

Contractor Doctor: My agency has stitched me up - what can I do?

Dear Contractor Doctor,

I've had been working for a client for three years on my first and only contract. After complaining about the rates I was receiving, I got terminated unfairly when the client found out I was looking for another contract. I was looking for another contract because the agency told me I was due a pay review after 12 months, which was in my contract, but it never happened, and the client said it was not in their contract with the agency.

I then found out my agency had been making a 25% margin on my rate. Then, when I informed the agency that I planned to ask the Employee Advisory Service (EAS) for advice about my rights, as my umbrella company grievance procedure did not cover this eventuality, they told the client I was threatening action, implying I was looking for a payoff.

I think the agency and client are in the wrong and would like to take further action. What can I do and what rights do I have?

Thanks

Mark

Contractor Doctor says:

Unfortunately, there's not a whole lot contractors can do in this situation. The various elements of what you've described are all too common, although it is unusual to be hit with them all at the same time.

And to be brutally honest, contractors who have a bit more experience, or have read advice on contracting, wouldn't allow themselves to get into this kind of position in the first place. That does sound harsh, I know, but every contractor needs to take a little time to learn some basic contractor survival skills. There is plenty of information and advice on this site, and the newly published [Contractors' Handbook](#) puts it all together into one comprehensive and accessible book.

So, what are the basics for contractors to look out for?

Contract for services

Firstly, you must remember that you are a contractor and your [contractor umbrella company](#) has a [contract for services](#) with the agency, which then has a contract with the client. This means that you are not an employee of the client, no matter how much they might treat you like one.

And since the ruling on the [James v Greenwich](#) tax case, contractors have been unable to claim employment rights under any circumstances. So you have no employment rights, no complaints procedure to go through with the Employee Advisory Service (EAS) and no point worrying about it.

Contractors don't get pay reviews, either, because they are not employees. Contractors have the opportunity to [re-negotiate their rates](#) when the contract comes up for renewal, and it is in the lead-up to that when you should talk to the agency about an increase in pay.

Agency margins

It sounds like your agency made a sound commercial decision when it hired a contractor at a 25% margin, when the industry benchmarks tend to be around the 15% mark. Well done, them.

Remember, there is nothing illegal or unethical about an agency taking a high margin of the contractor's fees. The agency is a business that has simply been astute in its business dealings; as a contractor you need to be just as astute in getting a good deal for yourself. You wouldn't think it unethical if you'd managed to negotiate them down to 5 or 10%, would you?

The other key point to remember is that the agency works for the client and not the contractor. It's the client who pays the bills, and from where the agency gets their cut of the contractor's fees.

Every contractor has the potential to get ripped off by the agent in their first contract, so don't feel too badly about it. Most of us contractors have been there. Put it down to a useful lesson learned, and don't let it happen to you again.

Governed by the contract

“ Remember, there is nothing illegal or unethical about an agency taking a high margin of the contractor's fees ”

Whether the termination was unfair or not really depends on the terms of the contract and how much you, the contractor, stands to gain, or lose, by making an issue of [early termination without notice](#).

Contractors are protected by their contracts, so if it says 30 days notice either way, and the contractor is escorted from the premises one day and not paid, then technically the client is in breach of contract and the contractor could sue.

However, if the day rate is only £100 per day, it's probably not worth the hassle of a protracted legal battle. If the day rate is £500, then it probably is worth the contractor putting up a fight.

Be prepared

Websites like www.contractorcalculator.co.uk and books like the [Contractors' Handbook](#) are designed to prevent first time contractors, and those who have experience, from making basic mistakes.

So, before the contract starts and whether it's your first one or you're a 20-year contracting veteran, do your homework, get the [contract checked by an expert](#) and confirm that the client's contract says the same as yours. Also do some research into rates for the role and don't immediately say yes to the agency's first offer.

Good luck with your contracting!

Contractor Doctor

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