

## Q & A's on Agency Law

by **David Bentley**  
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**Q.** In the event of my death, am I correct in understanding that my personal representatives, on behalf of my Estate, would potentially be entitled to pursue a claim for compensation, against all of my various principals? I have written agreements with some of the companies I act as agent for, and have always operated as a sole trader.

**A.** Potentially, and assuming that you continue operating on the same basis as you currently are, the answer is "yes" – i.e.:– in the event of your death as a sole trader, your executors (or "personal representatives") would indeed be entitled to pursue a claim, for (as appropriate, and depending on (a) whether you had any written agreement with any principal, and (b), if so, what any such agreement provided for:–), either an indemnity or compensation.

Following on from the above, some points to bear in mind are, as follows:–

Firstly, in order to preserve any such claim to an indemnity/compensation, your personal representatives would have to effectively notify the former principals concerned that your Estate intended pursuing its statutory entitlement to recover the relevant compensatory amount, and do so within the relevant strict time period following your death [– and any failure to notify in this way would then mean that no claim could then be pursued, no matter for how much money it could have been for];

Secondly, the tests and processes which would be applied for assessing how much by way of an indemnity/compensation you may be entitled to would generally be the same as would have applied had you lost the relevant agency, and had been making a claim in your lifetime; and

Thirdly, it must be obvious that unless agents make their family and intended representatives aware of their Estate's potential rights on their death, no claims will ever be pursued (as they won't be known about).

Finally, be aware that, depending on who is deemed as having been the agent, possibly no claim may arise.

**Q.** I currently have one very large agency, and another one which is more modest in terms of what it earns me. I also just now have the opportunity to take on another (i.e.:– a third) agency, and am wondering as to whether I can only do this if I have my other two principals' prior written approval – what is the position as regards that, please?

**A.** Unless you have otherwise agreed with any of your principals either (a) as to how many other agencies you will carry, and/or (b) that you will seek that principal's prior written approval before you take on any other agency, then, as long as the new agency isn't going to take up so much of your time as to prevent you from properly servicing your existing principals' requirements or isn't going to involve you selling products which are in competition with what you already sell for your current principals, I do not see that you have any requirement to first of all have to get any existing principal's permission, to take up a new agency opportunity.

My above advice is based on the premise that, as a self employed person, you are clearly not constrained by the sorts of obligations which an employee owes to his employer, and are thus entitled to maximise your own profitability.

In this regard, and whereas representing a number of different principals in the same industry can benefit those companies for which you are the agent, the importance of ensuring that you do not over-stretch your resources to the point where you cannot properly service all of your principals, and the importance also of ensuring that you do not place yourself in a situation where you are contracted to sell products, on behalf of different principals, where those products are in conflict with each other, cannot be over emphasised.

**Q.** I have recently lost my driving licence for nine months (due to excessive speeding), and am concerned as to whether this will affect my standing with any of my principals. What is your advice, please? I am confident that I can make satisfactory alternative travel arrangements in respect to the various agencies which I have, but am concerned as to how any of my principals may nevertheless react – would any of them be entitled to (for example) terminate my agency, forthwith, for example?

**A.** Unless you have an agreement with any of your principals to the effect that, in this scenario, your agency would be terminated forthwith, and irrespective as to whether you were able to make any alternative arrangements, then – provided always that you can indeed make viable alternative arrangements to enable you to properly and effectively cover your territory area, and to service the reasonable requirements of your principals and the needs of your customers – I would not expect your principals to (a) be entitled (without affording you proper notice) to terminate your agency, nor (b) to do so.

As a rider to the above, I would just add that I would expect my advice to potentially be quite different if the circumstances of your driving ban involved something more than just low level excessive speeding – i.e.:– if it could be viewed that what you had been banned for was (e.g.) drink related or otherwise reflected an offence which wouldn't generally be regarded as relatively minor.

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