

HMRC wins narrow victory over Larkstar Data IR35 case in the High Court

The [IR35](#) case of Larkstar Data Ltd and the fates of contractor Alan Brill and his wife are once more in the balance as the high court backs [HMRC](#) and decides to refer the case back to the General Commissioners.

According to John Brazier, Managing Director of the [Professional Contractors Group](#), which supported the case: "Larkstar's owner Alan Brill did very well to win his case at the General Commissioners, but he now faces the prospect of having to go through it all again."

HMRC took the highly unusual step of appealing against Brill's original victory in the General Commissioners, sparking speculation about the nature of the case. No public record is published of cases heard by the general commissioners.

General Commissioners no experts

Sir Donald Rattee decided that the case should be re-heard by the General Commissioners on the grounds that they misdirected themselves in law. According to Rattee, the General Commissioners failed to consider all the evidence put before them by HMRC.

And although three of the four grounds for appeal lodged by HMRC were thrown out, only one needed to be upheld to force a re-hearing.

"This case illustrates why PCG's advisers have historically always taken cases to the Special Commissioners rather than the Generals," continues Brazier. "The Generals are a lay tribunal, which increases the chances of this kind of error compared to hearings before the Specials, who are professionally qualified."

Uncertainty over new tax tribunals

With the introduction of the new Tax Tribunals in April 2009, the General Commissioners and their clerks will be abolished, leading to doubts as to where exactly the case will be re-heard, as according to Brazier: "It is not yet clear whether the re-hearing will be under the old or new system".

Brazier also adds: "It certainly seems fair to say that all is not lost in this case by any means." However, despite successfully defending himself in the first hearing before the General Commissioners, Brill will receive ongoing support from PCG in any future hearings.

No formal written judgement has been published by the High Court, but a transcript of Rattee's remarks has been made available, which may reveal for the first time the details of the case.

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John Brazier, PCG

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