

How contractors should handle being terminated

Having your contract terminated is always a messy business. But a contractor who has prepared for the eventuality, and who handles it properly can get through it without too much damage.

The call for termination is most often not at all your fault: rather it happens because of changing business needs by the client. Of course, it can be the result of a difference of opinion with the client, or it can be that, rightly or wrongly, the client is not satisfied with your work.

But, for whatever the reason may be for the client's decision to terminate your contract, you will want to make sure that you receive the full pay that you are due up to termination, that your rights are respected, and if possible, that you can still use this client as a reference, or possibly even receive more work from the client. You should avoid, if at all possible, quarrelling with the client, because there is nothing to be gained from it. Much more is to be obtained by maintaining a reputation as a contractor who is easy to work with.

Get the Contract Right

This may all be possible if you have worked out the details of your contract with the client properly. Says David Royden, a lawyer specialising in contract law with Layton's Solicitors in Manchester: "The best way to handle being terminated is to have worked out a contract with the agency in such a way that there is no danger of your suffering because of termination. Get the contract right, and being terminated will pose little danger for you."

Getting the Last Payment

One important aspect of the contract concerns how you are paid. "Getting the last payment after termination is always dicey," Royden says, "even if you are legally entitled to it." Agents often handle this badly, so it is up to you to smooth the transition.

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Get the contract right and being terminated will pose few issues
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David Royden-Laytons Solicitors

"Your contract should have clearly defined milestones which determine your payment," Royden says. "With the achievement of each milestone, you are paid a part of the total value of the contract. The client or agency should be obliged under the terms of the contract to provide notice of termination within a short period of the achievement of a fee-earning milestone—you do not want to have these spaced too far apart." If the notice period for termination is too long, you will risk working all that time without pay.

Check the Notice Period

But often your contract will not be specific enough: it will simply state that you are to work on 'Project X' at a given rate for a given time. Usually though, it will specify a period of notice for termination, typically stating that termination can be invoked by either party in a specific period, usually a month.

This notice may be served on you at any time, even when you are on vacation (agencies may take advantage of your being away from work to limit the amount of the final payment, and they have a legal right to do this). As [Roger Sinclair](#), a lawyer specialising in contractor affairs with the London-based Egos legal consultancy points out, you do have a right to payment for all of the time you actually worked up to the end of the period of notice.

Enforcing this right may prove unreasonably expensive though. If the sum is small—GBP 5000 or less—you can take your claim to [MoneyClaim Online](#), a service for pursuing bad debts online by HM Courts Service. This can be done without a solicitor. Or you can take your claim to the courts. But this will be expensive, and while you may win costs if you are successful, you should make certain, before starting out, that you can prove what you claim.

Proof For The Courts

If your client terminates you, and refuses to sign your timesheet, how do you provide proof? You could have other contractors testify that you worked on the days you claim, but the danger here is that they will either have been terminated too, and thus have an axe to grind, or that they will still be working for the client and won't want to jeopardise their own contracts.

Even with such testimony, the agency will have considerable range of proof on its side, and the testimony of the client. "The court is usually sympathetic and understanding with the contractor in this situation," says Royden, "but the courts still need proof, and the burden of proof is on you." The upshot is: write to the agency and demand payment; if they won't make it, move on.

Whatever the period of termination, you will want to make sure that the fulfilment of all your obligations and warranties should be carefully checked if you are to obtain that final payment. "Make certain that you have done everything that you have agreed to do up to the point of termination, and that the client certifies this. If you have provided a warranty for any particular aspect of the work, make certain that it is in evidence and has been agreed to by the client—this is good practice all the way through any contract, and not just when you are being terminated," Royden continues.

This is why including milestones in your contract can make such a big difference.

Resolve Major Issues If You Can

If there are major issues that divide you and the client, try to resolve them. "It is best if you already have a means of arbitration defined by your contract, so that should such disagreements arise, you will be able to take them to an impartial tribunal without paying all the costs of litigation," Royden points out.

One of the worst situations arising from being terminated is when the client claims that you have been negligent, or have simply not done the job contracted for at all. This should not arise if you have clearly defined milestones in the contract, but under the pressure of business change all things are possible. Barring absolute bad faith on the part of the client, you should be able to negotiate a solution, even before going to arbitration. Unless the client's claims are justified, you should be able to work it out by demanding reconsideration in writing.

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Be above reproach and make
certain all your obligations are
fulfilled
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David Royden-Laytons Solicitors

Leave Room for Negotiation

The solution, however imperfect, is again to write a registered letter. "Write to the most senior official at the agency that you can. Remind the client (and the agent) that you have legal rights that are not being respected. Be specific, and be polite. Indicate that you are seeking to avoid litigation or arbitration, but that you are not getting any cooperation from them. If they fail to respond reasonably, or at all, they will be in a very bad position to undertake litigation," Royden says.

But normally you should not reach this point. "If what you are entitled to, and what you are expected to do, are clearly set out in the contract, then you should be able to avoid ever getting to this stage," Royden concludes.

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