

# When can a contract be varied orally?

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# When can a contract be varied orally?

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Parties are at liberty to agree new terms orally or by conduct even where a prior contract contained a clause providing that all future variations must be in writing.

A commercial contract between two companies contained a term stating that their agreement *"can only be amended by a written document which (i) specifically refers to the provision of this Agreement to be amended and (ii) is signed by both*

*parties*".

In subsequent litigation concerning the contract, it was argued that this clause prevented the parties from varying the terms between them orally or by conduct.

The Court of Appeal, which determined another matter arising from the case, made some observations about the validity of that argument. It stated that the existence of the above term in the contract did not prevent the terms being varied by oral agreement or conduct, by virtue of the parties' freedom to agree whatever terms they wish.

The Court noted that it may be more difficult to prove an agreement where it took place orally, but it would still be possible in some cases. In the present case, the evidence of the "open, obvious and consistent" dealings between the parties sufficed to show a variation by conduct had taken place.

*Globe Motors, Inc & Ors v TRW Lucas Varity Electric Steering Ltd & Anor* [2016] EWCA Civ 396

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