

HMRC still conducted no formal testing of CEST, two years on from its release



HMRC has conceded that its [Check Employment Status for Tax \(CEST\) tool](#) has undergone no formal testing since its release almost two years ago, despite repeated claims from HMRC and the Treasury that the tool is under continual review.

The taxman has also confessed that not even an informal assessment was conducted to ensure that CEST adheres to the Government's Digital Service (GDS) Standards, which the [Government Service Manual notes](#) is used "to check whether a service is good enough for public use".

Both of these admissions were made in response to Freedom of Information (FOI) requests by ContractorCalculator. The news comes as HMRC faces mounting scrutiny over its design and development of the tool, which is believed to have already forced thousands of public sector contractors into false employment, [including hundreds within the BBC](#).

"Given that HMRC has imposed CEST upon the public sector, cheating many honest taxpayers out of thousands in the process, it's astonishing that it has still produced nothing to prove that the tool works, or to hold itself to account," comments ContractorCalculator CEO, Dave Chaplin.

Two years on, still no test proof for CEST

Responding to ContractorCalculator's request concerning testing documentation, HMRC stated: *'No further documentation has been created since April 2018 where CEST has been subsequently tested against court cases'*, alluding to a [table of 24 employment status cases](#) provided in response to a [separate ContractorCalculator FOI request in April 2018](#).

The table contained the name of each case and the appeal outcome, alongside the supposed outcome when assessed using CEST. HMRC had attempted to use the documentation as proof of CEST's accuracy. However, a rigorous re-testing against the 24 cases by ContractorCalculator found the tool to return a [flawed assessment 42% of the time](#).

"After we debunked HMRC's single page of 'proof' as to CEST's accuracy, we thought the taxman might make some effort to try to vindicate its tool," notes Chaplin. "Instead, we are two years on from CEST's launch and HMRC has still provided no justification for the many tax bills issued as a result of its assessments."

In addition to this, an examination of the [public repository hosting CEST's underlying code](#) shows that no material changes to the programme's 'decision matrix' have been made since its release two years ago.

Government assessment of CEST 'not appropriate' – HMRC

HMRC's case is worsened by its acknowledgement that CEST hasn't been subject to any form of GDS assessment, with the taxman concluding: 'As CEST is a tool for guidance purposes and not a transactional service, a GDS assessment was not appropriate'.

"It's entirely inappropriate to rely on an obtuse caveat to avoid delivering the necessary high standards required for such an important service, especially when there are hundreds of thousands people's livelihoods at stake," notes Chaplin.

The response from HMRC is particularly contentious, given the manner in which it has implemented the tool in the public sector. Though publicly the taxman has described CEST as optional and intended for guidance purposes, many public sector bodies, including the NHS and more recently the BBC, have admitted treating the tool's assessment as binding on HMRC's encouragement.

Staggeringly, BBC chiefs revealed recently that 95% of freelancers were deemed employed following a CEST assessment after the broadcasters' previous employment status assessment – developed in liaison with HMRC – had found roughly 90% to be self-employed.

Why is CEST still in beta phase?

Of further concern is the fact that such significant decisions are determined by a tool still in its beta phase. Previously, HMRC claimed that [CEST follows Government's agile methodology](#) framework, which requires that services progress through certain delivery phases.

Services aren't expected to spend more than a few months in beta phase, yet CEST has been at this stage for two years. Not only this, but the tool still fails to meet various criteria required to progress to the 'live' phase, as highlighted within the [Government's guidance](#) which, include:

- Improving the service by testing it with users
- Carrying out regular accessibility testing and conducting an accessibility audit
- Releasing updates and improvements in the development environment
- Continue iterating and improving the service.

"CEST has been stuck in beta mode since its inception, due largely to the fact that HMRC has neither properly tested nor developed the tool," explains Chaplin. "For a solution of CEST's importance, you would expect roughly 4,000 pages of testing documentation to prove it's accuracy alone, which is transparent and can be checked and verified by the public. HMRC has provided next to nothing - just a single page.

"The outcome is we have a faulty HMRC tool, which is still technically in its development phase, making employment status determinations that should instead be made by trained legal professionals."

Admissions expose Government mistruths over CEST 'improvements'

The latest revelations are in stark contrast to the messages that have been emanating from HMRC and from within Westminster over the past few months. In its October 2018 [summary of responses](#) to the Off-Payroll working in the private sector consultation, HMRC stated:

'HMRC will continue to work with stakeholders to improve the CEST digital service. Enhancements to CEST will be introduced in advance of the new rules coming into force.'

Chancellor Philip Hammond later echoes this claim in correspondence shared with one of the Prime Minister's constituents, in which he stated: *'HMRC will continue to review and improve CEST, working with stakeholders over the coming months to ensure the tool and wider guidance suit the needs of the private sector.'*

"For HMRC to 'continue' with improvements to CEST, it needs to have been working on them in the first place. The taxman has just admitted that this isn't the case, and it appears the tool has been abandoned for the last two years" highlights Chaplin.

"Of greater concern is that, while HMRC has repeatedly vowed to improve CEST, the taxman has continued to issue tax bills amassing hundreds of thousands of pounds off the back of the tool."

Chaplin adds: "In terms of employment case law, whether you work in the public or private sector, doesn't factor into the employment status equation. With that in mind, it will be interesting to see what 'enhancements' to CEST HMRC sees fit in preparation for Off-Payroll in the private sector."

HMRC faces unrealistic timeframe to fix CEST for private sector

Though HMRC is yet to express any sense of urgency, it has an unrealistically short timeframe to fix CEST in readiness for the private sector. Firms engaging contractors on one-year contracts will need to begin assessing individuals within a few months, assuming the contracts run beyond the proposed April 2020 Off-Payroll implementation date.

If CEST isn't rectified before then, the outcome could mirror the public sector fallout that leading QC Jolyon Maugham predicted before a [Select Committee hearing on BBC pay](#) in March 2018:

"In two years', this Committee is going to be looking at whether the BBC and the NHS were right to force everybody to be taxed as employees in circumstances where the case law has shown after the fact that very often those people were taxed properly as self-employed," Maugham noted.

"Given the mounting evidence that CEST is creating false employment, it won't be long before challenges to its assessments are coming thick and fast," adds Chaplin.

"By rolling the Off-Payroll rules into the private sector, HMRC is setting itself up for a colossal fall, and intensifying the impending crisis tenfold. The fact that it shows no inclination to hold itself accountable in the meantime will do little to help its case further down the line."

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