

Larkstar leaves grim legacy for contractor IR35 status, despite HMRC closing case

Contractors have not heard the last of the lengthy [Larkstar Data case](#), despite the company's director, Alan Brill, choosing to throw in the towel and halt his appeal. In fact, contractors have yet to feel the full impact the case will have on HMRC's ongoing application of case law in [determining IR35 status](#).

According to a [report by PCG](#) (formerly the Professional Contractors Group), Brill has chosen to retire to shield his family from further stress. So, although keen to fight on and get some satisfaction for the 'stress he has been subjected to over the last seven years', PCG's adviser [Accounttax](#) 'managed to persuade HMRC to close the case'. It is not clear at this stage what strategy Accounttax used to achieve this small victory.

Inspectors' internal guidance on IR35

What is also not yet clear is the impact that the series of Larkstar Data rulings will have on how HMRC uses case law to determine IR35 status. Nor is it known how it will be written up in the HMRC inspectors' bible for determining employment status, the [Employment Status Manual](#) (ESM).

Another case, that of [Dragonfly Consulting](#), has impacted dramatically on how HMRC inspectors apply the [IR35 intermediaries legislation](#). This has resulted in several [recent updates to the ESM](#), specifically referring to Dragonfly and how tax inspectors can use the case to support their [IR35 investigations](#) and cases.

By [implementing Dragonfly into its internal guidance](#), HMRC has developed new rules that it is essential that contractors understand if they wish their contracts to stay outside IR35. For examples, things previously thought of as IR35 'silver bullets' – like [control](#) and [substitution](#) – have been further watered down, leading to even greater chances of contracts being found to be inside IR35.

No liability for Brill

PCG's [report](#) on the end of the Larkstar case also reveals that HMRC will not pursue Brill or 'any of the directors of the business for any liability to the PAYE [Pay as You Earn Income Tax] or NI [National Insurance Contributions] that they feel is owed.'

This is a small consolation, however, as after allowing for a final pension contribution and settlement of bank charges, HMRC will be left to help itself to whatever is left of the £129.79 currently in Larkstar Data's bank account.

If this is indeed the final settlement HMRC can expect, it will show a derisory return of approximately £10 per year for each of the seven years contractor Brill has been fighting HMRC with the assistance of PCG and Accounttax.

Still a 'win' for HMRC in the IR35 battle

However, [HMRC's Litigation and Settlement Strategy](#) makes it clear that it will continue to prosecute cases such as Larkstar Data despite the poor yield in tax because 'an issue may have materiality beyond the tax at risk in the immediate case, because of wider deterrent or clarification effects'.

In addition, on page 3 of HMRC's strategy documents, inspectors are given the following advice:

'Some disputes have an all-or-nothing character, involving a single point of law that would be decided one way or the other by the courts, with no middle ground. Such disputes should be settled on all-or-nothing terms: do not split the difference or offer any discount for an agreement not to litigate.'

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HMRC Litigation and Settlement Strategy

This suggests that, as with the Dragonfly Consulting case, Larkstar Data will be viewed as a positive result for HMRC, not on the basis of tax recovered, but on the grounds that it has gained for casting the IR35 net ever wider to include even more contractors.

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