

## Contractor doctor: can my agent lock me into a low rate?

Dear Contractor Doctor,

I'm on a low rate, because I undersold myself at the start of the contract.

I've been offered a 3 month renewal, but after asking for more money the agency refuses. Their margin is 25% which I understand to be high. What can I do? Can I simply work for the client direct, or inform the agency of my new requirements and that they are non-negotiable and see if the offer is withdrawn?

Thanks for your urgent help.

Robert

Contractor Doctor says:

The short answer is that you should:

1. Contact the agent and say that you will work direct with the client if they do not change their position;
2. Explain to the client that the agency is engaged in unfair bargaining and so you prefer to work directly with the client or to find another agent (some clients won't let you work direct);
3. See if the client does not simply pressure the agency into changing its terms
4. Ignore threats of court actions from the agency because this is an area of law that is fraught with peril for those who venture into it

### Restrictive Covenants Are Not Straightforward

All this takes a lot of explaining, but we'll put it into a nutshell. The agency contract that you signed includes a clause known as a "[restrictive covenant](#)." Restrictive covenants are clauses that ensure you do not cut out the agent and go and work directly for the client. These are certainly fair, since the agent has spent a great deal of time and effort in securing you the role, and courts will enforce them.

Says Jonathon Little, a lawyer specialising in contract law with [Jones Day](#) in London: "This is a perfectly legitimate clause, and one which judges will enforce. But only so long as it is used for its original purpose, and not for anything else."

Your agent is using this clause as a tool to keep you working at a low rate. That's not a 'legitimate protectable interest' as the lawyers call these things. So you have every right to defy the agent's conditions. If the agent is willing to negotiate, ask for a fairer margin, and get the agent to sign off on it, or else go direct to the client.

Obviously restrictive covenants are needed by agencies, because they spend a lot of money recruiting, and if every contractor went direct just after the first contract ran out, the agencies wouldn't be in a profitable business. The [Association of Professional Staffing Companies](#) points out that agencies have every right to use these clauses. But even APSCO agrees that having a recruiting agent who is using them to bargain isn't good practice.

“ A restrictive covenant may only be used for its original purpose which is to protect agencies from unfair competition ”

Jonathon Little-Jones Day

So do feel free to go direct, and perhaps make it clear to the agency in a letter why you feel you have this right.

For more details please refer to the following articles:

[How Contractors Should Handle Restrictive Covenants: Part 1 - The Agencies](#)

[How Contractors Should Handle Restrictive Covenants: Part 2 - The Law](#)

Good luck with your contracting,

Contractor Doctor

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### Related Calculators:

- [Contract Comparison Calculator](#)
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### Related Internet Links:

- [Jones Day](#)
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