

Did HMRC attempt to conceal admission of IR35 non-compliance caused by Off-Payroll?



HMRC has been accused of purposefully deceiving the public and Government in claiming that the [new Off-Payroll IR35 rules](#), introduced in April 2017, haven't given rise to increased engagement with disguised remuneration umbrella schemes.

The [claim comes as part of written evidence](#) provided by the Independent Health Professionals Association (IHPA) to the [Finance Bill Sub-Committee's inquiry into the 2018 draft Finance Bill](#).

The IHPA's submission contains a copy of a May 2018 email from HMRC's IR35 lead Mark Frampton to Martin Innes, a then senior official at [NHS Improvement](#), which was obtained through a Freedom of Information (FOI) request to the NHS provider.

Frampton acknowledges that the Off-Payroll rules have intensified engagement with tax avoidance schemes in the email, which was accompanied within IHPA's submission by evidence to suggest that HMRC had attempted to avoid disclosing the same exchange.

The news raises further serious questions about the integrity of the Government department, which has so far publicly refused to acknowledge the extensive evidence of the Off-Payroll rules' failings.

HMRC admits being 'very concerned' about non-compliance

In the email, which was sent the same month that HMRC published its Off-Payroll working in the private sector consultation, Frampton disclosed: "We have heard reports that some doctors are also being sold the sort of tax avoidance schemes we thought everyone knew were closed down years ago. HMRC are very concerned that some doctors are being sold 'contractor loan' or similar complex avoidance schemes without them understanding that there is already legislation in place that catches these schemes."

The discovery marks a major blow for HMRC and Frampton, who just last month was exposed for delivering an HMRC seminar to NHS Trusts which appeared to actively [encourage blanket assessment of locum staff](#).

In addition to potentially encouraging non-compliance among hirers, this email demonstrates that HMRC was aware that the Off-Payroll rules were inciting disguised remuneration at a time when it was championing the legislation's supposed success in improving public sector compliance.

Despite multiple reports highlighting the proliferation of these [schemes within the NHS](#), some of which claim there to be [as many as 60 in operation](#), the taxman has publicly denied the issue of non-compliance.

HMRC's summary of responses to the May 2018 consultation failed to address feedback from respondents detailing heightened engagement

in loan schemes while concluding: “the reform has increased compliance and has not had a widespread impact on public bodies engaging flexible workers.”

Perceived cover-up suggests taxman may have more to hide

To make matters worse for HMRC, the IHPA’s submission contests that there has been an attempted cover-up between the taxman and NHS Improvement. Identical FOI requests were sent to both organisations, requiring that they share their correspondence, yet they yielded differing results.

The IHPA notes that HMRC released 34 emails, but not the one acknowledging loan scheme use, which was present in NHS Improvement’s response. Meanwhile, NHS Improvement only released a handful of emails, with the IHPA estimating that it failed to disclose up to 30 emails without citing an exemption.

This leak comes just five months after the NHS was implicated in a possible [multi-million pound tax dodge](#), where Trusts were believed to have significantly reduced their VAT liability by engaging locum staff via intermediaries operating the controversial Direct Engagement Scheme (DES).

Use of the DES is understood to have proliferated following the public sector reform, with the NHS’ approach to Off-Payroll resulting in far more ‘inside IR35’ locums, whose new tax arrangements were better suited to the scheme. Adoption of the model within the NHS is yet to be addressed by HMRC.

Dwindling locum healthcare numbers disprove HMRC claims

Though HMRC continues to deny the issue of non-compliance and its impact on the public sector, the statistics are telling. Analysis of figures from the Office for National Statistics (ONS) by Worklab shows that while self-employment within the healthcare sector has fallen in response to the Off-Payroll rules, it has been accompanied by a significant shrinkage in the overall workforce.

Compared with the same period during the previous year, the second quarter of 2018 saw 20,000 fewer medical practitioners – a 36% reduction. Meanwhile, year on year (YoY), the total number of medical practitioners within the UK workforce fell by 12,000 to 259,000. For dental practitioners, the number of self-employed declined by 10,000, contributing to an 11,000 YoY reduction to that portion of the workforce.

“If Off-Payroll had proven a success in HMRC’s eyes, without negatively impacting public bodies, the fall in self-employment wouldn’t be accompanied by a significant reduction in the overall workforce,” comments Chaplin.

“Instead, HMRC’s draconian regime appears to be stretching the UK’s critical frontline services ever-thinner. I wonder how many of these medical professionals left after being blanket assessed by the NHS, upon HMRC’s instructions.

“Of course, HMRC will probably dismiss this empirical evidence as mere rumour, as it has done with all research that has shown the Off-Payroll rules for what they are. It’s a sign of weak Government when civil servants are calling the tune, and MPs such as the Financial Secretary to the Treasury, Mr Mel Stride, aren’t holding them to account. It forces you to question who’s really in charge.”

Is Treasury ‘in on the deceit’?

Chaplin’s comments aren’t without substance, as it would appear those further up the hierarchy are playing by the same rules. The Financial Secretary to the Treasury has so far [refused to provide evidence to the Finance Bill Sub-Committee](#), in response to allegations of severe failings of HMRC enforcement.

Meanwhile, letters sent to Stride by MPs representing contractors opposing Off-Payroll have been greeted with familiarly dismissive claims. In one response, the Financial Secretary simply states: “Early evidence suggests the public sector reforms are working and compliance is improving.” In another, he points towards HMRC’s estimated tax yield as evidence of improved compliance.

Responding to a letter by ContractorCalculator CEO, Dave Chaplin, Stride reaffirmed Government’s commitment to tackling tax evasion and avoidance, adding: “Government is monitoring the impact of the public sector reforms, and they are leading to greater compliance.”

Chaplin concludes: “Whether the Treasury is in on the deceit, or has been unwittingly misled by HMRC, is unknown. But I would be concerned about the aptitude of the department if it were the latter, given the evidence that is already out there.

“Either way, if Government was genuinely committed to tackling tax evasion and avoidance, you have to question why it would persist with a regime that the taxman knows is encouraging this behaviour.”

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