

Contractor loses £99,000 in IR35 case for being 'part and parcel'

IR35 Issues Considered by the Judges

- o Project-based?
- o Control
- o Mutuality of Obligation

A contractor has lost an [IR35](#) ruling before the Special Commissioners that will cost the contractor's company, pending any appeal, £99,000. The case was defended by Dave Smith, of the London-based firm Accountax.

John Bessell, managing director of the London-based Dragonfly Consulting Ltd., was found to be acting as an employee for the Basingstoke-based Automobile Association Limited.

Not Project Based

Bessell is an extremely experienced IT tester. Through a contract with the London-based agency DPP International Ltd., Bessell began working in 2000 on a series of projects, under a series of contracts, for the AA.

But the judges found that Bessell's work was not project-based, and being available for many different assignments irrespective of the contractual project is one of the most basic [tests of IR35](#).

As special commissioner Charles Hellier puts it: "... those in the testing function were 'tail end charlies' and that as a result it was rare that they would find themselves with nothing to do on a project. If one stage in the testing of a project had been completed more expeditiously than planned then Mr Bessell would not be expected to sit around and do nothing : there would always be something else to be done....Mr. Bessell would set about that something..."

Doing whatever work the end-client finds necessary, and billing for it under your contract, is considered a very strong indication of IR35 status for a contractor.

Control

Equally serious was the issue of control: contractors must control their own companies, and their own work. When the end-client is deemed to control how when and where the work is done, it suggests employee status.

Bessell worked on a corporate team at the AA. Bessell did not provide his own equipment, and he was subject to spot checks by the AA managers. He ate at the company cafeteria, and when he worked at home, he had a dedicated ISDN line that ran to the AA offices. It is true that Bessell paid for the line himself, but he worked for no other client with it. The actual work Bessell did was dictated almost entirely by the AA: the AA did not tell Bessell how to do the work -- Bessell had the skills after all -- but the AA told him what work to do and when to do it.

In short, as Hellier ruled, "the degree of control was that which one would expect from a skilled professional employee and points towards employment."

Mutuality of Obligation

Bessell did not work for any other client during his time at the AA (he did a small job for a local nursery that the judge, perhaps unfairly, discounted). But Bessell had to turn up at the AA offices every working day, and the AA had to give him something to do. There was also little possibility for substitution as Bessell's particular skills and experience were part of his value to the AA.

Contractors should pay great attention to project-basis, control, and [mutuality of obligation](#) when accepting assignments. Contractors should never agree to conditions that make them "[part and parcel](#)" of the end-client's organisation. Even little things like [eating in the cafeteria](#) can become absurdly important when the case is reviewed later.

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