

## What a client needs to know about contract law

Having an understanding of the principles of contract law is essential for clients hiring contractors.

The first thing to bear in mind is that contractors are not employees; they are like any other supplier and should be treated as such. So, although this means contractors don't have employment rights, they are protected by contract law.

Most client organisations will have specialists who deal with the legal and financial side of managing contractors. Typically, those specialists will be in the finance or accounts department, the human resources or personnel function or even the agency that has recruited and supplied the contractor in the first place.

However, client project managers who have a basic understanding of the nature of the contractual arrangement with their contractors are much better equipped to spot problems before they become issues. This will help them prevent any disputes over contracts escalating, as they'll know when to call in expert help from specialist colleagues elsewhere in the organisation.

### What is a contractor contract?

At the very basic level, a contract is a legally binding agreement between the client's organisation and the contractor or agency. If the contractor is contracting direct, the client will have the contract with the contractor's limited company, umbrella company or other trading vehicle that might, in some cases, be an offshore organisation.

If the contractor was hired by [using a recruitment agency](#), then the client will have a contract with the agency, called the 'higher' or 'upper level' contract. The agency, in turn, will have a contract with the contractor's limited company, umbrella company or other trading vehicle, called the 'lower level' contract.

Upper and lower level contracts may be different, so clients should not assume that the contractor has exactly the same contract with the agency as the agency has with the client. This assumption by both contractors and clients is a common source of confusion and can lead to disputes.

Clients should note that verbal contracts are also legally binding. Technically, if a client has offered a contractor a contract, specifying the project and the contractor's remuneration, then this is legally binding. Although it might be difficult for a contractor to enforce, clients should take care with what they say, particularly in interview and negotiation situations.

### How to review a contractor contract

Contractor contracts can come in all shapes and sizes, but most have common themes running through them, including:

The 'standard' or 'permanent' section, which includes things that usually relate to both parties, like the standard clauses, liabilities, confidentiality, jurisdiction, termination and so on

The schedule, which details the services being provided, and what they will receive in exchange, covering items like pay and the duration of the project.

The standard section would normally be created by specialists within the client organisation, or their professional advisers, and is not normally negotiable. However, the client, agency and contractor will work together to create and agree on the content for the schedule.

Contractors will try to negotiate some elements of the contract, in addition to pay and duration. In particular, clients will find that contractors want to make the contract 'IR35 friendly'. This usually involves adding clauses allowing the contractor to provide a [substitute](#) and removing clauses that could be interpreted as the client having [control](#) over the contractor.

Whether a client allows changes of this kind is a judgement call, and depends on how badly the client needs the specific contractor, market conditions and the availability of contractors.

However, clients that recognise and accommodate the needs of [contractors' IR35-related concerns](#) will tend to be able to recruit the hottest talent. The reason is that the taxman's interpretation of the contractor's IR35 status can [make a huge difference](#) to the contractor's take-home pay.

So being flexible and amending clauses to ensure that the contractor doesn't look like a '[disguised employee](#)' gives contractors a great incentive to come and work on your project, rather than a competitor's.

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### Breach of contract

A contract is in breach when one of the parties fails to deliver on a clause in the contract. For example if the client does not pay the contractor, then they are

in breach of contract. Similarly, if a contractor fails to provide a specific deliverable according to schedule, then they are in breach of contract.

But breach of contract is not an excuse for immediate legal action. Courts take a dim view of contractual disputes where parties have reached for their lawyer before reaching for the telephone to see if an amicable, non-litigious, solution can be found.

For example, if a contractor fails to deliver part of a project, there may well be a good reason why. For example, it could be that a permanent member of staff has failed to meet their schedule and has therefore forced the contractor to fall behind.

### **Don't let issues become problems – seek expert help**

Clients are not expected to be legal experts and neither are contractors. But a basic appreciation of what each party is trying to achieve and good communications usually result in a long-term and trouble free client-contractor relationship.

But where it looks like trouble might be brewing, issues can be nipped in the bud by the client seeking expert help, either from colleagues within their organisation or external professional advisers.

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