

## 10 key failings of HMRC's IR35 testing tool CEST - 18 month investigation



Though HMRC continues to champion CEST, an 18-month investigation into the tool by ContractorCalculator has uncovered numerous shortcomings and inconsistencies, proving that CEST is not fit for purpose. These findings range from faulty processes and the omission of key employment status factors to an evident lack of testing during development. Below, we share ten areas in which, through CEST, HMRC has failed taxpayers.

### 1: HMRC holds no evidence that the tool is accurate

In a February 2018 Freedom of Information (FOI) request response to ContractorCalculator, [HMRC conceded that it holds no detailed testing evidence](#) to support its claims regarding CEST's accuracy. HMRC ultimately provided ContractorCalculator with a list of 24 employment status cases which it claimed CEST was tested against, but again provided no supporting documentation proving how the tool reached these outcomes.

### 2: It malfunctions, is hopelessly unreliable and biased

ContractorCalculator conducted a [rigorous re-testing of CEST against the 24 cases](#), which found that the tool returned a flawed assessment 42% of the time. In seven cases, CEST would return the wrong outcome, while, in another three, it would return the right outcome but for the wrong reasons. The analysis also concluded that CEST was geared towards returning an 'inside IR35' outcome, proving that it is not fit for purpose.

### 3: It does not align with how judges consider employment status

Case law requires that judges determine employment status by considering the accumulation of detail regarding an individual's working arrangement. However, [CEST considers just four elements of law](#), all in isolation from each other, meaning a contractor's assessment could be determined by as little as one employment status factor. [Experts have slammed the logic underlying the tool](#), and warn that its results easily manipulated results leave users at risk.

### 4: It has no basis in law and does not align with the law

CEST's failure to consider all elements of employment case law alongside each other has led experts to dismiss the tool as having no basis in law. As a result, it would make for a feeble defence in the event of a tax investigation. HMRC is aware of this and has been known to challenge assessments carried out using CEST, placing its users at serious risk of tax penalties and interest.

### 5: It only asks a fraction of the questions usually posed during an HMRC inquiry

When conducting an IR35 enquiry, an HMRC inspector will typically ask at least 50 questions of a contractor, and often in excess of 100.

CEST only asks a maximum of 16 questions, and may even return a status assessment based on answers provided to just four questions.

## 6: HMRC purposely omitted key elements of status law

HMRC purposefully ignored key elements of employment case law when developing CEST, including mutuality of obligation (MOO). When challenged, HMRC stated it believed MOO to be present in all public sector engagements; a flawed assumption which it has used to influence the Treasury and the Chancellor. In spite of damning assessments from employment status specialists and strong opposition from IR35 Forum members, HMRC maintains its stance. Recent tribunal cases, which have hinged on MOO, have reinforced HMRC's error of judgement, with one case even showing that HMRC knew CEST was misaligned with the law upon launch.

## 7: It does not provide legal certainty and fails to provide 'reasonable care'

The Off-Payroll legislation requires hirers take 'reasonable care' when assessing status. An examination of the case law and HMRC's own guidance by former HMRC inspector Philip Manley concluded that using CEST falls short of reasonable care is unable to provide legal certainty.

## 8: The tool had no formal testing within Government Digital Services

Despite being used to determine the tax status of thousands of contractors, HMRC and Government Digital Services (GDS) agreed that CEST didn't require a formal service assessment. This was revealed to ContractorCalculator in a June 2018 FOI response by the Cabinet Office and shows that CEST likely doesn't even meet the standards set out by GDS.

## 9: Surveys indicate the market has little or no confidence in the tool

CEST's multiple flaws and dubious outcomes have resulted in widespread mistrust of the tool. In March 2018, it was revealed at a select committee that CEST deemed 97% of people within the BBC to be caught by IR35. A recent survey of more than 2,000 contractors by ContractorCalculator found that 79% don't believe CEST can be trusted to provide accurate results and 75% claimed they would always seek an alternative assessment.

## 10: Its results aren't aligned with market experience

Following intervention by the ICO, HMRC disclosed to ContractorCalculator its figures detailing the results issued by CEST. These showed that 54% of CEST assessments resulted in a pass, in sharp contrast to market experience, with thousands of contractors having been forced to work inside IR35 due to blanket assessments by hirers, proving that many aren't receiving fair tax treatment.

*This is an extract from a whitepaper published by ContractorCalculator: [CEST - not fit for purpose](#).*

Published: Tuesday, August 14, 2018

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