

Contractor contract reviews by a legal specialist

Contractors are so called because they do just that – contract with clients to perform specific projects in exchange for fees. As a result, contractors are dealing with legally binding, business-to-business contracts on an ongoing basis.

But many contractors **sign the first contract** sent to them by an agent or client without having the contract checked by a legal specialist, who would not only evaluate the **IR35** implications but also confirm that the contract is, in fact, fit for purpose for the contractor.

Some agents and clients realise that contractors do not get their contracts checked by an expert before signature, so some contracts can be loaded in favour of the other parties to the detriment of the contractor.

Contractor specialists

When choosing a legal specialist to review their contract, contractors should ensure they only use advisers with a strong track record in the contracting sector and who have experience of contractor, agency and end-user client customers.

It is unlikely that the contractor's local high street or family solicitor will have the appropriate experience to review a contractor contract, and contractors should avoid asking their accountant, unless the accountancy practice then farms out the review to a legal specialist.

There are also a number of legal consultancies with the right experience that are not current qualified solicitors, but will still provide the depth and quality of service the contractor requires.

What the specialist will look out for

A contractor legal specialist reviewing a contract will be looking for much more than just the IR35 implications of the contract, although this may form part of the review.

When completing a thorough review, the very basic elements that the legal specialist will be looking to assess include:

Ensuring the parties in the contract are correctly identified

Confirming the contract has a sensible structure and length for its purpose – 40 page tomes will get rejected

Making sure the dates, rates and terms of business are acceptable and what was previously agreed

Ensuring the presence of an acceptable termination clause

Identifying that intellectual property (IP) rights are correctly dealt with

Confirming the jurisdiction is appropriate

Identifying clauses relevant to IR35, such as substitution, mutuality of obligation, control and so on

Flagging items of concern, such as working hours being specified or unnecessarily strong legal terms

Specifying clauses that should be removed

Including any key missing terms and/or clauses.

Basically, a good legal adviser will be looking to identify any clauses that have been included that may not work to the favour of their client, the contractor. The lawyer would also aim to include additional clauses where something is missing or it would strengthen the contractor's position in the event that something went wrong.

The contract review report

Contractors should expect to receive a comprehensive report on the contract from their legal adviser. This should highlight areas of concern and would usually include the adviser's recommendations.

Some contractor specialists offer a 'lite' service, which provides a quick summary rather than a full report, sometimes just examining the IR35 implications of the contract. This can be cheaper than a full report and possibly suitable for contractors with extensive experience negotiating their own contracts. However, it is strongly recommended to get a full review of the both the contract paperwork and the working conditions to properly evaluate the IR35 position.

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Negotiation

Many contractor legal specialists are able to assist the contractor with negotiating the changes in the contract. Although this can result in additional expense, it does send a message to the contractor's agent or client that the contractor is a professional who means business and is intent on getting the contract changed to suit their needs.

Some agencies may refuse point blank to have any changes made to the contract, often because they do not want to incur additional legal costs themselves. Another important point to note is that the upper level contract, the one between the agency and the client, must mirror the lower level contract, between the contractor and the agent. If they are not the same then this would be a factor against the contractor in any subsequent IR35 investigation by HMRC.

As contract reviews now range in price from a few tens to a few hundreds of pounds, which for most contractors is what they would earn in the first morning's work of a new contract, they are a worthwhile investment. And they can save contractors a fortune should something go wrong in the future.

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