

## Restraint of trade rules do not mean contractors can bypass the agency

Contractors seeking a route around a **restrictive covenant** in their agency or client contract should not automatically assume that by applying the UK's restraint of trade laws, they will find a simple answer.

According to **Roger Sinclair** of contractor specialist legal consultancy Egos, simply because the courts generally support the position that any restriction of trade is against public policy, does not mean a restrictive covenant is not enforceable by an agency.

"For over 100 years, the UK legal system has supported the position that it is a 'bad thing' for people to be restricted in what they do in business," explains Sinclair. "However, when a restriction is imposed to protect a legitimate commercial interest then it may be enforceable."

### Restraint of trade – general principles

If a clause in a contract places a restriction on trade that only favours one of the parties, and if there is some ambiguity in it, then the courts will generally interpret the clause in the way least favourable to the interests of the party set to benefit, or which imposed the condition. This, says Sinclair, is a rule of contractual interpretation called 'contra proferentem', and is designed to encourage clarity in contracts.

"Restraints of trade, including things like restrictive covenants, are only enforceable to the extent that they go no further than is reasonably necessary to protect the legitimate commercial interests of the person imposing the restriction."

So contractors facing what appears to be an excessively onerous restrictive covenant, and who have cause to seek a break with the agency, may find drawing the clause to the attention of their legal adviser advantageous.

### Reasonable protection of legitimate commercial interests

Sinclair explains that legitimate commercial interests would generally be considered to fall into three categories:

Protectable trade secrets

Confidential information

Business connections.

"Realistically, when you consider the relationship between a contractor and their agency," explains Sinclair, "there is unlikely to be a case when a contractor has access to the agency's trade secrets or confidential information.

"Therefore, any restrictive covenant from an agency should go no further than reasonably protecting the agency's business connections. What is considered reasonable will depend on the specific facts of the situation."

### What is reasonable – consider scope and duration

A restrictive covenant will typically have two key components:

Scope, which covers what the restriction sets out to prevent, such as not contracting directly with the client or placing a geographical limit

Duration - the time for which the restriction will remain in force.

"Typically the scope will include a restriction that seeks to prevent the contractor from dealing directly with the client, which may be reasonable," says Sinclair. "It may also seek to prevent dealings with organisations other than the client, and that extended scope may not be reasonable.

"Similarly, for a contract lasting three months, a restrictive covenant remaining in force for twelve months after its finish may well be considered unreasonable. The converse could also be true, so for a contract lasting twelve months, a subsequent three-month ban on direct dealings may not be considered to amount to more than a reasonable level of protection for the agency. Each case depends on the exact wording of the contract and a consideration of the overall situation."

Sinclair concludes: "I encounter cases where restrictive covenants are challenged on a regular basis, and they are often circumvented because the agency's requirements are unreasonable. But equally, restrictive covenants are in place to protect the agency, and contractors should always seek expert legal advice and not assume 'restraint of trade' gives them automatic sanction to disregard what they have agreed in a contract."

“  
Restrictive covenants are in place to protect the agency, and contractors should always seek expert legal advice and not assume 'restraint of trade' gives them automatic sanction to disregard what they have agreed in a contract  
”

Roger Sinclair, Egos

© 2016 All rights reserved. Reproduction in whole or in part without permission is prohibited. Please see our [copyright notice](#).



ABCe verified website - last audit confirmed *134,482 monthly unique visitors*

© Copyright 2016 Byte-Vision Limited UK. All rights reserved [Copyright notice](#)