

## Contractor doctor: can clients withhold payment over disputes about equipment not returned?

Dear Contractor Doctor,

Can a client withhold submission of timesheets if they say they cannot find an item that was returned to them? I returned a 3G card by placing it in a secure, locked cupboard. Unfortunately I couldn't hand it in to a manager as they were rarely on site.

The 3G card has since gone missing, and the client is refusing to send the timesheets off to processing until this is resolved. I've suggested that the card is cancelled.

The contract states that any assets should be returned at the end of the contract, which I have done, but they are obviously questioning this.

Thanks

Otto Bennett

Contractor Doctor says:

Ideally, contractors should not use clients' equipment as this could be a contributing factor to putting them within [IR35](#). But when a contractor does have to use their client's equipment then they should always obtain a receipt on its return.

"When a dispute arises and the client is claiming the contractor has not returned equipment, the issue becomes a question of evidence," explains [David Royden](#) of [Laytons Solicitors](#). "The contractor must prove that they returned the equipment, which might require a statement from the individual they returned it to."

Where it is not possible for the contractor to prove they returned client's equipment, then the client company has the right of 'set-off' for the costs of the equipment. In other words, they can claim compensation from the contractor for the cost of the equipment lost.

"However, this does not mean the client can withhold payment from the contractor, which may amount to thousands of pounds in lieu of equipment worth a few tens of pounds," continues Royden. "If the client withholds payment on the basis of equipment not returned and which is worth far less than the amount owed to the contractor, then the contractor is perfectly within their rights to take legal action to recover unpaid fees."

In this case, the contractor should get in touch with their solicitor or, if the amount of fees owed is less than £5,000, Royden advises the contractor to use the Small Claims Court, as they will be able to recover their costs in addition to the amount owed.

"In a perfect world, contractors should not put themselves in the position of using client's equipment," says Royden. "But when it is vital that they do, they should ensure that there is a paper trail of receipts to account for the equipment's whereabouts."

"However, unless the equipment is of very high value, the client has no right to withhold payment from contractors if equipment goes missing."

Good luck with your contracting!

Contractor Doctor

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“ Unless the equipment is of very high value, the client has no right to withhold payment from contractors if equipment goes missing ”

David Royden, Laytons Solicitors

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