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# Myerson **Dispute Resolution**

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**Commercial Agents Guide for Principals**

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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 Principals 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 principals.

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**'. Therefore, you can rest assured you will receive a high quality and truly personal service.

Myerson is retained as an expert advisor 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 Agents 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 a sales representative is 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 our sales representatives?

The Regulations apply to all commercial agents who perform their sales activities in Great Britain, where English law applies. It is not necessary for an agent to have a written agency agreement for the Regulations to apply. The Regulations will not apply to employed sales representatives.

## What protection is offered to commercial agents 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 an agent to look after the interests of the principal and act dutifully and in good faith. The agent must make proper efforts to negotiate and conclude transactions, communicate all necessary information to the principal, and comply with reasonable instructions given by the principal.

The principal is also required 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 which are concluded during the agency either because a transaction is concluded because of their efforts, or because the transaction is with a customer or within an area which is exclusive to the agent. The agent's commission becomes due as soon as the transaction is concluded. The Regulations provide a long stop date for the payment of that commission, with which principals must comply. There are very limited circumstances where commission will not be payable to the agent.



# How we can help?

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

- The principal wants to vary the terms of the agency, which could involve changes to territory, changes to remuneration structure, or accounts being brought “in-house”.
- The principal wants the agent to sign a written contract, either on the same or different terms.
- The principal is considering giving notice to terminate the agency due to the agent’s poor performance or breach of contract.
- The principal has terminated the agency and has received notification from the agent that he intends to pursue a claim under the Regulations.
- The principal is unable to comply with the terms of the agency due to factors outside of its control.
- The principal requires advice about a sub-agency .
- The agent is coming up to retirement age, and the principal requires advice about its liabilities to the agent upon retirement.
- The principal wishes to restructure its workforce and use employed sales representatives rather than sales agents.
- The principal is considering terminating the agency with immediate effect because the agent is in serious breach of the agency agreement.

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 principals on their likely financial exposure to an agent following termination, including the valuation of claims for compensation, 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 to understand your business and its current situation. We will explore the objective of your business and be clear about what it is seeking to achieve. We will advise your business on its legal position and its options. That will include consideration of the terms of any agency agreements. If your business is looking to restructure, we can provide advice as to how your business might seek to minimise its financial liability to its sales agents.



We will ensure appropriate steps are taken to protect your business and minimise any financial exposure. 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 a commercial agent claim for?

If a sales agent has been terminated or the agency has otherwise come to an end, the agent may have the right to bring a claim against your business for compensation or an indemnity under the Regulations.

Compensation requires a 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 value of the agency to a hypothetical purchaser at the date of termination.

An indemnity requires a principal to indemnify the agent for commissions which 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 is calculated with reference to the increase in value and goodwill resulting from the agent's efforts.

An agent is entitled to claim for 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 you have not provided him with sufficient notice of the termination of the agency.

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



# Are there any time limits which apply to an agent's claim?

Your agent must notify you of his intention to make a claim under the Regulations within 12 months of the date of the termination of the agency. The agent will then have 6 years in which to bring a claim in the courts.

## Will an agent's 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 a range of funding options. Our team are on hand to talk through funding in detail to ensure you are given all the available options.

## Testimonials

We have acted and continue to act for agents and principals all over the world 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 who also specialise in agency law, to whom we can turn should there be a foreign element to your dispute.





# 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 **Dispute Resolution Team** today.

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