

# Will a restraint of trade clause be deemed ineffective under clause 23 of the Franchising Code of Conduct?

Please tick if you agree with the statement

The franchise agreement has expired and the franchisor has **not** extended the franchise agreement.

**Agree**

If the franchise agreement has not expired, then the restraint of trade clause will **not** be deemed ineffective under clause 23 of the Franchising Code of Conduct.

The franchisee has given written notice to the franchisor seeking to extend the franchise agreement on substantially the same terms as the franchisor's current franchise agreement.

**Agree**

If you have ticked the first box, but you have not ticked this box (because the franchisee did not give written notice), the restraint of trade clause will **not** be deemed ineffective under clause 23 of the Franchising Code of Conduct.

The franchisee was not in breach of the franchise agreement or any related agreement.

**Agree**

If you have ticked the first two boxes, but you have not ticked this box (because the franchisee was in breach of an agreement with the franchisor), the restraint of trade clause will **not** be deemed ineffective under clause 23 of the Franchising Code of Conduct.

The franchisee had not infringed the intellectual property of, or a confidentiality agreement with, the franchisor during the term of the franchise agreement.

**Agree**

If you have ticked the first three boxes, but you have not ticked this box, the restraint of trade clause will **not** be deemed ineffective under clause 23 of the Franchising Code of Conduct.

The franchisee claimed compensation for goodwill because the franchise agreement was not extended, but the compensation given was not genuine compensation.

**Agree**

or

The franchise agreement did not allow the franchisee to claim compensation for goodwill in the event that it was not extended.

**Agree**

If you have checked all of the boxes and the franchisee has claimed compensation but the compensation given was not genuine, the restraint of trade clause is likely to be deemed to be ineffective under clause 23 of the Code.

If you have checked all of the boxes and the franchise agreement does not allow the franchisee to claim compensation for goodwill, the restraint of trade clause is likely to be deemed ineffective under clause 23 of the Code.

Restraint of trade clauses are only enforceable if the restraint is reasonable. If clause 23 of the Franchising Code of Conduct is not applicable, you should get legal advice about the restraint of trade clause contained in your franchise agreement (as it may be ineffective on some other basis).