

# The evolving risks of being legally bound: key lessons for the formation of contracts

## Introduction

A recent case has again reinforced the need for caution in commercial communications, particularly in the Financial Services sector where the speed and informality of modern business can lead to “unintended” legal consequences. The courts continue to adapt to technological change, recognising that binding agreements can arise from emails, instant messages, and other informal exchanges. This briefing draws on the latest case of *Jaevee Homes Ltd v Fincham (trading as Fincham Demolition)* [2025] EWHC 942, as well as practical insights from industry-focused discussions, to highlight the key risks and commercial considerations for **everyone** communicating and doing business on behalf of banks and financial services firms.

## Key legal developments: from email to instant messaging

The Court of Appeal’s decision in *Hudson v Hathway* [2022] EWCA Civ 1648 confirmed that signing off an email a name or preset signature can constitute a signature for the purposes of the Law of Property Act 1925, and that a series of emails can amount to a binding agreement. The recent case of *Jaevee Homes Ltd v Fincham (trading as Fincham Demolition)* [2025] extends and reinforces this principle of modern communication being capable of forming binding legal agreements.

## Facts of *Jaevee Homes Ltd v Fincham (trading as Fincham Demolition)* [2025]

Jaevee Homes Ltd is a property developer, and Mr Fincham, trading as Fincham Demolition, is a demolition contractor. In early 2023, Jaevee approached Fincham to carry out demolition works at a site in Norwich. The parties engaged in a series of communications, including site visits, emails, and crucially, WhatsApp messages.

Fincham provided a written quotation for the works, which was followed by further negotiations over email and WhatsApp. The price was eventually reduced to £248,000 plus VAT. A few days after these exchanges, Jaevee sent Fincham a formal purchase order and a short form contract, which

included more detailed payment terms. However, Fincham did not sign or expressly accept these documents. Instead, the demolition work commenced on 30 May 2023.

Fincham subsequently submitted a series of invoices, some more frequently than monthly, and Jaevee made various payments, but not in full. A dispute arose over the validity of the invoices and whether Jaevee was liable to pay the outstanding sums.

Jaevee brought Part 8 proceedings seeking a declaration that their standard terms were incorporated into a contract with Fincham, meaning disputed invoices sent by Fincham were not valid or enforceable. The High Court held that a binding contract was formed through both initial negotiations and informal exchanges of WhatsApp messages. The formal written terms which Jaevee Homes sought to rely on were circulated after the WhatsApp messages and were never signed. The court found that the WhatsApp messages evidenced a concluded contract, meaning the formal written terms provided after were not properly incorporated into the agreement. This meant the invoices totalling £145,896.31 were payable by Jaevee Homes.

The court was clear: if parties intend to be bound, even informal communications can crystallise into enforceable obligations.

## Practical implications for financial services clients



### 1. Informal communications can create binding contracts

The *Jaevee Homes* decision is a reminder that the courts will look at the substance of communications, not their form. This means that negotiations conducted over email, instant messaging platforms, or even text messages can result in legally binding agreements if the essential terms are agreed and there is an intention to create legal relations. For example, a series of emails between a bank employee and a contact at a potential customer counterparty discussing the key commercial terms of a transaction, may be sufficient to form a contract, even if the parties intended to document the deal more formally later. This logic can now be extended to communications via WhatsApp, Microsoft Teams, or other messaging platforms commonly used in fast-paced deal environments.



### 2. The importance of clear reservation of rights and “Subject to Contract” labelling

Simply including “reservation of rights” wording or “subject to contract” in correspondence may not be sufficient to prevent a binding agreement from arising. The courts will instead consider the parties’ conduct and whether their actions are consistent with an intention of being bound. If a party acts in a way that is inconsistent with a reservation of rights, for example, by allowing performance to commence or by accepting payments, this may amount to a waiver of the right to insist on formalities or to terminate.

In the *Jaevee Homes* case, allowing performance of the contract to begin before the detailed written agreement was signed showed that the WhatsApp messages were an intention to form a legally binding agreement.



### 3. Technological developments and the meaning of “Signature”

The courts have recognised that technological change has broadened the concept of a “signature”. As confirmed in *Hudson v Hathway and Neocleous v Rees* [2019] EWHC 2462, typing a name at the end of an email, or even the automatic inclusion of a name in an email footer, can amount to a signature for legal purposes. The same logic may apply to other forms of electronic communication, such as digital signatures or even typed names in messaging apps. This means that internal and external communications should be drafted with care. Before sending an email or message that could be interpreted as agreeing to key terms, consider whether you intend to be legally bound. If not, make this explicit and ensure that all parties understand the status of the negotiations.



### 4. Statutory and regulatory overlay: payment terms and contractual gaps

The *Jaevee Homes* case also demonstrates how statutory regimes can “fill the gaps” in informal contracts. Where parties fail to agree exhaustive terms, the relevant statutory scheme (such as the Housing Grants, Construction and Regeneration Act 1996 in the *Jaevee Homes* case) can imply these terms into the contract. This can have significant commercial consequences, including the timing and calculation of payments, and the operation of default notice regimes. This highlights the importance of ensuring that all key commercial terms are expressly agreed and documented. Relying on informal arrangements or assuming that statutory provisions will not apply can expose firms to unexpected liabilities or operational risks.

This means that so long as ‘essential terms’ are agreed, implied terms from the relevant legislation could fill the gap. Essential terms will be considered in the context of the agreement itself. This means that some agreements may require significantly more or less essential terms to be agreed before the contract can be formed, depending on the exact nature of the and complexity of the matter at hand

## Commercial considerations and risk management



### 1. Training and awareness

All employees, representatives and agents involved in negotiations or client communications should be trained in the risks of being legally bound by informal communications. This includes understanding when a contract may arise, the significance of “subject to contract” wording, and the implications of electronic signatures.



### 2. Internal policies

Companies should review and update internal policies to address the use of email, instant messaging, and other electronic communications in commercial negotiations. Clear guidelines should be in place regarding the use of disclaimers, the escalation of legal issues, and the documentation of key terms.



### 3. Contract management

Where possible, all agreements should be documented in formal, signed contracts. If negotiations are ongoing, make this clear in all communications and avoid conduct that could be interpreted as acceptance or performance of a contract. This should include formal processes to ensure that performance of the contract does not begin before a formal written agreement is signed by the parties.



### 4. Legal review

Involve legal teams early in the negotiation process, particularly where high-value or complex transactions are involved, or where there is any uncertainty about the risk of incorporating implied terms.



### 5. Commencement of performance

Consider carefully whether the performance of the works or services or preparatory works or services should be commenced ahead of formal documentation being put in place.

## Conclusion

The legal landscape continues to evolve in response to technological change and commercial practice. For clients, the risks of being legally bound by informal communications are real and growing. By understanding the latest legal developments and implementing robust risk management practices, steps can be taken to protect against unintended contractual and regulatory exposure. Before pressing “send”, think twice and consider whether legal advice is appropriate.



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