

CEST caused 98% and 87% 'deemed employee' rates at Met Office and CCS, FOIs reveal



IR35 status assessments conducted by both the Met Office and the Crown Commercial Service (CCS) have delivered unfeasibly high 'deemed employee' rates for contractors since the introduction of the public sector Off-Payroll reform.

Responding to a Freedom of Information (FOI) request from ContractorCalculator, the Met Office revealed that it deemed 98% of contractors caught by IR35 following assessments carried out between April 2017 and January 2019. During the same period, the CCS determined 87% of its contractors to be within scope of the rules.

When asked by ContractorCalculator, both public bodies denied holding any internal guidelines or policies relating to the Off-Payroll rules, instead claiming to use [the relevant HMRC guidance](#) which promotes the use of the Check Employment Status for Tax (CEST) tool.

"It's no coincidence that yet more public sector bodies, failing an absurdly high proportion of contractors, have acknowledged using CEST," notes ContractorCalculator CEO Dave Chaplin. "With CEST, HMRC has clearly fettered its discretion by releasing a tool that gives incorrect guidance, resulting in thousands of workers being wrongly classified and incorrectly taxed."

Met Office and Crown Commercial Service join unwanted company

Of 141 assessments conducted by the Met Office between April 2017 and January 2019, only three contractors were considered outside of IR35, compared with 138 who were found to be 'deemed employees'. Meanwhile, the CCS passed just 13 contractors, failing 84.

The findings are wildly inconsistent with HMRC's own estimations, that roughly a third of contractors should be found within scope of IR35, and join a host of dubious results at the hands of CEST:

- [HS2 determined 98% of contractors to be caught](#) by IR35 in 2018
- [Network Rail found 99% of contractors within scope of IR35](#) in 2018
- [92% of BBC freelancers were deemed caught](#) following the public sector reform.

CEST's determinations concerning the BBC freelancers has come under particular scrutiny after a number of setbacks in the taxman's clampdown on the broadcasting industry.

Presenters [Lorraine Kelly](#) and [Kaye Adams](#) both successfully appealed HMRC-issued tax bills at tribunal recently, and doubts over the taxman's grasp of the legislation will only have been intensified by [CEST's failure to reach the correct result](#) in either case.

Met Office persists with CEST despite tribunal outcome

Meanwhile, the Met Office's reliance on CEST comes in spite of the public body having already been taken to court over a flawed assessment. In October 2018, it emerged that contractor [Tony Elbourn had successfully proven his self-employed status](#) using an employment tribunal.

Having been deemed within scope of IR35 by the Met Office, following a CEST assessment, Elbourn appealed to the employment tribunal for unlawful deduction of wages, after having employer's National Insurance (NI) deducted from his rate – itself an unlawful action by the Met Office.

As intended by Elbourn, the appeal failed due to the Judge's ruling that the contractor was neither an employee nor a worker, and therefore ineligible for such a claim. In doing so, Elbourn confirmed his self-employed status.

Though this was one of numerous recent occasions where a tribunal Judge has rejected a CEST assessment, the taxman remains resolute over the tool's accuracy. Speaking recently [before Parliament's Public Accounts Committee](#) (PAC), HMRC's Jim Harra stated:

"We thoroughly test CEST, and we have tested it with a set of stakeholders against court and tribunal decisions about employment status, to make sure that when you put the relevant facts into CEST, it gives the answer that employment law or the employment status decisions have given."

HMRC using CEST 'to override the law'

Far from providing answers in accordance with employment law, Chaplin argues that the very one-sided public sector assessment results are the result of HMRC's efforts to re-write the rules:

"HMRC appears to have taken it upon itself to override the law, having inflicted the biased CEST on the public sector, resulting in widespread non-compliance whereby genuinely self-employed workers are being told they are 'deemed employees'."

As Chaplin highlights, contractors aren't the only ones suffering as a result of CEST's questionable results: "With CEST almost unanimously bundling contractors into 'deemed employment', public sector bodies will also be paying the new off-payroll tax of 14.3% when they perhaps didn't need to.

"CEST has been used to extort money from businesses and workers. It's no wonder there are reports of the self-employed refusing to work in the public sector despite contract rates rising considerably."

Chaplin concludes: "Laughably, HMRC claims that its work is about restoring fairness in the tax system. Since when is deliberately cheating and overriding the law considered fair?"

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