

CEST exposed as hopelessly unreliable using HMRC's own test data obtained via FOI



HMRC's Check Employment Status for Tax (CEST) tool has been exposed as biased and hopelessly unreliable, after a comprehensive re-testing of HMRC's CEST test data obtained under FOI by ContractorCalculator, which HMRC and Treasury are consistently relying upon to back up their claims that the tool is accurate.

Following ContractorCalculator's initial 14-month investigation into CEST involving multiple Freedom of Information (FOI) requests, HMRC finally provided ContractorCalculator with a one-page list of 24 key employment status cases, including 18 IR35 tribunal cases, which it claims CEST was tested against to ascertain its accuracy. Alongside each case, the analysis detailed the status judgment and the supposed status assessment reached when run through CEST.

Though the list provides no insight into how questions were answered during the testing process and isn't supported by any further evidence, both the taxman and the Treasury have been relying upon it to back their claims of CEST's reliability by referring to the document in widespread correspondence with Members of Parliament who have been questioning the Treasury about the off-payroll tax reforms on behalf of their contractor constituents.

ContractorCalculator analysed all of the court cases, by using 557 pages of court judgments available in the public domain, and discovered that HMRC's testing claims are woefully incorrect.

This revelation comes just months after HMRC admitted that it holds [no detailed evidence to prove CEST's accuracy claims](#). So, how did HMRC's single-page analysis fare against the rigour of proper formalised analysis and testing?

HMRC knew CEST was inconsistent with court judgments

HMRC's FOI response portrayed CEST as largely accurate, yet its own analysis conceded that two assessments out of 24 were inconsistent with the court decision. Our rigorous re-testing shows that CEST fares considerably worse than that.

"We spent two months re-testing CEST against the 24 cases by enlisting the help of expert employment status lawyers. We used a level of rigour suitable for systems of this importance, resulting in 690 pages of comprehensive testing documentation, to prove our claims. HMRC appears to be 689 pages short of the mark when it comes to its own claims of 'rigorous testing'."

Only 14 out of the 24 cases (58%) gave the correct answer, for the right reasons, by CEST: our analysis

ContractorCalculator's comprehensive re-testing discovered that not only were HMRC's testing claims woefully incorrect, but that the CEST tool is heavily biased towards pushing people into being incorrectly taxed as a "deemed employee". Results also revealed:

- CEST only returned a properly correct outcome in 14 out of 24 cases – just 58%.
- 7 cases (29%) resulted in CEST giving the wrong answer.
- 3 cases gave the right answer, but for the wrong reasons – called “false positives”
- 3 of the cases which passed (of the 14) demonstrated an over-reliance on substitution, which otherwise would not have produced the correct result, contrary to the courts direction.

ContractorCalculator’s re-testing documentation details every answer entered into CEST, alongside extracts from each relevant judgment substantiating the rationale behind each answer provided. Our analysis shows that CEST falls woefully short of the claims made by HMRC and the Treasury to MPs regarding its accuracy, with the tool delivering an incorrect outcome in 7 of the 24 cases - that's 29%.

For a further three, CEST displayed an over-reliance on whether the contractor had a right to substitute. In at least two of these cases, CEST would have delivered an incorrect assessment of “IR35 applies” if it hadn’t placed so much emphasis on substitution. One of these instances is the Lime IT case.

“The Lime IT case is considered the seminal IR35 pass, with the contractor found to have passed IR35 in all areas,” comments Chaplin. “Yet, had CEST not displayed an over-reliance on substitution when assessing this case, it would have deemed the individual to be employed, which is ridiculous.”

Three of the “false positive” passing cases determined that IR35 didn’t apply based solely on substitution, yet in their respective judgments it was made clear that it was not the determining feature of the decision.”

“Many contractors provide a personal service but are not subject to sufficient control or mutuality of obligation (MOO). By the letter of the law, the majority of these should not be caught, but CEST will say they are, forcing thousands into wrongful taxation in the process.”

What is a false positive?

In three of the passing cases, CEST delivered the correct outcome, but one which was based on what scientists would refer to as a ‘false positive’. Here, the outcome is perceivably accurate, but the means of getting to it are wrong, as Chaplin explains:

“If I get 100 random people in a room and flip a coin 100 times to determine whether they are male (heads) or female (tails), the overall result in terms of male/female split will be largely correct due to the law of averages.

“However, an individual coin flip will produce many false positives indicating that the coin might actually be capable of guessing someone’s gender. This is what we mean by a false positive, which is precisely what CEST is – a coin flip, and one that is misaligned with the law.”

