

Sometimes agents cannot unilaterally cut rates mid-contract

Contractors threatened with contract-busting rate cuts can face off unscrupulous agencies by getting the right professional advice when the dispute starts, and holding their nerve when that advice confirms that they are in the right.

"Some contractors' clients, particularly those in the financial services sector, have developed the habit of imposing across-the-board rate cuts on their contractors," notes [Roger Sinclair](#) of contractor specialist law firm [Egos](#). "They entice the contractors into accepting an engagement at one rate, and then, a month or so down the line (but whilst the contract is still current), they demand that all contractors take a cut. And that's despite those contractors not only fulfilling their own responsibilities as originally contracted, but also having every intention of continuing to do so."

Such breaches of contract are wholly unethical, says Sinclair. "After all, look at it the other way: if a contractor demanded a rate increase half way through a contract, the client would give them short-shrift - and rightly so! What possible justification can there be for it being regarded as 'OK' one way round - but not the other?"

Now, it seems, not only clients, but also some agencies are resorting to such tricks.

The agent, not the client, demanded a rate cut

By way of example, Sinclair describes the case of a contractor who was being threatened with a rate cut part-way through a contract. The contractor turned to ContractorCalculator's [Contractor Doctor](#), who recognised that Sinclair's professional help could win the day.

"When the contractor and his colleagues were informed by their agency that their rates were to be cut by 10% the following month, they naturally asked their client whether there was a problem," continues Sinclair. "The truth was then revealed: this wasn't being driven by the Client - the agency was quite shamelessly trying to increase its own margin at the contractors' cost."

The contractors were then put on 30 days notice by the agency and informed that if they wanted to continue to work for the client, they would have to renew their contract after 30 days at the reduced rate.

Not surprisingly, the contractors saw red at this grossly improper action by the agent and said, "No way!"

No substitute for legal expertise

Once Sinclair has gathered and assessed all the facts of the situation, it became quite clear that, if they held their nerve, the contractors quite clearly had the stronger position.

"The agency had a contract with the client to provide a specified number of contractors to perform specific roles," says Sinclair. "Having [terminated their contractors](#), the agency had chosen to put itself in a position where, within 30 days, it would be unable to honour its contract with the client for the supply of these contractors, and would therefore itself be in breach of contract with the client."

The client was unhappy when they found out about the terminations, and indicated that they would be prepared to take on all the contractors, with whom they were very satisfied, via another agency.

And according to Sinclair: "It would be highly likely that any [contract restrictions](#) in the contracts with the original agency preventing the contractors from working for another agency with the same client, would be unenforceable, given that the agency had itself been responsible for terminating the contractors' contracts solely to boost its own profits."

The penny dropped...

Sinclair had put the contractors well and truly in the driving seat: "Gradually it dawned on the agency that they were in a potentially very serious situation. Once the penny dropped, instead of the 10% originally demanded, they tried to negotiate a 5% cut with the contractors if they would sign new contracts, or alternatively no cut, but with considerably lengthened credit terms. The contractors would not budge."

Eventually, the agency capitulated and the contractors were issued with new contracts at the same rates, payment terms and conditions as previously. And, as Sinclair concludes, the contractors had the last laugh: "Having given notice to terminate the contracts, the agency could not unilaterally withdraw that notice, and needed the cooperation of the contractors to reinstate them and avoid the agency being itself in breach with the client. So the contractors were in a position to negotiate out the [restrictive](#)

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Roger Sinclair, Egos

[covenants](#) from the new contracts.”

This situation of having rate cuts dictated is unfortunately familiar to many contractors, but how many have rolled-over and accepted the rate cut because they lacked the confidence, based on sound legal advice, to tough it out?

There are lessons to learn from this example, and the key one is: don't try this at home – get professional advice right at the start!

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