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# Myerson **Business**

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Our guide to Commercial Agent Regulations

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# Welcome

We understand the complexities of modern life and the importance of taking care of your business interests. So it's a deep source of satisfaction that so many Commercial Agents choose Myerson as their trusted adviser

## Why Myerson?

At Myerson, we are the leading legal Commercial Agency firm outside of London, and we have years of experience in advising agents and principles.

We are proud to be ranked as '**Top Tier**' in the prestigious international directory **The Legal 500** and commended by The Times '**Best Law Firms 2024**'. So, you can be certain that you will be receiving the highest quality legal advice and that we can advise you on complex copyright issues.

Myerson is retained as an expert adviser to the members of Agentbase and the Association of Professional Sales Agents. Our litigation team has acted in agency disputes against companies based in Ireland, Germany, the Netherlands, Spain, France, Belgium, Italy and the USA, and are experienced in complex disputes.



# Commercial Agent Regulations

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## What are the Commercial Agents Regulations?

The Commercial Agents (Council Directive) Regulations 1993 (the Regulations) implement the EU's Commercial Agents Directive (86/653/EEC) relating to self-employed agents under English law. They continue to apply to commercial agents since Brexit by virtue of the European Union (Withdrawal) Act 2018. The Regulations will continue to operate and be effective unless and until the law is amended at a future date by the UK Parliament.

The Regulations came into force in England and Wales on 1 January 1994 and cover the rights and obligations of both agents and principals, as well as providing commercial agents with a number of significant protections.

## How do I know if I am a commercial agent?

A commercial agent is defined as *"a self-employed intermediary who has continuing authority to negotiate the sale or purchase of goods on behalf of another person (the principal), or to negotiate and conclude such transactions on behalf of and in the name of that principal"*.

Commercial agents must be self-employed, and critically have independence from the principal. They must have continuing authority to negotiate, but this will include agents whose role is simply to introduce third parties (often referred to as marketing agents). Typically, agents are remunerated on a commission basis but not always. Commercial agents can be paid by way of a fixed retainer or a mixture of both. Agents are not usually a party to the sales contract and are different to distributors.



# Will the Regulations apply to me and my business?

The Regulations apply to all commercial agents who perform their sales activities in Great Britain, where English law applies. An agent does not need a written agency agreement for the Regulations to apply.

## What protection is offered by the Regulations?

The Regulations provide agents with various rights and entitlements. They govern a principal's conduct and behaviour, and they provide protection to agents from being dismissed without due compensation.

The Regulations require a principal to act both dutifully and in good faith. This includes providing the commercial agent with the necessary documentation concerning any goods and obtaining whatever information is necessary for the agent to perform the agency agreement. A principal must provide the agent with a statement of commission due to the agent and must pay the agent "reasonable remuneration", in the absence of any agreement in relation to a specific level of remuneration.

The Regulations entitle agents to be paid commission on transactions concluded during the agency, either because of their efforts or because the transaction is with a customer or within an area exclusive to the agent. The agent's commission becomes due as soon as the transaction is concluded. The Regulations helpfully provide a long stop date for the payment of that commission. There are very limited circumstances where commission will not be payable to the agent.



# How we can help?

Agents come to us for a variety of reasons. For example:

- The principal has failed to pay the agent's remuneration.
- The agent is encountering issues relating to territory, changes to remuneration structure, or accounts being brought "in-house".
- The agent has been asked to sign a new contract on different terms.
- The agent has been given notice to terminate the agency.
- The principal has terminated the agency with immediate effect.
- The principal is acting in breach of the agency agreement.
- A main agent requires advice about a sub-agency .
- The agent has retired and the principal is refusing to pay any post-termination entitlements.

We are experienced in advising on all aspects of the Regulations. That includes advising on rights, duties, and obligations both during and after termination. We are also experienced in advising on the likely value of an agent's claim for compensation or an indemnity and other post-termination entitlements. Our advice does not just cover the law; it also covers strategy. We want to ensure we get the best result for you.

The first step is understanding your situation and advising you on your legal position. That will include considering the terms of your agency agreement. That agreement may be in writing, or more often than not, it will be a verbal agreement. We will then advise you on your options and take steps to protect your position. That is likely to involve us writing to your principal and may involve us preparing what is known as a Letter of Claim.

We will ensure that those rights are brought to the attention of your principal and that the appropriate steps are taken to protect your position. That may involve court proceedings, but we will seek to resolve your dispute via other means, such as negotiation or mediation. Court proceedings are nearly always a last resort.



# What can I claim for?

If your agency has been terminated or has otherwise ended, you may have the right to bring a claim for compensation or indemnity under the Regulations.

Compensation requires the principal to pay a sum of money to the agent as compensation for the agent's loss of the agency. This is calculated by reference to the agency's value to a hypothetical purchaser at the termination date.

An indemnity requires the principal to indemnify the agent for commissions that the agent would have received had the agency not been terminated. An indemnity is capped at a maximum of one year's gross commission and calculated with reference to the increase in value and goodwill resulting from the agent's efforts.

An agent is entitled to claim commissions on all sales made by his principal to his customers and/or in his territory for a reasonable period after the termination of the agency. This is often referred to as pipeline commission.

An agent may also have a claim for "notice" if his principal has not given him sufficient notice of the agency's termination.

Finally, an agent has a right to be paid all commissions due to him during the agency. A claim will arise if there are any outstanding commissions.

## Are there any time limits which apply to my claim?

You must notify your principal of your intention to make a claim under the Regulations within 12 months of the date of the termination of your agency. You will then have 6 years in which to bring your claim in the courts.



# Will my claim go to trial?

The vast majority of commercial agency cases settle prior to trial and many claims settle at a mediation, such that it is now not a common occurrence for a commercial agency claim to run to trial.

# How much is it likely to cost?

As with many legal matters, costs can vary from case to case. Your solicitor will discuss costs in detail with you before we undertake any work on your matter.

We promise that, from the outset, our costs will be clear and transparent, and we are proud to be able to offer you a range of funding options. We recognise that if you have been unexpectedly terminated by your principal, you will be without all or part of your income. In many cases, we will offer to act pursuant to a “no win, no fee” agreement (also known as a conditional fee arrangement), which defers payment of our fees until the end of the case. A CFA agreement may not be suitable in all cases, but we will discuss all funding options with you at the outset of your matter.

Our team are on hand to talk through funding in detail with you, to ensure you are given all the available options.

# Our Network

We have acted and continue to act for agents and principals worldwide and are retained by Agentbase as a panel solicitor due to our significant knowledge of and experience in commercial agency matters. We are also supported by APSA, the Association of Professional Sales Agents.

We also have links with a network of European firms that specialise in agency law, to whom we can turn should your claim contain a foreign element.





# You're in safe hands!

If you would like further information about how we can help you or if you have any questions, please don't hesitate to contact a member of our **Commercial Litigation Team** today.

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