

What if my principal is in breach of our agreement?

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Most agents are aware that if their agency agreement is terminated by the principal they are entitled under the Commercial Agents (Council Directive) Regulations 1993 to payment of either compensation or an indemnity, depending on what their agency agreement says.

An agent loses his entitlement to compensation or indemnity, though, if the reason for termination is that he is in breach of the agreement.

Often we are consulted by agents whose principals have breached the terms of the agency agreement.

Unhappy with the actions of his principal, it is the agent who wishes to terminate the agreement. Is the agent in this situation still entitled to compensation?

The answer is yes, in principle, provided the actions taken by the principal are so serious that they amount to a fundamental breach of the agency agreement.

Minor infringements of the agreement will not be sufficient. The key question for the agent to determine is what amounts to a fundamental breach.

Some of the breaches our clients typically encounter are:

CHANGES TO TERRITORY

Generally an agency agreement contains details of the territory in which the agent is entitled to operate, often with exclusivity for that region. Unless there is express agreement by the agent, an attempt by the principal to unilaterally change the territories in which the agent operates is likely to constitute a fundamental breach of the agreement.

CHANGES TO COMMISSION ARRANGEMENTS

The agent's rate of commission is usually set out in the agreement and any attempt to revise this downwards or otherwise change the basis on which it is paid to the detriment of the agent is also likely to constitute a fundamental breach.

OUTSTANDING COMMISSION

A one-off failure to pay the commission due to an agent, or late payment on one or two occasions, is unlikely to be sufficiently serious to entitle the agent to terminate the contract. However, persistent delays or failures to make payment resulting in a significant debt arising may result in a fundamental breach having been committed.

ADMINISTRATIVE CHANGES

Unilateral changes to administrative matters such as reporting requirements are unlikely to amount to fundamental breaches.

An agent whose principal is in breach of the agreement is in a difficult position.

If the agent does nothing, and continues to perform in accordance with the agreement, then he risks 'affirming' the principal's breach and losing his right to terminate.

On the other hand, if he terminates the agreement on the basis of what he considers to be a fundamental breach, but it is subsequently found that the principal's breach was not sufficiently serious, then the agent himself will be in breach of the agreement and will lose his entitlement to compensation, and may also find himself facing a damages claim from his principal.

It is therefore vital for an agent who thinks his principal has committed a fundamental breach to take urgent legal advice before taking any action.

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