

## Contractor Doctor: Can I quit the contract if the role is different than agreed?

Dear Contractor Doctor

I've just started work on a new contract that has turned out to be completely different to what I was expecting. The agency arranged an interview with the client where we discussed the role in detail and I subsequently accepted the contract offered.

However, at the first project meeting on day one I discovered the role bore little resemblance to the assignment discussed with the agency and at interview with the client. Not only was the client's expectation of me different, but I don't actually have the necessary skills to complete the part of the project allocated to me. If I'd known the true story, I would never have accepted the contract.

Can I quit the contract if the role is different than agreed?

Thanks

Graham

Contractor Doctor says:

If an agency, or client, misrepresents a contract assignment to a contractor, then the contractor has the option of terminating the contract without penalty. It may also be possible for the contractor to take legal action to recover any losses caused as a result of the misrepresentation, such as losses from turning down another contract opportunity.

However, the role might still be attractive and if the contractor has the relevant skills and experience, they can choose to renegotiate the contract to properly reflect the services being delivered and to ensure they don't fall foul of [IR35](#). This may also include a rate renegotiation.

In practice, though, most contractors in this situation advise the client of the agency's error and [terminate the contract](#) amicably without taking legal action, chalking the whole affair up to experience and moving on to seek a fresh assignment.

### Misrepresentation and compensation

If the agency has clearly misrepresented the assignment to the contractor, [contract law](#) allows the contractor to choose to cancel the contract. Misrepresentation does not automatically result in the contract becoming unenforceable, but it does provide the injured party with the option of termination.

This means that, if it suits their circumstances, the contractor can choose to continue with the contract and all its provisions. Not all misrepresentations are automatically negative – there could be circumstances under which a contractor might benefit as a result of an agency's or client's misrepresentation of an assignment.

If the contractor has suffered loss as a result of the agency's misrepresentation, then contract law allows the contractor to be put back into the position they were in before the contract was agreed.

So if, for example, a contractor has turned down another lucrative contract to accept the one that turn out to have been misrepresented, they may have a case for taking legal action to secure compensation.

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### Contract renegotiation

Although it might not be quite what was expected, an assignment that has been misrepresented might actually work well for a contractor. If they have the necessary skills and experience to deliver the services required by the 'real' role, the contractor can choose to proceed with the assignment.

However, for their protection and to ensure they remain outside IR35, under these circumstances a contractor should always renegotiate the terms of the contract. Specifically, the [contractual terms](#) detailing the services or deliverables provided must be updated to accurately reflect what is required by the client.

This is for two reasons:

So the client cannot subsequently claim that the contractor failed to deliver the services specified in the original contract

So the contractor does not appear to be arbitrarily allocated new tasks by the client, suggesting the client [controls](#) the contractor as a 'tail-end Charlie', strongly pointing to the contractor being inside IR35.

If the contract is via an agency, the contractor should ensure their agency agreement is updated to reflect the new assignment and its deliverables.

### **If the misrepresentation is by the client**

It might be that the agency represented the contract in good faith based on what they understood about the assignment from the client; after all, they are not an expert in the contractor's field. But it could be the client who is knowingly asking the contractor to fulfil a different role.

The contractor still has the option of walking away without penalty, but if they choose to stay, then the new arrangements must be documented. Otherwise, if the project goes wrong and the contractor is blamed, the client could deny knowingly changing the contract.

If this situation can't be avoided and the contractor needs to complete the assignment, then it is a very good idea to pack an escape pod. Contractors can do this by emailing the client confirming the changed role and ensuring they keep records of the elements of the project they have confirmed with the client that they will complete.

Equally, if a contractor is presented with a contract that is fairly vague about the specific services and deliverables, they should confirm these. An email to the agency and client stating exactly what they are accepting to do as part of the contract before it starts can help avoid subsequent disputes.

Ultimately, in most cases when this happens, there has been a genuine breakdown in communications and the contractor gains nothing by taking legal action. Because they can walk away without penalty, most contractors choose to do so and seek another contract.

It could even be that if there has been a genuine mistake, both the 'lost' client and the agency might be keen to make amends by helping the contractor into a more suitable, or much better, new contract.

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