

## Managing the Risk of Back Door Hires

Back dooring is when a client engages a candidate without informing you, thus avoiding the engagement fee. It's a growing problem for recruiters in every sector. The back door can take place shortly after the introduction, or can be months after, and the candidate may be employed in a position other than the one they were initially put forward for.

In a poll by Sterling Debt Recovery 52% of recruiters said they had been back doored by their clients in the past year, 20% said they probably had been and were too busy to check, and 28% were confident it hadn't happened. The nature of the problem means that many back doors occur without the recruiter ever knowing, so whilst over 52% of recruiters report it definitely happening to them, experience tells us it's probably also happening to most of the other 48%

The following advice should help you to uncover back door cases and will give you a better chance of getting paid.

### Ensure your terms of business cover back door hires appropriately

Your client (or their solicitors) may look for loopholes in your contract to avoid payment. Unfortunately, the most commonly used TOB's in the recruitment sector contain weaknesses that the client can use to their advantage.

The main areas to review are:

- 'Effective cause' which requires the recruiter to prove that they were the direct cause of the candidate's engagement. The TOB's should specifically state that this is not a requirement for the fee to be due. In order to protect against the scenarios above, recruiters should change their terms of business to close the loop-hole. Our solicitor has created a standard clause that can be used to achieve this,

"For the avoidance of doubt, there is no requirement for an Introduction to lead to an Engagement or be the "effective cause" of an Engagement and any implied term to this effect is hereby excluded to the greatest extent allowed by law."

- Your agreement should deal with the common arguments 'the candidate was already introduced by another agency', 'we already knew the candidate' or 'we found him on Indeed/LinkedIn'. There should be a clause requiring the client to advise you of this and provide evidence in writing within X\* days of receiving the candidate's CV from you (\*usually 3 working days).
- It's common in TOB's for there to be no financial incentive for the client to not back door you. If they do, then contractually they only need pay you the standard fee at a later date. As a minimum the obligation to pay should arise on the date of engagement and not the date of invoice so that contractual interest can be added if the client does back door you. Better still, a higher rate should apply if the client has breached the terms.
- Your terms should cover instances where the client refers your candidate to another company in the group, or other associated business.

- Of course, your terms only apply if they've been put in place correctly. Always email your terms **separately** before sending over details of any candidates. This provides a clear separation between formation of the contract (incorporation of terms) and performance of the contract (an introduction). Provided the client does not respond stating they do not agree with your terms, or offering alternative terms, then your terms of business should then apply and you can proceed to performance (introductions). As a belt and braces approach we also recommend an introductory cover letter with the terms and an e-mail footer with a hyperlink to your terms on all out-going e-mail.

You should be careful if editing your terms to ensure that clauses are added in such a way that they do not conflict with other areas of your terms. You may also need to remove the current clause(s) e.g. referring to the introduction "leading" to the engagement. Drafting or editing terms is best carried out by a solicitor. Sterling's solicitor specialises in the recruitment sector and is available to edit your existing terms, or provide new ones. Contact us for more information.

### **Keep good data**

Most CRM/ATS systems are excellent at recording CV submission data, and the more relevant data you record in your CRM/ATS, the easier it will be to search and detect back door cases. You should keep a copy of the CV for as long is permitted by your GDPR policy, and of course LinkedIn url's are useful, but you should also keep a history of the outcome from the submission. This will help to check search results at a later date. For example, if another agency had already put the candidate forward so your submission was rejected, 12 months later if you discover the candidate working for the client then you can view the history and avoid mistakenly accusing the client of back dooring you.

### **Schedule a regular search process**

The majority of agencies do not have a set search process for back door cases, instead relying on irregular checks on candidates when time permits, or sheer luck.

Whilst searching for back door cases is a time-consuming process, if it's done in the correct way it can uncover fees you've already earned with far less effort than making a new placement.

Putting in place a set process to a regular schedule (for example each quarter, searching 12 months history each time) will find cases early, giving you a greater chance of getting paid. You can run the process internally, or outsource to a specialist such as Sterling who have developed technology and procedures for the task. See <https://sterlingdebtrecovery.com/hirechecker/>

Whilst LinkedIn is the obvious place to check your candidates, it is not the answer to everything, particularly for roles where the candidate is less likely to have a profile or keep it up to date. There are many other data sources that can be checked, depending on the sector.

### **Don't jump to conclusions**

When uncovering a back door the usual assumption is that the client has done it deliberately. Whilst this is often the case, sometimes it is a genuine mistake caused by their poor processes, or a misunderstanding of their obligations. Our advice is to approach the client under the assumption that it has been a genuine mistake, reminding them of their obligations and liability

for your fee. This way you are more likely to keep the client (if you want to) whilst warning them against repeating the action in future.

Sterling's website contains a Tools area with standard letters you can use for this type of scenario including a gentle first letter and Final Demand should that not work. See <https://sterlingdebtrecovery.com/tips-and-templates-for-debt-disputes/>

### **Get them paid**

If you've sent a final demand and the client still refuses to pay then it's time to escalate the matter.

Back door hire cases are usually contested and technical, so legal proceedings can be complicated, expensive and slow. The client and their solicitor will look for any weakness they can in the case to persuade the court to find against you. You should review the case thoroughly before commencing legal proceedings, and in most cases litigation should be a last resort. Using a recruitment debt collection agency such as [Sterling Debt Recovery](#) on a commission only basis removes the risk of throwing good money after bad and usually gets a quick result. In addition, provided your terms of business do not say otherwise, a debt collection agency can add reasonable costs of recovery to the debt as well as late fees, so in many cases the debtor will effectively pay for the full cost of collection.

### **Sterling Debt Recovery**

Sterling's HireChecker service allows recruiters to check their data regularly to search for back door hires. The service works on a fee per find basis, with a simple export needed from your CRM/ATS system.

For more information call us on 0207 1005978, or email us at [info@sterlingdebtrecovery.com](mailto:info@sterlingdebtrecovery.com).