

Crucial Dragonfly Consulting IR35 appeal has been lost

A crucial [IR35](#) test case for all contractors has been lost by Dragonfly's John Bessell, leaving him with a huge tax bill and the contracting sector with an even bigger headache.

Dragonfly Consulting now faces a bill of at least £99,000 from HMRC for unpaid taxes and National Insurance Contributions, with further penalties possibly to be imposed. The reason is that its director and shareholder, John Bessell, has been proved by HMRC to have been within IR35 during his contract with client The Automobile Association.

Supported by the [Professional Contractors Group](#), Bessell fought HMRC's judgement and the case finally went to the High Court in June for a ruling, which has just been made. (See copy of full [dragonfly court ruling](#).)

Disaster for IR35 defences

The Honourable Mr Justice Henderson agreed with the [original Special Commissioners' conclusion](#) that Bessell's IR35 defence was weak. Despite paying for training and equipment, Bessell's business Dragonfly Consulting was considered an intermediary, with Bessell falling within IR35.

This ruling puts many contractors' IR35 defences on the back foot and potentially might shift the emphasis of prior case law and rulings that supported the arguments put forward by Bessell's defence team.

'Notional Contracts'

The Treasury-proposed IR35 legislation has allowed HMRC to make its own conclusions about the relationship between contractors and clients, regardless of their own wishes.

And in a blow for the contracting sector, the [Dragonfly Ruling](#) will, until a possible future successful case against the taxman, confirm this right, by which HMRC can dictate to contractors and clients who is an employee and who is an employer.

Contractors must get contracts right

One of the lessons from this ruling is that contractors must have the paperwork pinned down at every stage, including the contractual agreement between the agent and client, if this applies.

According to the contract with the client and agent, Bessell could supply a substitute but did not have an 'unfettered right', which means the client could decide whether to approve or reject any alternative consultant.

Even when the schedule was amended to presumably allow Dragonfly Consulting the [right of substitution](#) and alter the inference of control, High Court Judge Henderson ruled that the changes: "owed more to anxiety about the possible impact of ...IR35...than to any real change in the position on the ground".

Based on this ruling, it seems the case law on [control](#) has changed, a lesson that needs to be clearly understood for future [contractor defences against IR35](#).

According to the Special Commissioner, and now confirmed by the ruling of this appeal, Bessell was controlled by the client. Judge Henderson pointed out in his ruling that this had been made clear in the first schedule between Dragonfly and the agency DPP, which that Bessell would be subject to the client's "direct supervision and control".

Witness evidence also corroborated the control of Bessell by AA project managers, because he could be 'spot checked'; plus, specific managers ran more detailed checks to ensure Bessell's work was of an acceptable standard.

Impact

The consequences of this decision could have a major impact on the supporting case law that many contractors and their advisers use to defend against investigations by HMRC.

ContractorCalculator will be running a series of analysis articles on the Dragonfly Consulting case to assess what this landmark ruling means to the contracting sector.

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