

BREAKING NEWS: Kaye Adams IR35 ruling stands as Tribunal dismisses HMRC appeal



HMRC has suffered another blow in its pursuit of freelancers in the media sector after an unsuccessful appeal against the deemed IR35 status of presenter Kaye Adams throughout engagements between 2015 and 2017.

The Upper Tier Tribunal upheld the original decision, [made by the First-Tier Tribunal in 2019](#), which found Adams outside of IR35 and which could provide considerable comfort to other media-based freelancers currently on HMRC's radar.

However, IR35 Shield CEO Dave Chaplin, who observed the case through both the First-Tier and Upper-Tier Tribunals and has read the full UTT ruling, notes that there was some cause for optimism for HMRC: "Whilst the appeal ultimately failed, HMRC may find comfort on some key points of law that were decided in the taxman's favour, perhaps reducing HMRC's motivation to apply to the Court of Appeal."

A statement released exclusively to ContractorCalculator by Kaye Adams stated: "I am delighted that the Upper Tribunal has reaffirmed the finding of the First-Tier Tribunal confirmed my status as a freelance worker. I hope we can now consider this matter closed."

Problems for HMRC's media probe?

The circumstances under which Adams was found to be outside the scope of IR35 were far from ordinary and could prove problematic for HMRC as the taxman pursues multiple similar cases against broadcasters.

As Chaplin highlights, the nature in which the decision was arrived at could undermine the approach to adopting status applied by both HMRC and its Check Employment Status for Tax (CEST) tool:

"Adams was found to be providing personal service, mutual obligations were satisfied and there was a sufficient framework of control. CEST would – and indeed HMRC did – have no doubt that Adams was caught by IR35. Yet she was found by the Upper Tribunal to be 'outside IR35' purely on the grounds that she was in business on her own account."

Multiple engagements swing decision in Adams' favour

In 2019, Adams successfully appealed HMRC's challenge to her self-employed status that spanned her engagement with the BBC as presenter of 'The Kaye Adams Programme' during the 2015/16 and 2016/17 tax years.

She is also well known for her appearances on ITV's 'Loose Women' and 'Paper Review' on Sky News, in addition to writing regular columns for various newspapers and magazines.

It was the array of work undertaken by Adams that led to the final decision concerning her status, with Mr Justice Marcus Smith and Judge Jonathan Richards concluding: "...the prima facie conclusion reached at the end of Stage 2 is to be displaced because, when entering into the hypothetical contracts here at issue, Ms Adams would have been entering into business on her own account."

Reinforcing the importance of this aspect of the case, Chaplin adds: "This has brought some much-needed clarity as to how status is to be decided, including the all-important Stage 3 when applying the framework laid down in Ready Mixed Concrete."

Ruling emphasises importance of 'conduct of the contract'

HMRC successfully argued one of its grounds of appeal concerning the misapplication of the Supreme Court's decision in [Autoclenz v Belcher](#) employment tribunal (ET) case. However, this proved inconsequential. Having decided to remake the decision, the tribunal still found Adams to be outside IR35, after observing that: "Autoclenz involved neither the intermediaries legislation nor the creation of a hypothetical contract within the meaning of that legislation."

There were lengthy discussions during the tribunal about the correct approach to construct the hypothetical contract, and how much violence could be done to the written agreement whilst considering the 'circumstances' of the arrangements – as per section 49(4). This was carefully navigated in the decision, with the tribunal distinguishing between the actual contractual arrangements and how these would work in practice when considering the hypothetical contract being built.

Chris Leslie of [Tax Networks](#), who successfully defended the IR35 appeal for the [RALC Consulting case](#), and who also observed the full proceedings, commented: "The importance of the judge referring to the 'circumstances' in section 49(4) when building the hypothetical contract should not be overlooked, as this reinforces the necessity to examine the conduct of the contract rather than taking a purely literal interpretation."

Chaplin adds: "Whilst the clarity on the application - or lack thereof - of Autoclenz in tax status cases is useful, the route to the true agreement in IR35 cases is firmly via section 49(4), or the equivalent in the Off-payroll legislation. So, the same advice applies – make sure the paperwork aligns with the conduct of the contract."

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