

CONSTRUCTION AND ENGINEERING DISPUTES

The Dos and Don'ts Factsheet

Unfortunately, with construction and engineering projects, disputes are very common. So, if you do find yourself in this position, here is some guidance to help secure a favourable outcome.

And remember, if you are unsure how to proceed, seek legal help. This investment at the outset could save you considerable time and money in the long term.

The Dos

1 Find witnesses.

Consider what witnesses you will need to support your case and obtain statements.

2 Collate all relevant documentation.

This pertains to any information relevant to the investigation, including emails. Your lawyer may need to issue document hold requests to the other party in order to stop information from being deleted, so it is important to be methodical with your communication.

3 Look at your insurance.

If you are pursuing a claim, or if it is possible that your dispute will lead to a claim, it is important to speak with your brokers. They may require notification before agreeing to pay.

4 Seek specialist advice.

A good lawyer with construction and engineering experience will give you the best chance of navigating a dispute effectively. Consider also getting advice from the project's Quantity Surveyor or Commercial Manager. Their knowledge of the job and why the dispute has arisen could be invaluable

5 Mitigate your losses.

You have an obligation to mitigate losses, so bear that in mind if you are the injured party.

6 Look into litigation funding.

If you have financial concerns about bringing a claim, there are third-party funders who may buy or fund a claim on your behalf.

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The Don'ts

1 Don't terminate a contract without seeking legal advice.

Invalid terminations are problematic, will weaken your position and make it more difficult to resolve the dispute.

2 Don't exclusively pursue legal remedies.

There may be commercial solutions available that will help, so pursue those in tandem with legal measures. You may, for example, wish to agree a discount for the next project you do with the other party in the future.

3 Don't just rely on prevention clauses.

Prevention clauses, such as force majeure, are often included in contracts to attempt to remove liability when parties are prevented from fulfilling their obligations. However, these clauses can be a blunt instrument that courts will only take into consideration in limited circumstances. You would be better served by making express provision in the contract for situations which may prevent work being undertaken. Consult with your lawyer about this.

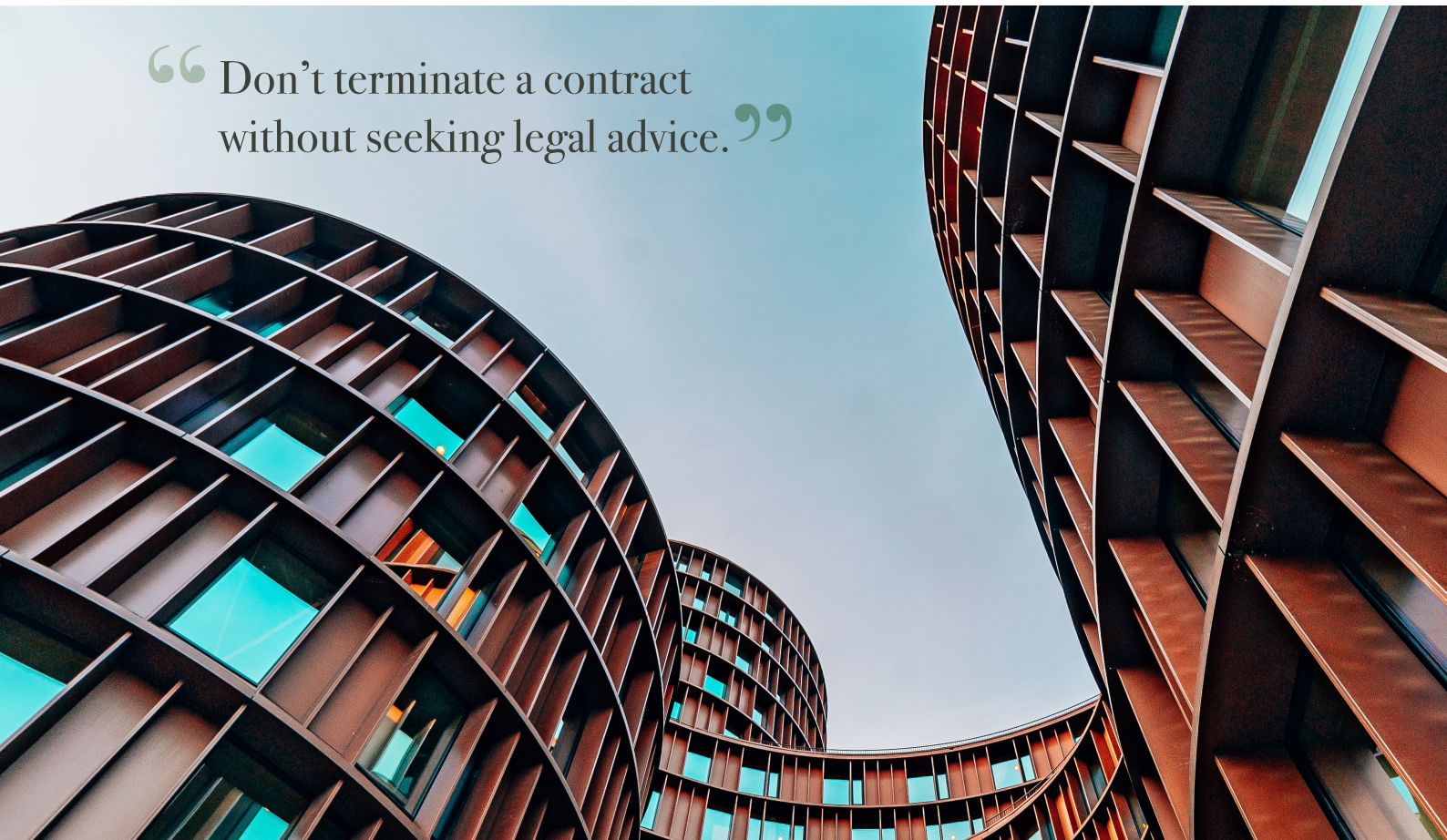
4 Don't waive your privilege.

Confidentiality is the key component of litigation privilege, which only applies once a dispute is reasonably in contemplation. Privilege can be inadvertently waived by sharing documents with a third party so, take great care when distributing information, circulating it no more widely than is strictly necessary and ensuring that there is no accompanying annotation or comment.

5 Don't ignore CPR pre-action protocol

Construction and engineering disputes are generally heard at the Technology and Construction Court. They are subject to CPR pre-action protocol, which is designed to ensure that, before Court proceedings commence, both parties have provided sufficient information and have had time to consider the outline of the other's case. You must familiarise yourself with these requirements before starting legal proceedings:

https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/prot_ced.



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