

BBC chiefs pin problems on CEST after hundreds suffered unjust tax bills



HMRC's Check Employment Status for Tax (CEST) tool was exposed as a root cause of the continuing disruptions which led to hundreds of freelancers facing unjust retrospective tax bills at a [Public Accounts Committee \(PAC\)](#) meeting in Parliament yesterday.

Subject to heavy scrutiny over their muddled adoption of the Off-Payroll rules, BBC chiefs repeatedly called CEST and HMRC's rushed implementation of the public sector reform into question.

The BBC confirmed that it is seeking to reach a global settlement with HMRC to provide certainty to roughly 800 individuals who have suffered backdated tax bills, having had their employment status overturned by CEST.

"From 2017 onwards, we were surprised by the way the outcomes of the tests that we had been applying perfectly legitimately and properly before were suddenly changed by CEST," commented BBC director general Lord Hall.

Hundreds of workers employment status 'suddenly shifted'

During a two-and-a-half hour probing by the PAC, BBC chiefs were asked to recount the broadcaster's practices regarding employment status in recent years. Though disorganised in its approach, the evidence provided suggested the BBC had engaged in no untoward practices with regards to assessing employment status, with the problems all beginning in 2017 after the introduction of CEST.

Lord Hall noted that, in 2013, an employment test developed with Deloitte in liaison with HMRC had determined roughly 900 of 1,000 staff to be self-employed. He added that the radio industry guidelines had always been strictly adhered to in determining the status of the relevant individuals.

However, according to directors, the 2017 launch of the legislation and CEST gave rise to a torrent of problems contributing to the current situation. Among the issues highlighted were:

- The unreasonable timing of implementation of the rules by HMRC
- A higher than expected volume of individuals expected to be assessed
- The haste in which CEST was developed

- CEST's generality and inability to consider sectoral differences.

"We've used the guidance as we've understood it over the years. When we used CEST, people's employment status suddenly shifted," said BBC deputy director general Anne Bulford.

Bulford later added that the BBC had written to HMRC in 2016, warning that the impending changes were "coming in too quickly and would cause huge difficulty", yet their concerns were disregarded by the taxman.

For ContractorCalculator CEO Dave Chaplin, the case put forward by the BBC with regards to CEST is conclusive: "We warned PAC chair Meg Hillier about CEST prior to a [previous PAC meeting](#), but [our evidence-backed claims](#) were [dismissed by HMRC's head of tax](#) Jim Harra who said "We did a lot of work last year with public sector engagers to make sure that they used the tool effectively, so that it would give them the right answers."

Chaplin continue: "I wonder on what grounds HMRC will disregard the BBC fiasco, and the damaging impact that the evidently biased CEST tool has had on hundreds of taxpayers. This is effectively just one well-publicised case study."

BBC freelancers 'did nothing wrong'

BBC chiefs were questioned regarding multiple accusations from individuals that they had been coerced into operating via limited companies, or end their engagement altogether, in the years preceding the Off-Payroll rules.

Lord Hall conceded that the BBC had left many freelancers with little choice but to work via a limited company. Bulford estimated that the BBC had saved between £2m and £3m per year in employer's National Insurance (NI) since Off-Payroll was introduced as a result of engaging limited companies and sole traders.

Both suggested that the employment status tests conducted prior to CEST had largely vindicated this decision, with the large majority of individuals found to be self-employed. However, Bulford noted that, once CEST was applied to the relevant BBC staff, it determined that roughly 95% were employed.

This is a startling number, and one which raises further questions over [HMRC's own figures](#) – in response to a freedom of information (FOI) request by ContractorCalculator in April 2018, HMRC shared statistics indicating that CEST had found IR35 not to apply in 54% of assessments conducted. And in HMRC's [Off-payroll factsheet](#) released in May 2018 HMRC claimed that "We estimate that two thirds of people working through a company are genuinely self-employed and not affected by these rules. But around one third are working like employees."

"The challenge that we faced was that CEST places different weight on different factors when compared with our previous test," Bulford commented. "I don't think they [BBC staff] have done anything wrong."

Bulford added that, despite its sharply contrasting results, the BBC had been compelled to use CEST upon its introduction, with HMRC insisting that it would stand by the tool's outcome.

What now for the BBC, HMRC and CEST?

Two years on from their implementation, the Off-Payroll rules and CEST remain central to a high profile saga in which hundreds of freelancers face thousands in backdated tax. Having accepted its part to play, the BBC is currently seeking to achieve a global financial settlement with HMRC to prevent the retrospective taxation of the affected staff.

The [toxifying effect between business and individuals due to the off-payroll tax](#) was highlighted by Lord Hall who commented: "I take no joy at all from being at odds with people who are front line to our viewers and listeners. None, and I want to repair that relationship."

Whilst apologising to affected individuals, Lord Hall stressed that they alone were not responsible for the chaos: "HMRC should be thinking very hard about the difficulties created by rushing into something which was more global in nature, and which we still haven't worked through the consequences of now."

With the proposed settlement, the BBC faces a steep financial penalty for its involvement, while HMRC representatives are set to meet the PAC in the coming weeks. Until then at least, Chaplin notes that the significance of the saga appears lost on HMRC:

"In a bid to push through the private sector changes, HMRC and the Treasury have repeatedly stated that any negative effects felt in the public sector have been mere growing pains, and have had no lasting impact. They must have conveniently forgotten about this farce with the BBC and the impact on its freelancers – a farce that has been ongoing for two years."

Chaplin concludes: "HMRC now needs to admit that Off-Payroll is a chaos creating disaster, CEST has failed, and thousands of people have been overtaxed as a result of a heavily biased and flawed tool which the taxman had no legal authority to force public bodies to use."

Published: 31 January 2019

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