

Contractor beats HMRC in IR35 case - Larkstar Data

The Pontypool, Wales-based contracting firm Larkstar Data Limited has won an [IR35](#) case at the General Commissioners in January. Alan and Jean Brill successfully defended their family company proving that they were indeed running their own company and not disguised employees (the Brills could not be reached for comment).

HMRC immediately attacked again with an appeal to the High Court, and the London-based [Professional Contractors Group](#) is considering supporting the Welsh contractor for the appeals proceedings.

Great Spirit of Independence

Because an appeal is under consideration, there is only limited information available about the case, but we already know about a few remarkable aspects of it.

First, it is most unusual for an IR35 case to be heard in a simple appeal to the General Commissioners. The General Commissioners are the people you go to when you think the tax man has made a mistake and won't admit it, or when you think the local tax inspector has been too harsh with you. There are 2000 General Commissioners around the UK. Since IR35 cases are generally too complex for them, one has to think that the Revenue's case must be extremely poor—but then it so often is in IR35 cases (records of the case are not available).

"Then, for contractor to succeed in navigating the complex waters of [IR35 case law](#) while defending themselves shows a great spirit of independence," says PCG Policy director John Kell.

HMRC Doesn't Spend Its Own Money

Of course, now that HMRC has appealed the case, Larkstar will have to find lawyers and spend hundreds of hours preparing for a full-scale hearing. Of course, the Revenue only spends our taxpayers money on these things, so why should HMRC care about what they will put this company through? Not a nice position for a busy working firm to find itself in, and we hope that the PCG will indeed come through with support.

"The imposition of duty of care on the Revenue might change their position on cases like these," Kell insists.

PCG Supports Dragonfly

In a second IR35 case, PCG has already agreed to provide support to the London-based Dragonfly Consulting Ltd. which [lost a case](#) worth £99,000. John Bessell, managing director of Dragonfly was found to be acting as an employee for the Basingstoke-based Automobile Association Limited. Dragonfly is a specialist in IT testing, and there were issues in the case cited by the Commissioner of the lack of a project basis and the problem that Dragonfly allegedly handled whatever work was available.

But PCG believes that there are issues of [mutuality of obligation](#) that have not been addressed by the Special Commissioners, and so the Milton Keynes-based contractor services firm Accountax is taking the appeal to the Special Commissioners with PCG support.

"We believe that we can prove that Dragonfly was a company in business on its own and which had no obligation to accept work from the Automobile Association outside the context of the contract it originally engaged in," says Kell. "There are some important case law precedents that need to be challenged in the Special Commissioners ruling, and that is why we are taking the case to the Court of Appeal."

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“ The imposition of duty of care on HMRC might put an end to cases like these ”

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