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# When can a principal legitimately withold commissions? When could a war, pandemic or other event result in a contract coming to an end?

**The invasion of Ukraine and the COVID-19 pandemic have had a significant impact on commercial relationships and have focused minds on what might happen if external events impact on their contracts.**

For principals and agents, it raises the question of when such events might impact on the payment of commission, or even bring an agency contract to an end.

## When is an agent entitled to commission?

Commercial agents are entitled to commission on transactions concluded during the period covered by the agency contract, where:

1. the transaction has been concluded as a result of the agent's action; and/or

2. the transaction is concluded with a third party whom the agent has previously acquired as a customer for transactions of the same kind (i.e. repeat customers); and/or

3. the agent has an exclusive right to a specific geographical area or to a specific group of customers, and where the transaction has been entered into with a customer belonging to that area or group.

## When can a principal withhold commission?

An agent's right to commission is lost where the principal and the customer do not execute the transaction and the principal is not to blame for the transaction not taking place.

This means, for example, that if the customer refuses to take delivery, or does not pay, through no fault of the principal, then no commission is payable and any commission paid can be recovered from the agent or, more likely, will be set off against future commissions. However, if the order is cancelled because of non-delivery, late delivery or delivery of faulty goods, the agent generally remains entitled to commission.

So if external events, for which the principal is not to blame, intervene and prevent the principal performing its contract with the customer, commission is not likely to be payable. It is clear to see how the effects of a war or pandemic might cause this to happen and therefore relieve the principal of the obligation to pay commission.

## Force majeure clauses - can an agency contract vary these rules?

Principals and agents cannot agree in a contract that the rules set out above do not apply.
However, a contract between an agent and principal may **contain** a "force majeure" clause, which is a clause which will excuse one or both parties from performing their obligations should certain events outside their control happen.
This means that the parties can agree that specific events are not the principal's fault and therefore commission is not to be paid if they happen. That said, a Court will be concerned with substance rather than form and if, despite the terms of the contract, the non-performance is the principal's fault, commission is very likely to be payable.

## What if an external event makes performance of the contract impossible?

If there is no force majeure clause, then a contract may be "frustrated". A contract will be frustrated if an event / circumstances make it impossible to perform, through no fault of either party. It a court concludes that a contract has been frustrated, both parties are relieved of their obligations. It should be noted, however, that frustration very rarely arises in practice.

DWF's Ben Griffin specialises in work in the field of commercial agency. The legal directory Legal 500 noted that "Ben Griffin is noted for his expertise in commercial agency disputes, and he has 'a deep knowledge and understanding of the case law in this field." Ben has co-authored a textbook on commercial agency with Oliver Segal QC ('Commercial Agency – A Practical and Legal Guide' by Oliver Segal QC & Ben Griffin – Law Brief Publishing).

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