

## Dragonfly verdict - “no massive additional exposure to IR35 risk”

After the initial shock of the news that Jonathan Bessell of Dragonfly Consulting had [lost his IR35 appeal in the High Court](#) and faced a £99,000 tax bill, [Qdos Consulting](#) says that the judgement does not place tens of thousand of contractors at risk of being inside [IR35](#), as originally feared.

Amie Norton of Qdos Consulting explains: “After detailed analysis of the Dragonfly judgement, we have concluded that there is no massive additional exposure to IR35 risk for contractors.”

However, Norton warns that contractors must still take urgent action to ensure their contracts and working arrangement with clients are clear, and that any potential sources of doubt over their IR35 status are clarified.

“The key lessons from this case are the [right to substitution](#), [control](#) and the intentions of the parties,” continues Norton. “The interpretation of substitution has narrowed, but this can be clarified by contractors with their clients.”

One positive outcome of the case is that the Appeal Judge ruled that HMRC cannot ignore the intentions of the parties, although their intentions still cannot overrule the implications of the hypothetical contract.

### Contractors should still take urgent action

According to Norton, Qdos will be forwarding full guidance notes to their clients with practices and procedures that can be put in place to avoid falling foul of any fall-out from the case.

“Where Bessell fell short of having an unfettered [right to substitution](#) was in asking his client for approval,” says Norton. “It is a fine line, but we will be advising contractor clients to ensure that their end-user clients are aware of the substitution clause in the contractor-agency contract.”

The issue of approval invites end-user clients to start demanding to approve the substitute; this is clearly not an unfettered right of substitution and therefore falls inside IR35.

Norton says that contractors should also seek to confirm their status regarding control: “The clearest way to ensure the end-user client, as well as tax inspectors, understand that a contractor is not under the control of the client is to have a signed [Confirmation of Arrangements](#) on file. This is one of the first steps we ask our contractor clients to take.”

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Amie Norton, Qdos Consulting

### Adding weight to IR35 evidence

Norton is well aware that the practicalities of some contracts do not allow easy substitution, but urges contractors to take some simple steps to add weight to their IR35 evidence.

“It is a simple step for contractors to email colleagues asking for skills, availability and rates in order to build a file of potential substitutes,” explains Norton. “This can be used in a real scenario but can also be kept up-to-date and then used as evidence in the event of an investigation.”

Contractors can also [bring in expert colleagues to stay outside IR35](#). Sub-contracting elements of their work to colleagues and absorbing the cost themselves clearly demonstrates they are not a company providing personal service, not an employee and [in business on their own account](#).

It is evident that the Dragonfly verdict will have implications for contractors who are trying to stay outside of IR35 and many contractors would be wise to seek expert assistance urgently to clarify the status of their contracts.

However, as further analysis of the case is revealed, it appears that the Dragonfly Consulting verdict is not the harbinger of doom that some in the contracting sector have been predicting.

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