

Lawspeed IR35 win shows contractors can prove status

The Hove-based legal consultancy [Lawspeed](#), which specialises in recruitment affairs, has won a significant [IR35](#) case before the Special Commissioners. Coming after an unusual loss there, this win shows that contractors can make a solid case for consultant status when they control their own work.

Project Based

The case was brought by HMRC against the Bristol-based Datagate Services Ltd. two years ago. Datagate had entered into a contract with the agency now called Technology Project Services International Limited for the supply of services to the French company MBDA's UK subsidiary.

Datagate was asked to be part of a specific defence project. It was clear from the contract between Datagate and the agency, as well as from examination of the day-to-day operations, that Datagate was not engaged in any other activities for MBDA--its work was strictly limited to the project contracted for.

Control Issue

This was a defence project, and so subject to stringent security conditions. As a result, Datagate was not in a position to supply its own equipment, nor to exercise control over how the project was done.

"The Special Commissioner placed considerable importance on the issue of control: however, as in the case of [Ansell](#), the Special Commissioner took account of the strong security requirement as the projects concerned were defence-related and concluded that any right of control was not akin to that expected of employment. Similarly, the Special Commissioner dismissed HMRC's argument that the provision of equipment by MBDA was indicative of employment within the security context," explains Martyn Valentine of Lawspeed.

At the hearing the Special Commissioner commented on the strong similarities with 2004 case [HMRC vs. Ansell Computer Services Ltd.](#) Ansell, whose end-client was the defence industry firm BAE, was also subject to strict security controls, yet it was clear that Ansell Computer Services' working relationship with BAE was project-related and not typical of employment.

Financial Risk--A New Approach?

The issue of financial risk was also raised by the Revenue. One criterion that clearly distinguishes a contractor from an employee is that contractors operate at their own risk, where an employee is protected by the terms of employment rights. The Special Commissioners ruled that Datagate was clearly operating at its own risk, since it ran the risk of losing income from the project if its work was not found acceptable. This could represent a new approach on the part of the courts to defining the financial risk issue.

Right of Substitution

The Special Commissioner also considered that there was no requirement for personal service in the contractual documents and that Datagate had a right to substitute and engage helpers. Although there was no specific right-of-substitution clause in the contract, this was considered, as it has been in the past, a key element of proof of contractor status. Contractors should always have a [right of substitution](#) clause in their contracts, although in itself it may not constitute proof of status.

Says Valentine: "This decision has many interesting aspects, particularly the Special Commissioner's application of Ansell. Following the disappointing result in [Island Consultants](#), this decision will provide welcome reassurance to contractors that it is possible to operate outside the IR35 legislation and overturn status decisions by HMRC."

Also announced today was the loss of an IR35 case by a contractor, the Waterloo-based MKM Computing Ltd. The contractor, in this case, actually had the end-client's name on its Web site and stationary. The end-client was able to refuse time off to the contractor, and there was significant evidence of need for personal service (as opposed to right of substitution). HMRC proceeded, as it always does, to compare the language of the contract between the end-client and the agency with that of the contractor and the agency, and there were significant contradictions between the two. In this case, some of the classic warning signs were present, so the verdict should evoke no surprise.

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Martyn Valentine-Lawspeed

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