

Contractor doctor: can the agency hold my payments for ransom?

Dear Contractor Doctor:

My husband is a contractor. At the end of January he completed a contract and put in a time sheet for his final payment to the agency.

But the agency & client have refused to pay the final invoice. Instead, they are demanding that he signs a "non-disclosure agreement" stating he won't work for any of their clients (25 are listed) for an indefinite period.

Please can you tell me if this is type of agreement is enforceable? My husband specialises in a particular technology and this would narrow the potential market significantly.

Yours sincerely,

Kim

Contractor Doctor says:

There are several things wrong here. First and foremost: the agency has under no circumstances any right to withhold payment. Your husband did the work and submitted a signed time sheet. That means you have a right to payment, and there are no if's, and's, or but's about it!

Under no circumstances may a business withhold due payment for use as a bargaining tool. The agency has no case, and you should simply hire a lawyer and sue in full court (don't go to small claims court where you can't collect expenses) and demand payment of the sum due and all costs. If the agency then agrees to pay, demand interest on the sum due and reimbursement for any costs arising from your need to recover a payment that is yours by right.

You should also make a formal complaint about the agency to the [Recruitment and Employment Confederation](#) which acts as a regulatory trade organisation--even if the agency is not a member, the REC can do some good.

Now, as far as the so-called "non-disclosure agreement" is concerned, that's first of all not what it's called.

The full legal name is a "covenant in restraint of trade" but lawyers refer to it as a "[restrictive covenant](#)." This agreement would have been enforceable if, above all, the agency had put it in the initial contract.

But, and this is a very BIG 'but,' a restrictive covenant can never be enforced for an indefinite period. It is always for a specific and reasonable period of time to protect the agency's rights of competition.

Further, it sounds as though the range of companies demanded by the client under the terms of the restrictive covenant is far too broad. The client would have to show that its competitive rights are being infringed by such a wide range of companies.

So while such agreements are enforceable in theory, in practice the client would need a very good contract lawyer. Even then it's tough: judges will enforce restrictive covenants but they don't like to, because it is a form of restraint of trade which is counter to basic principles of British law. So if they can find a good reason not to enforce them, they will.

Good luck with your contracting!

Contractor Doctor

[Ed: We are pleased to report that the contractor in question followed our advice, gave the agency a very hard time, and eventually won the payment without having to get a lawyer. Another victory for Contractor Doctor!]

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