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What does it all mean? **Interpreting the agency contract**

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At the heart of every agency arrangement is a contract. Whether it be a written document containing detailed provisions of the parties' rights and obligations, or a simple oral agreement reached over a handshake; at some point the parties will have agreed to the terms on which they will do business with each other.

At the start of the relationship when there is goodwill on both sides and enthusiasm to get on with the business at hand, it is easy to overlook the importance of what has actually been agreed. Often, it is only further down the line when problems occur or where the relationship sours that attention turns to the contractual terms.

It can then become apparent that what one party thought had been agreed is not the same as what the other party understood the agreement to be.

An agent may find that they are bound by an unrealistic sales target. A principal might discover that they are required to give their agent a far longer period of notice if they wish to terminate the agreement than anticipated.

These sorts of issues can lead to messy arguments and costly litigation. So how can such problems be avoided? Or perhaps more importantly, how can you ensure that the contractual terms mean what you intend them to mean?

To answer these questions it is necessary to consider the Courts' approach to interpreting contractual terms.

Firstly, however, it is important to note that whilst a contract can be oral, it is almost always better to commit the terms of the agreement to writing. This goes a long way to avoiding arguments about what was said when and to whom. It also gives you some hard evidence that you can rely on if there is a dispute about what was agreed.

When presented with a contract, the Courts will interpret its terms objectively. This means that it does not matter what one party or other meant or understood the contract to mean, but rather what a reasonable person in the position of the parties would understand the contract to mean.

The Court will apply the ordinary and natural meaning of the words used given the factual context at the time the contract was entered into. It is not uncommon for one party to say that he or she did not mean what the words actually say and that they would never have agreed to the particular term if they had known how it would be interpreted.

Unfortunately for them, that is irrelevant. They are bound by the contract as it is and it does not matter if they thought they were agreeing to something else. This is so even where the ordinary and natural meaning of the term may have disastrous consequences for them. For example, in a recent case (not involving a commercial agent) that went all the way to the Supreme Court, a tenant was found to be bound by a lease agreement that provided for a 10% year on year increase in the cost of their service charge. This meant that what started out at a reasonable level of £90 a year would by 2072 rise to an annual charge of £550,000! The tenant had argued that the natural meaning of the words should not be followed as it would produce an outcome that could never have been intended. The Court disagreed. The meaning of the contract was clear and the tenant would have to suffer the consequences.

It is also important to bear in mind that when interpreting the contract, the Court will want to consider the background facts to understand the context in which the contract was formed. However, the Court will not consider the pre-contractual negotiations or earlier drafts of the agreement when determining what the contract means or includes. As such a Court may well find that if a particular term is missing from the final contract then it does not form part of the overall agreement. Parties should take real care to ensure that all of the terms of agreement are therefore included in the final contract. Furthermore, any variations to the contract subsequently agreed should also be put into writing and kept with the contractual documentation.

The importance of getting the wording in the contract right cannot be overstated. Having a clear and unambiguous written contract in place from the start of the relationship ensures that all parties understand what they are agreeing to do and what they can expect from the other party. It is often advisable to seek expert legal advice at this stage to ensure that the terms of the contract mean exactly what you intend them to mean. Getting the wording in the contract right at the start, can prevent much distress and expense further down the line.

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