



HM Revenue  
& Customs



**[Enter line of business name]**

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Date: 16 February 2018  
Our ref: FOI2018/00162

Dear Mr Chaplin

### **Freedom of Information Act 2000 (FOIA)**

Thank you for your request under the FOIA, which was received on 19th January, for the following information:

"HMRC has developed Check Employment Status for Tax (CEST). HMRC has claimed that ?The tool was tested, in conjunction with HMRC?s lawyers, against known case law and settled cases.? There will therefore be documentation (digital or otherwise) relating to the testing of the 21 known IR35 court cases, used for the testing of the tool.

For each of the following seven IR35 court cases, and only these seven cases: Usetech vs Young (Jan 2004); Future Online (Oct 2004); Netherlane Limited (Jan 2005); Island Consultants Ltd V Revenue & Customs (July 2007); MKM Computing Ltd (Jan 2008); Dragonfly Consulting Ltd (Jan 2008); Larkstar Data (Feb 2008); Please state for each of the cases:

1. The ones you have documented the CEST questions and answers for as part of your testing.
2. The ones you have NOT documented the CEST questions and answers for as part of your testing.

Only for those in [1] above please provide the documents which contain: 1. The list of questions in CEST 2. The answers given to each question, as per HMRCs interpretation of the case law for that particular case. 3. The final answer that CEST produced.

To be clear, I am not asking you to conduct a new fresh review of the cases used in the development of CEST against the cases cited in the list above, and then map each of the cases and its relevant elements against the CEST questions and the answers CEST generates. I am only asking for the data for which the above activity has already been completed"

Following a review of the paper and electronic records we hold, I have established that HMRC holds some of the information you have asked for.

The CEST tool testing was done by workshop where officials, lawyers, tax and IT professionals developed the set of rules that under-pin the tool. The workshop participants agreed the key relevant facts and points of law and then tested the rules that went into tool to ensure it gave the correct answer. The rules were then tested against live and settled cases. The only documented output of the workshops is the set of rules used by the tool, and these are already in the public domain.

Our records show that HMRC has used the CEST tool to test all the cases cited in your request, but we do not have a record of how each question was answered as part of that testing, only the end determination. The following table compiled from our records lists the cases you have asked about, the determination reached by the CEST tool, and the actual determination of each case.

Please note that CEST is designed to make general status determinations as well as determinations under the intermediaries' legislation. In the table the term "employed" is used and encompasses the intermediaries legislation applying to an engagement where relevant, and conversely "self-employed" encompasses it not applying.

<b>Case</b>	<b>CEST Determination</b>	<b>Decision of court / tribunal</b>
Usetech Ltd	Employed	Employed
Future Online Ltd	Employed	Employed
Netherlane Ltd	Employed	Employed
Island Consultants Ltd	Employed	Employed
MKM Computing Ltd	Employed	Employed
Dragonfly Consulting Ltd	Employed	Employed
Larkstar Data Ltd	Self-employed	Self-employed

If you are not happy with this reply you may request a review by emailing [foi.review@hmrc.gsi.gov.uk](mailto:foi.review@hmrc.gsi.gov.uk). You must request a review within 2 months of the date of this letter. It would help us carry out our review if you set out the aspects of the reply that concern you and why you are dissatisfied.

If you are not content with the outcome of an internal review, you can complain to the Information Commissioner's Office (ICO). The ICO will not usually consider a case unless you have exhausted the internal review procedure provided by HMRC. You can make a complaint through the ICO's website at: [www.ico.org.uk](http://www.ico.org.uk).

Yours sincerely

Freedom of Information Team