

When agencies collide

Q My agency has recently been invited to join a managed service project where a major blue-chip firm has outsourced all of its recruitment needs to a series of agencies with one agency (not ours) managing the process. We've been presented with a host of contracts and forms to sign but we're not up to speed with the legal ins and outs of outsourcing. What sort of things should we be looking out for, both now and during the contract?

As the non-managing agency, the most important document will be your contract with the managing agency setting out the terms on which you are to provide your services to the client. The client may or may not be a party to this agreement.

However, you should ideally review the contract between the managing agency and the client because some of the terms in that contract, (such as termination) will also affect you.

Whether you are the managing or, as in this case, the non-managing agency, there are certain standard provisions in outsourcing contracts which must be carefully reviewed to ensure that they accurately reflect what has been agreed regarding the services which you are to provide.

In particular, you should look at the provisions regarding the duration of the agreement, the means of assessing your performance (service levels) and the parties' rights on exit (termination) of the agreement.

Your firm should also be aware that the Transfer of Undertakings (Protection of Employment) Regulations 1981 applies to some outsourcings. These regulations are due to be amended in April so that they will apply to most outsourcings.

Under the new regulations, if you have a dedicated staff team working for a particular client

and that client changes agencies, your staff may automatically transfer by operation of law to the new agency, on the same terms and conditions of employment.

Similarly, if a client selects you as its new agency, you could find yourself having to take on the previous agency's staff who worked for that client, again on the same terms and conditions of employment.

There must be a dedicated staff team for the regulations to apply.

The regulations also prohibit the dismissal of transferring employees and post-transfer changes to their terms and conditions, where these are connected to the transfer.

As the non-managing agency in this agreement, your firm should be aware that you will probably be dealing with the managing agency on its standard terms and conditions.

These will obviously be weighted heavily in favour of the managing agency. This may mean that you may not be entitled under their standard terms and conditions to all the introductory and other fees to which you are entitled under your own standard terms and conditions.

Also, as the managing agency is also in your line of business, it

will be aware of all of the "tricks of the trade". You should therefore be prepared for some tough negotiations to get what you may feel is a fair deal.

The client may or may not be a party to your contract with the managing agency. If it is, you will have a direct contractual relationship with the client.

You may prefer to have such a relationship if, for example, you have concerns about getting paid as, if the client is a party, it can guarantee the payment of your fees by the managing agency.

If there is no direct contractual relationship with the client, you may have increased commercial risks if, for example, the managing agency becomes insolvent.

You should also be aware of the effect of the Contracts (Rights of Third Parties) Act 1999. Where the client is not a party, unless the effect of this

Act is expressly excluded, the client may nevertheless have rights against you under the contract, although you will not have any rights against it.



You also need to be very clear about what happens if the managing agency's contract with the client is terminated.

For example, you want to ensure that if that happens, you are not prevented from approaching and working for the client directly.

Non-poaching covenants are standard in agreements with clients. However, these are of even greater importance in your contract with the managing agency as it is in the same line of business as you. You should therefore ensure that these covenants are as strong and enforceable as possible.

Finally, you should be aware that one of the consequences of this type of arrangement is a possible increase in your liabilities generally, as you will have liabilities to both the managing agency and also to the client.

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