

FREE IR35 TEST

Nurses & agencies using umbrella loan schemes risk tax bills and prosecution



Locum nurses caught by IR35 are being warned to steer clear of unlawful loan-based umbrella schemes to mitigate loss of income resulting from [the public sector IR35 reforms](#). This follows reports of an increase in the take-up of non-compliant schemes amongst recruitment agencies.

The rise has coincided with struggles faced by locum healthcare workers in the [aftermath of the public sector IR35 reforms](#). With few NHS trusts willing to issue outside-IR35 contracts, unwittingly, nurses are attempting to counter the loss of earnings by using non-compliant umbrella schemes. Many of these schemes falsely claim that the user can take home as much as 90% of their earnings.

- IR35 reforms driving nurses into non-compliance
- Umbrella loan scheme users face major tax bills at a later date
- HMRC typically slow to react, often taking years to catch up with contractors
- Recruitment agencies facilitating schemes could face criminal charges

Whilst resource-stricken HMRC may take months or even years to close a scheme down, any users the taxman can identify will be liable for additional taxes, penalties and interest. Meanwhile, recruitment agencies could find themselves subject to charges and criminal prosecution under the 2017 [Criminal Finances Act \(CFA\)](#).

"It's unfortunate but what do you expect to happen when somebody is effectively forced to accept a 20-25% pay cut overnight? They become desperate and want to believe the phoney assurances given by sales people as to the legitimacy of these schemes," comments ContractorCalculator CEO Dave Chaplin.

"The worrying aspect is that these schemes can appear credible, by virtue of non-tax-savvy professionals actually using them and getting monies paid into their bank account without attracting the immediate attention of HMRC. It can take years before they are finally caught. In the meantime, like a fraudulent [Ponzi scheme](#), contractors unwittingly using these schemes act as 'songbirds', further promoting and proliferating their use."

Umbrella loan schemes – the risk for locum nurses

"We're less than a year on from the public sector IR35 reforms and there is already strong evidence to demonstrate it is driving significant non-compliance," Chaplin adds. "Unfortunately, those at risk are some of the most vulnerable yet most valuable workers affected by the rule changes."

Rhetoric from HMRC and Government over recent years has given the impression that they are tough on tackling tax avoidance and evasion, although sadly it doesn't align with actual enforcement. Whilst a [spotlight published by HMRC](#) in July 2016 indicates that contractor loan schemes are on its radar, Chaplin explains that the taxman is routinely slow to react:

"The taxman is still cracking down on some schemes that were created almost two decades ago, and contractors who used them are facing financial ruin. HMRC's inability to quickly address these schemes means that once it finally gets round to them, the founders and many of the users are long gone.

"This leaves a wake of financial destruction for the users who they do catch. We know of contractors who HMRC caught up with almost a decade later who are now losing their homes as a result. Don't be one of them."

For those currently engaging in loan schemes, things could come to a head sooner rather than later following amendments to Part 7A of the ITEPA 2003. Designed to tackle disguised remuneration, a tax charge will be applied to loans such as those paid out through loan schemes which are outstanding as of 5 April 2019 – known as the 'April 2019 loan charge'.

Agencies facilitating loan schemes face criminal charges

Placing locum staff in touch with fraudulent schemes can also have severe repercussions for recruitment agencies. This follows the September 2017 enactment of the CFA, which makes it a criminal offence for a company to fail to prevent the facilitation of tax evasion by an associated person.

An agency can be punishable under the new rules if:

- An employee of the agency is found to have facilitated an offence
- They did so under the knowledge that the scheme was set up to evade tax
- The agency has failed to take steps to prevent its employee from facilitating tax evasion

HMRC would have a strong case against the facilitation of any scheme which advertises '90% take home pay', having repeatedly singled this out as evidence of a non-compliant scheme.

It is insufficient for an agency to simply state it wasn't aware that one of its agents had referred a contractor, or that the scheme was non-compliant. A successful defence will need to demonstrate the agency has taken positive steps to prevent facilitation.

Where a referral fee has been paid to an agent, it suggests a clear motive for dishonesty. Offending agencies successfully prosecuted will be subject to an uncapped fine and possible ancillary sanctions.

How to avoid non-compliant loan schemes

With the public sector IR35 reforms driving incomes down for many locum workers, a lack of a better alternative has increased the risk appetite for some. Others are simply too quick to trust the "advice" given by agents recommending these schemes, unaware that the agents themselves receive a referral fee. It's not a risk worth taking, and Chaplin urges nurses to ignore the false promises made by scheme providers:

"People selling these schemes are cowboys, preying on vulnerable nurses whose livelihoods have been taken away by HMRC due to the draconian IR35 reforms.

"Here is a litmus test to ask the agent recommending them: Could you or the directors of the umbrella firm give me a personal guarantee in writing against any future tax liabilities as a result of using your scheme?"

Fortunately, there are several ways to spot a fraudulent scheme or a non-compliant umbrella provider:

- Consider the tax savings being advertised – the promise of unrealistic tax savings almost certainly means a non-compliant scheme, particularly if the take home pay is supposedly greater than that you would take home outside of IR35
- Check the terms of payment – any umbrella whose payment terms deviate from the PAYE format should be questioned, as this isn't standard practice

- Check the company's accreditation record – if the umbrella is [FCSA-accredited](#), it is a solid indication that it does everything legitimately

“Given the circumstances, it's easy to see why locum nurses are being drawn in by these schemes,” concludes Chaplin. “But the best action to take is to remain compliant if you plan on staying and working in the UK, at least to avoid further punishment at the hands of HMRC.”

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