

## BBC refutes Treasury claim it was satisfied CEST was accurate



The BBC has shared fresh evidence demonstrating that itself and HMRC were aware of the Check Employment Status for Tax (CEST) tool's inadequacies as they sought to implement the Off-Payroll regime. In doing so, they quashed further mistruths told by the Treasury.

The BBC was reluctant to address comments made by the Financial Secretary to the Treasury Mel Stride that the broadcaster was "satisfied with the accuracy of CEST", when questioned by ContractorCalculator. However, it did share [written evidence](#) to a separate enquiry.

The BBC's written evidence, which was submitted last year to the Department for Digital, Culture, Media & Sport's (DCMS) inquiry into BBC pay, acknowledges that it was mutually agreed that the outcomes returned by CEST weren't satisfactory:

*'HMRC have recognised that the CEST does not always generate the right outcome and have responded by providing additional guidance',* the document reads, adding:

*'The BBC has continued to work with HMRC to agree guidance to supplement the CEST in places where it is producing a result that is inconsistent with the legal position. This has been a slow and challenging process and is still ongoing.'*

### CEST caused 'huge difficulty' – BBC chiefs to PAC

Last week, [BBC chiefs called into question HMRC's application of CEST](#), and the tool's credibility, during an evidence session before Parliament's Public Accounts Committee (PAC).

During the hearing, the BBC revealed how CEST assessments led to hundreds of freelancers having their employment status overturned, resulting in substantial tax bills, when previous employment status tests had found these individuals to have been legitimately self-employed.

"We were not expecting the Revenue to ask us to set aside the Radio Industry Guidelines and deal with CEST. That caused huge difficulty for us and is the principle reason why so many people are switching employment status. I can't take responsibility for foreseeing that, because I was not expecting it," commented BBC deputy director general, Anne Bulford.

BBC director general, Lord Hall, also commented: "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."

### Treasury comments about BBC are ill-founded

The BBC's latest rebuttal comes in response to correspondence from Financial Secretary to the Treasury Mel Stride, obtained by ContractorCalculator, which painted a contrasting picture of the BBC's adoption of CEST to that shared by BBC chiefs at the PAC. Citing a

recent National Audit Office's (NAO) [report into the BBC's engagement of personal service companies](#) (PSCs), Stride stated:

"The NAO reported that, by August 2017, the BBC was satisfied as to the accuracy of CEST and it assessed 92% of 663 presenters inside the rules. The NAO did not conclude that HMRC's enforcement of the IR35 rules encouraged the BBC to force presenters into false employment."

Reference to the [NAO report](#) may appear to lend some credibility to Stride's claims. However, an examination of the report suggests the comment is, at least, presumptive.

The report at no point states that the BBC was satisfied with CEST's accuracy. It does, however, state: *'The BBC's view, and that of representative bodies we spoke to in the media industry, is that CEST's multi-sectoral approach means that it is not suited to media and broadcasting roles.'*

"From what we gather, Stride's initial comment was plucked from an excerpt from the report that states: *'The BBC did not feel sufficiently confident to rely on CEST until August 2017, following further discussions with and guidance from HMRC'*," comments ContractorCalculator CEO, Dave Chaplin. "To say he's clutching at straws would be an understatement.

"The report didn't conclude that HMRC encouraged the BBC to force presenters into false employment because its purpose wasn't to speculate on the true employment status of those affected. If you were to ask the Treasury whether HMRC encouraged the BBC to assess its workers using CEST, you might get a different response."

## HMRC rebuttal quashed by own compliance guidance

Though strictly speaking, Stride hasn't commented on the suggestion that the BBC was pressured into using CEST, [HMRC has recently reiterated its public stance on the tool's use](#). Responding to [criticism of its failure to formally test CEST](#) or have it assessed under Government Digital Service (GDS) Standards, HMRC issued the following statement:

"Its use is advisory and not mandatory, but we are confident in CEST's accuracy and stand by its output when it is completed in line with our guidance.

"GDS Standards assessments are only required for transactional services, which allow users to exchange information, goods or services. As CEST is a tool for guidance purposes, not a transactional service, a GDS assessment was not appropriate."

The message from HMRC is in stark contrast with the BBC's experience, which was summarised by Bulford at the PAC meeting: "The Revenue made it clear that we needed to use CEST in order to have a reliable future employment status."

Although the taxman publicly maintains that CEST is only to be used as guidance, [HMRC's Compliance Operational Guidance](#) obliges compliance officers to use the tool to assess the status of workers involved in a compliance check, before acting on that assessment. Specifically, the guidance instructs officers to:

- Use the CEST tool to provide an opinion
- Where CEST has produced an opinion, issue a clear letter together with the list of questions and answers generated by CEST
- Issue a computation of liability and seek retrospective recovery.

"HMRC claims CEST requires neither testing nor an assessment because its use is only advisory. Yet, its compliance officers are forced to issue 'opinions' based on CEST, resulting in retrospective tax deductions which contractors then have to appeal in court," notes Chaplin.

"This tool is still in beta mode, has no legal authority and, as the BBC saga has shown, returns some extremely dubious outcomes. For HMRC to refuse to be held to account, while continuing to issue retrospective tax bills off the back of CEST's assessments, two years on from its launch, is nothing short of a scandal."

## PAC must hold HMRC accountable for 'digital Dick Turpin'

For Chaplin, the apparent efforts by HMRC and the Treasury to distort the truth regarding CEST and the Off-Payroll rules are akin to fraud, which he hopes will be addressed when the PAC questions HMRC in the coming weeks:

"HMRC and the Treasury are resorting to a twisting of the truth to cover up the reality, which is that they have built a tool that is the equivalent of a digital Dick Turpin, designed to override the current law of the lands and extort tax from people and companies when it isn't due."

"I sincerely hope that when the PAC questions HMRC about this matter, it drills down into the unsubstantiated baseless claims HMRC continues to make. Why is it that after two years, and continued criticism from the sector, HMRC still hasn't been held to account for exploiting contractors and lying to the public?"

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