

In Confidence & Draft - with George & Mervyn for
Comment

Dealing with proven serious contract breaches: guidance for Contracts Advisors and Appeals Managers.

Background.

From time to time contracts advisors and appeals managers will be required to give consideration to what would be an appropriate outcome where an agent is found to be culpable of a serious breach of contract. Typically but not exclusively these breaches will be in the form of false accounting and / or mis-use of Post Office® funds.

These notes are designed to provide advice to decision makers who find themselves in this position.

Guidance notes.

In cases where guilt has been proven on the basis of 'balance of all probabilities', it will be necessary to determine what action is necessary. For serious contractual breaches, it is necessary to deal with the matter robustly, not least because;

- We have allowed the agent to use our cash and stock, free of any charge, and have made it clear what they can and cannot do with that
- Failure to do so will have an adverse impact on our brand
- The agent operates in a position where a considerable amount of trust has been vested in them, and
- It is necessary for the action we take to have a strong deterrent effect in others.

On considering an appropriate outcome, there are at least two options open to the decision maker; summary termination of contract, and final written warning. In some cases, the outcome may be less serious than either of these two options.

In each case, there may be a number of mitigating and aggravating circumstances present, and it is incumbent on the decision maker to factor all of these in when deciding on an appropriate outcome, and to explain how they had done so. It is also incumbent upon the decision maker to explain in detail in their judgement notes why they had discounted one (or a number of) particular outcomes in favour of another.

To assist you in this, I have included here a table showing examples of what you would reasonably be expected to factor into your decision making; these examples are not exhaustive of course.

Aggravating factors	Mitigating factors
The agent had, or had tried to cover up the offence at the time.	The agent was acting under some form of duress, or threat.
The agent had blamed someone else for the offence.	The agent has accepted full personal responsibility for the offence.
The agent has not admitted the offence from the outset.	The agent has admitted the offence from the outset.

The agent has not re-paid any monies taken.	The agent has re-paid any monies taken.
The agent has not apologised for the offence.	The agent has shown genuine remorse for the offence.
The agent has not indicated how further failures will be avoided.	The agent has been able to say how further offending will be avoided.
Where POL funds had been mis-used, the offence was unnecessary as the agent had sufficient other personal resource to avoid the offence.	There is evidence that the agent was taking medication, or was suffering from some disorder that would have affected their judgement and decision making.
The agent's record shows that they have a disregard for rules, or that their general performance is poor.	The agent's behaviour was out of character compared to their track record generally.

You will see that it is not always possible to easily apply a weighting to these examples, nor is it appropriate to simply apply a scoring system here – what weight you finally apply to each factor is a matter for your own judgement. That said, to help you reach a fair conclusion, you should consider the following factors when considering the aggravating and mitigating factors:

- Cases where the agent had taken a sum well in excess of their ability to repay at the next payday would carry a heavier weighting, as that moves the offence (in criminal terms) away from mis-use of funds and more towards theft.
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- Factors that occurred at a time before the offence had been discovered would carry more weight
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- Where the offender had been caught 'Red Handed', any mitigating factors would carry less weight

Criminal cases.

These guidance notes only deal with the civil i.e. contractual aspect of the case. Whilst this matter is dealt with separately from any criminal proceedings, consideration should be given to that aspect, as it would not be desirable to re-instate an agent with a final warning where there was a likelihood that a criminal conviction would follow.

Further advice.

Further guidance in this matter can be obtained in the first instance from the National Contracts Managers, and then from the author of this guidance note.

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