not intended to create a legal relationship. Whereas agreements entered into in a business or commercial context are more likely to be viewed as intending to be legal contracts, unless the parties can demonstrate otherwise.

Capacity and consent

Parties must have the legal capacity to enter into a contract, and they must do so freely and with genuine and informed consent. A contract may be challenged if one party did not have the capacity to enter into the contract, or if any of the parties have not entered into the contract of their own free will. The agreement should not have been entered into due to undue influence, duress, any or all parties operating under a mistake or any forms of misrepresentation. As a business, you should take care to ensure that the person you are dealing with understands the nature and effect of the contract and has the ability to make their own decision. You must not take advantage of a person's vulnerability, pressure them into agreeing or give them misleading information. You must also ensure that the information that they need in order to make an informed decision is provided to them, and available to them when they need the information. You can find out more information about this in other parts of this guidance, and also in our 'Consumer vulnerability' guide.

Contracts may not be legally binding, or may be open to challenge, where they have not been entered into fairly. This may include situations where a person has been pressured into agreeing to a contract, has relied on misleading information or has made a mistake that the other party is aware of and has sought to take advantage of. If consumers have been asked to agree to unfair terms or terms they could not possibly have been aware of before the contract was made, these will not be legally binding. In consumer contracts, terms must be fair, transparent and properly brought to the consumer's attention. See part 3 of this guide ('Terms and conditions') for more details.

< Introduction

> Part 2. Types of contracts

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