Contractors should take care with verbal agreements

A contractor may well find that a client or agent seeks to contract for work with a verbal agreement. It may be that the person in question is someone you know well through other circumstances. Or it may just be something that needs to be done quickly, before there is time to work out a formal written contract.

Verbal agreements are fine. But they need to be handled with care.

"A verbal agreement is a perfectly valid contract," says David Royden, a lawyer specialising in contract law with Laytons Solicitors in Manchester. "The problems only arise when the contractor and the contractee enter into a verbal agreement, and then don't agree on the details."

If you enter into a verbal agreement, you obviously should trust the contractee. If you don't, or if something causes you to cease to trust that person, you have a problem, but not one that is hopeless to resolve.

You Can Find Proof of Terms

The problem then becomes proving what the terms of the agreement really were. "This may sound more difficult than it is," Royden points out. "There are ways to justify the terms of a verbal agreement, and if you go to court, that's what the judge will try to do."

One way the judge will try and establish what was in the agreement is by looking at what happened in practice. "How much were you paid by the contractee so far? What terms did the contractee provide since you started work? The judge will look at past practice and consider that it establishes a 'de facto' basis for the verbal contract," Royden explains.

The judge will of course focus on the area of conflict with the contractee. It will obviously be important for you to document as much as possible of what you've been doing, how you've been paid, or whatever the issue is. So it is a good idea to keep careful records here so that there are indicators of past practice for the judge to consider.

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> David Royden-Laytons Solicitors

Standard Trade Practice Also Helps

Another way for the judge to determine what the terms of your verbal agreement are is to refer to standard practice in the industry. "Standard trade practice is a key determinant," says Royden.

For example, if, in your field, a contractor is always expected to work extra hours, then the judge will say that the contractee has every right to expect you to do that. A written contract stating that you are not going to work extra hours would have been required to specifically depart from standard practice.

Royden gives the example of a restaurant manager who was working under a verbal contract with a caterer. The manager was sacked with one week's notice. When the manager sought professional advice, it became clear that standard trade practice in the restaurant industry called for a 3 month notice period before a contractor could be terminated. The caterer challenged the contractor to take the matter to court. When the contractor did, the judge ruled that the caterer owed three months wages to the contractor—not to mention all the additional costs involved in the court case.

> **"Send an email stating the terms of your agreement and ask if you have got them right"**
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> David Royden-Laytons Solicitors

Send an Email

With all this said, verbal agreements aren't the best way to assure you of getting what has been agreed to. But if you feel uncomfortable about demanding a written agreement, there is a middle way, according to Royden. "One of the simplest things to do in this case is to send the contractee an email in which you state in the most simple way what has been agreed to. Ask the contractee to get back to you if you didn't get it right. If the contractee doesn't get back, the text of the email will be a powerful tool in enforcing your rights should you have to go to court."

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