HMRC’s CEST accuracy claims ‘laughable’

HMRC has faced much criticism of CEST, as its shortcomings have been made more apparent. In response to mounting questions, the taxman has attempted recently to use its single page test sample to validate its accuracy claims, citing this in a letter to an MP:

“HMRC has released a list of cases that CEST has been tested against, which illustrates the results from CEST are consistent with the main employment status test cases.”

“That HMRC can release a table displaying the supposed CEST outcomes, without disclosing any details as to how those decisions were made and use it to try to attest to CEST’s accuracy, is laughable,” comments Chaplin.

“Fortunately, we have shown that the claims pedalled by HMRC and Government are false and, unlike HMRC, we have comprehensive evidence to prove our assertions.”

How will HMRC and the Treasury respond?

“With the taxman’s most recent claims debunked, it will be interesting to see how HMRC frames its response,” continues Chaplin. “Given the staunch [opposition to HMRC’s flawed interpretation of mutuality of obligation](#) (MOO) and this latest failed attempt to pull the wool over the sector’s eyes, the best the taxman can now claim is that CEST gives an answer which can only be half relied upon. That is not good enough, and the CEST tool must be withdrawn.”

Despite its posturing, HMRC’s assertions regarding CEST have weakened since ContractorCalculator began its investigation into the tool. The

taxman is now less reluctant to profess CEST's accuracy, but numerous remarks have become staple features in HMRC's correspondence regarding CEST's "certainty", including:

- *"CEST was developed in consultation with public authorities, employment agencies, tax specialists and contractors"*
- *"The results have been tested by HMRC against known case law and settled cases"*
- *"It provides an answer in 85% of cases."*

Chaplin says: "HMRC and the Treasury often refer to the fact that CEST gives an answer in 85% of cases as being somehow demonstrable of its reliability. You could flip a coin that gives an answer 100% of the time, and it would be almost as accurate as CEST, but a coin flip isn't a great arbiter when it comes to matters of employment case law. And neither is CEST."

Correspondence received by ContractorCalculator's readership shows that the same rhetoric is being [used by the Financial Secretary to the Treasury](#), and [even the Chancellor of the Exchequer](#), to defend CEST, much to Chaplin's disappointment:

"It's a shame that the Treasury and the Chancellor have taken to copying and pasting HMRC's prose regarding CEST, rather than providing the public with a considered response of their own."

"The good news is that all of these parties will be forced to change tack, given that these comments have now been proven incorrect or irrelevant by our analysis. The taxman, and everybody else on board with this, have run out of excuses."

IR35 legal expert Martyn Valentine, from [The Law Place](#), agrees: "CEST has no basis in law, is not defined in statute, and it does not align with the law. It is now proven to hand out decisions that are contrary to the law. CEST demonstrates beyond doubt that HMRC do not understand the law and cannot be trusted to advise on status nor enforce the law on status. The tool must be withdrawn to avoid further misrepresentation of the law by Government."

Taxman's CEST instructions are a 'serious abuse of power'

One strategy that HMRC has used in the past to deflect criticism away from CEST has been to remind the public that the tool was designed only as a means of guidance and that hirers aren't compelled to use it. However, the taxman's correspondence with public sector hirers would suggest otherwise.

In a letter circulated to public authorities, obtained by ContractorCalculator, HMRC provides clear instructions that recipients use CEST to conduct status assessments. Below a subheading: 'What you need to do now', the taxman states:

"Please now check that you are getting the employment status right for any worker who you pay on a self-employed basis. To help you do this, you can use our online tool, go to www.gov.uk and search for 'Check employment status for tax (CEST)'.

"We'd like you to carry out this check within the next 30 days. We'll contact you again later to ask you what action you've taken. Please keep a copy of any decision produced by CEST as we may ask to see this at a later date."

Chaplin concludes: "The taxman is pushing hirers to use CEST, which, as our analysis shows, is geared towards assessing contractors as employed. In doing so, HMRC is trying to override the laws of the land."

"HMRC has a duty of care to ensure that the public pays the correct amount of tax. CEST doesn't provide this, and HMRC has no authority to create digital tools which overrule the law. Its actions here are a serious abuse of power."

Join our IR35 campaign

ContractorCalculator is actively campaigning to put a stop to Governments plans to expand the public sector IR35 tax reforms to the private sector.

To support the campaign against IR35, please [subscribe to our mailing list](#), and help raise awareness by following the instructions set out on [our IR35 campaign page](#). Please follow or connect with our [CEO Dave Chaplin on LinkedIn](#). Dave regularly posts about the IR35 reforms and is an essential contact to have for keeping abreast of the latest news surrounding the legislation.

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