

Following a confirmed booking, a locum was told he wasn't needed.

↓ THE CASE

A pharmacist was booked by a locum agency and turned up for work at the pharmacy as agreed. Despite phoning a day in advance to confirm the pharmacy was expecting a "locum pharmacist", on arriving for work he was told that he was not needed. The locum agency confirmed that it had booked him but that as the client (the pharmacy) did not need him it could do nothing about it because the client claimed that it had never

placed a booking for that particular day with that particular agency. The locum was asked to leave but was promised his travelling expenses by the employer. The locum presented an invoice for the full day and the pharmacy made a 'gesture of goodwill' by offering to pay him for two hours work.

↓ FACTS AFFECTING THE CASE

Double bookings are becoming more frequent. Indeed some locums believe that certain employers are using the aeroplane industry's approach of overbooking to fill the places in order to guarantee cover. The evidence is not that strong but locums should know their rights in such circumstances.

The passenger aeroplane industry uses this technique because they have a contract with their customer that says that they can. Consequently, the only way a pharmacy can use this approach is if it has a contract with the locum stating that it may cancel a booking made with a locum, even if the pharmacy or its agency were at fault.

Some locum agencies have a contract with the pharmacy, which stipulates that if they cancel within fourteen days of the commencement of the booking the contractor will pay half the contracted rate and the full amount if the cancellation is made within two days of commencement.

If an agency has, in good faith, secured a booking for its client

organisation and the locum fulfils his contract by presenting himself for work, the client organisation is obliged to honour that contract which has been agreed on its behalf by its agent.

If the locum sues the Pharmacy, the Pharmacy can in turn then exercise its right to sue its agency to recover the money it has had to pay to the locum; alternatively (and far more likely in practice), it can add the agency as a 'Part 20 Defendant' in any proceedings and seek to have judgement entered directly against the agency.

This point of contract law has largely gone unchallenged by locums and pragmatically ignored (through ignorance and custom and practice rather than intent) by employers. To-date, therefore, locums have, generally speaking, accepted that they have no rights and acquiesced to the employers' actions. In this case when the issue was taken up directly with the employer by the PDA, the locum was paid in full.

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01. Consider any contract carefully before signing it and be wary of any contract that allows the employer to cancel at a moments notice. At the very least ensure that the arrangement is reciprocal.
02. When locum agencies arrange bookings they are doing so on behalf of a client and as such are acting as the client's agent. In effect what the agency is doing is acting with the authority of the chemist contractor [its 'Principal'] and making a contract between the locum and the Principal direct; it is generally NOT making a contract between the agency and the locum.
03. Although an agency has a 'duty of care' towards its locums and it could be sued for breach of that duty, there is more risk of failure in bringing such an action and it is usually much better for the locum to sue the Principal contractor in contract law.
04. Locums should always strive to get a confirmation of a booking in writing or via e-mail. If it is not the practice of the locum agency to do this, write or e-mail the agency with the conditions under which you are prepared to (and have agreed to verbally) confirm the contract with its Principal (the pharmacy employer). Alternatively, use the standard PDA 'Contract for Services' for all locum bookings.
05. It is good practice for locums to contact the location of a locum placement prior to the commencement of a placement. A person in authority should be able to confirm that there is no doubt as to the existence of your booking and the name of the expected locum.
06. In the event of a cancellation dispute, contact PDA for advice.

Pharmacist is sued for breach of contract despite giving twenty-eight days notice.

↓ THE CASE

A locum cancelled a booking and was then sued by the proprietor. The pharmacist sought the services of a high street solicitor to provide representation. The proprietor won the case and also secured damages

in compensation. Subsequently, the proprietor reported the pharmacist to the RPSGB.

↓ FACTS AFFECTING THE CASE

The locum, on accepting a contract, realised that on two days of the two weeks he was contracted to, he would be unable to get to the pharmacy, because of a planned train strike, without incurring considerable expense. The proprietor was unwilling to meet or even share these expenses and would not accept the locum's right to find a replacement for those two days. The pharmacist informed the proprietor, through his agency, that he was therefore unwilling to continue the contract, he gave twenty-eight days notice.

When the proprietor took the case to court, the locum was ordered by the Judge to pay a proportion of the extra locum expenditure that the proprietor incurred because the judge felt that he was in breach of contract. Fortunately, for the locum, he was not also required to pay the proprietors legal costs because the judge felt that the proprietor did not do enough to mitigate his losses – he used an expensive emergency locum when this was unnecessary.

It was the PDA's Counsel's view that the reason that he lost the action was because the solicitor did not understand the nuances of pharmacy related practices, and consequently could not mount a credible defence. A number of very important points were not taken at the hearing, because they were either missed or unknown to the high street lawyer.

- There is a well established term in most locum agreements that the locum may sub-contract services to another. The proprietor unreasonably refused to allow this, thereby himself, breaching the contract.

- His terms and conditions with the agency clearly implied that either party might cancel the contract up to three days before commencement.

- The agency's terms and conditions would have provided for a locum to receive all expenses; such expenses would reasonably have extended to costs in the event of a rail strike. The proprietor's refusal to meet these costs actually meant that he breached the contract.

The PDA believed the locum to have very strong grounds for appeal, however he was advised that owing to the high costs already expended by both parties (nearly 5 times the damages awarded), an appeal should only be brought if it were essential in order to protect his registration or professional livelihood. The additional costs of an appeal would not otherwise be justified, but the PDA's Counsel believed that it would be very likely to succeed.

The RPSGB referral.

The PDA produced a report for the locum supporting his position and highlighting normal pharmacy practice. Despite the outcome of the court case, the Society decided not to proceed with any disciplinary action.

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01. 1. It is important to use lawyers who know and understand pharmacy in courts of law otherwise a strong case could easily be lost.

02. Unless it is stipulated in a written agreement, locums who cancel a booking leave themselves open to a claim of breach of contract. This however, also applies to employers who cancel.

03. As much as possible, locums should use a written contract – the PDA 'Contract for Services' is available at no cost to all locums and deals with the points in this incident and many more besides.

04. The RPSGB rarely consider straightforward contractual disputes between employers and employees, however, they do get involved in situations where the public has been affected or if either party acts in a way as to involve professional misconduct.

05. PDA has already successfully claimed in excess of £25,000 on behalf of locums who are in a contractual dispute with employers. In the event that you have a contract dispute with an employer, contact the PDA.