

BBC pay fiasco highlights mess created by public sector IR35 reforms

Commons Select Committee



The BBC's struggles to adapt to its requirements under the public sector IR35 reforms were highlighted in a [select committee on BBC pay this afternoon](#).

The broadcasting organisation is accused of having forced many presenters into engaging their services via limited companies. As revealed by ContractorCalculator in October 2016, [HMRC has since initiated IR35 proceedings](#) in relation to more than 100 of these presenters.

However, the committee heard from several affected broadcasters who argue that their engagement via an intermediary was upon the insistence of the BBC, which managed to avoid employer's National Insurance Contributions (NICs) and other employment costs as a result of the arrangement.

Since the [public sector IR35 reforms came into effect](#), the BBC has ceased engaging broadcasters via limited companies, but its approach to adopting its new requirements – which BBC Money Box presenter Paul Lewis described as “cack-handed” – should serve a stern warning to HMRC that wider industry is not prepared for the reforms.

Employer's NI: the elephant in the room

“The BBC appears accused of purposefully misclassifying its workers to avoid paying employer's NI contributions,” comments ContractorCalculator CEO Dave Chaplin. “Due to the imbalance of the IR35 rules, prior to the changes in April 2017, presenters are being faced with the tax bills that historically should have been paid by the BBC.

“I have a lot of sympathy for the BBC presenters who were simply following the BBC's direction to operate in this way. The BBC needs to hold up its hands and help to put things right.”

Atonement could be a costly process for the BBC, whom barrister [Jolyon Maugham QC](#) estimated may have made employer's NI savings amounting to hundreds of thousands over the years, as a result of its arrangement.

And whilst the BBC is no longer engaging broadcasters in this manner – Lewis noted that the BBC changed its policy as soon as tax risk was posed – the employer's NI issue is still a recurring theme within the IR35 discourse.

“Though the IR35 reforms request that the ‘fee payer’ makes the employer's NI contribution, this tax still isn't being funded properly in the public sector,” comments Chaplin. “In many cases, the tax is still being deducted from the contractor's earnings. This is breeding non-compliance amongst many contractors who rightfully feel that they aren't receiving fair tax treatment.”

HMRC's CEST dismissed as ‘not fit for purpose’

Lewis and fellow broadcaster Kirsty Lang also expressed dissatisfaction with HMRC's Check Employment Status for Tax (CEST) tool, which

they have been asked to use to determine their IR35 status following the public sector reforms.

“CEST is not fit for purpose. It does not apply to the jobs we do. After using CEST, my result was indeterminate, and so the BBC decided that I should be employed for tax purposes,” commented Lang.

“It’s impossible for a broadcaster to accurately complete. Its multiple choice, and fails to take many employment law factors into account,” argued Lewis, who also disclosed that 97% of those within the BBC who had used CEST had been deemed caught by IR35.

“As the evidence has shown, the BBC has faced considerable challenges implementing the reforms, and has made a complete mess of it,” notes Chaplin. “We know that CEST cannot provide accurate judgments, and the supposition that 97% of those who took the test were caught confirms this.”

“It demonstrates that, in many cases, HMRC is encouraging false employment. It also provides a clear indication that industry as a whole is not prepared for a wider implementation of these reforms.”

Has the BBC forced its broadcasters into false self-employment?

BBC DJ Liz Kershaw presented BBC email correspondence to the committee, demonstrating that an offer of a two year contract was contingent on her providing her services via a limited company.

The committee heard that Kershaw was also informed that her requirement to engage via a limited company was the result of an industry-wide modus operandi issued by HMRC, following a review of the commercial sector’s radio presenters. The notion that HMRC instructed the BBC to engage broadcasters in this manner was later dismissed as “implausible to the point of impossible” by Maugham.

In several exchanges, the BBC told presenters that, in exchange for their engagement via a limited company, it could offer them work for a fixed price over a longer period. Without such an arrangement, it claimed it would only be able to contract the individual’s services on an ad-hoc basis with no guaranteed commitment.

“The evidence is pretty damning,” notes Chaplin. “By issuing an offer such as this, the BBC forced hundreds of broadcasters into false self-employment whilst almost guaranteeing that they succumb to IR35.”

BBC IR35 fiasco a warning to wider industry

Witnesses spoke of how, following the IR35 reforms, the BBC attempted to engage them as ‘employed for tax purposes’, where they are taxed as an employee without receiving the equivalent employment rights.

This arrangement is the equivalent of being caught by IR35, and further demonstrates that the reforms have yet to ensure that the correct tax is being paid by the right parties. It prompted Lang to express that she felt like she had been “hung out to dry” by the BBC.

Citing the plight of her fellow presenters, one of whom [attempted to take her own life](#) due to stress, Kershaw called on the BBC to put things right by compensating the broadcasters affected, and the BBC has indicated that it will consider paying part of the bills issued in some cases.

“The situation with the BBC provides a very public example of what we could see in the coming years if the IR35 reforms are extended to wider industry,” concludes Chaplin. “Contingent staff could suffer similar exploitation to those working for the BBC. Furthermore, companies engaging limited company contractors could risk the same problems down the line that the BBC is now having to face up to.”

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