

## Uber ruling is good for contractors with important lessons to learn, say experts



As a contractor, your IR35 status won't be impacted negatively as a result of the [Uber employment tribunal outcome](#) published on 28 October 2016, experts have confirmed.

### Uber ruling will not impact IR35 for contractors

During the decision's build up, [there were concerns that the claims for employment status](#) and rights by two Uber drivers could set case law precedents. However, this proved not to be the case even though the drivers were found to be self-employed workers.

Experts warn not to get complacent though, adding that whilst the tribunal outcome doesn't provide HMRC with any new ammunition to challenge an IR35 status, it won't halt the taxman's attack on the contingent workforce.

If you're worried about your IR35 status, you can use ContractorCalculator's free online IR35 test [to help identify what action you should take](#).

### Why the Uber ruling and 'control' is important for you

The outcome largely hinged on the amount of control Uber exerted over its drivers.

These elements of control included:

- The fact that Uber requires drivers to accept trips and/or not cancel trips
- The fact that Uber sets the default route and the driver departs from it at their peril
- The fixed fare agreed by UBV that the drivers can't negotiate
- Uber's rating system is deemed to amount to a performance management procedure
- The fact that Uber reserves the power to amend the drivers' terms unilaterally

For ContractorCalculator CEO Dave Chaplin, this reinforces the importance of demonstrating that control is not present with their clients to help eliminate IR35 risk:

"It's interesting to see that control can now be considered exercised by use of a device supplied by the firm, and that it can also be exercised by proxy of providing reviews and feedback that influence how an individual decides to carry out their work. With the scope of control perceivably widening as working practices evolve, contractors need to stay on their guard."

## How will the Uber case impact client-freelancer engagement?

The tribunal referred to the Supreme Court case of *Bates van Winkelhof v Clyde & Co LLP* [2014] which sought to distinguish between the two types of self-employment:

- People who carry on a profession or a business undertaking on their own account and enter into contracts with clients or customers to provide work or services for them' [contractors]
- Self-employed people who provide their services as part of a profession or business undertaking carried on by someone else' [self-employed workers]

"The first thing this case has done is confirm that the latter of these two groups have access to certain specified statutory rights that they may or may not have known about," highlights Professor Patricia Leighton, [Emeritus Professor of Employment Law at the University of Glamorgan](#) and [Professor at the École Supérieure de Commerce à Paris et à Nice](#) (1pag).

"I have highlighted for many years that employers and clients should be alert to the fact that workers are entitled to claim these rights."

One potential fallout from the outcome for the freelance sector, as Leighton points out, is the deterrent effect that the increased alertness to employment rights could have amongst potential clients:

"The key rights that will likely be claimed are paid holidays and possibly equality rights. However, clients may think this is the thin edge of the wedge, and that new rights might build on the ones that exist. Freelancers may, though, not claim in huge numbers, especially if they identify themselves with the SME community."

## Uber claims branded 'faintly ridiculous' at tribunal

Key to the outcome was Uber's attempt to obfuscate the true nature of the relationship between itself and its drivers within its documentation. The tribunal was sceptical about the referral to drivers as 'partners' and passengers as 'riders' within Uber's analysis of its legal relationships, adding:

"The notion that Uber London is a mosaic of 30,000 small businesses linked by a common 'platform' is to our minds faintly ridiculous."

The choice of terminology, which was referred to as 'twisted', was perceivably included with the assumption that, should Uber be brought to tribunal, the court would examine the documents rather than look at how the relationship panned out in practice. This wasn't the case.

## Contract terms simply didn't align with reality

[Roger Sinclair of contractor legal specialist Egos](#) highlights that the main determinate factor was the court's decision that these terms didn't correspond with the reality of the relationship between Uber and its drivers, adding:

"The contract says one thing but what actually happens in the real world simply doesn't sit with that. On that basis the tribunal felt at liberty to disregard those contract terms.

By disregarding the contract terms, the tribunal was effectively disregarding the model as Uber sought to present it. The essence is the reality undermined the legal model."

## Why you cannot rely on contracts alone to stay outside IR35

For Leighton, this sends a stark warning out to contractors to ensure that their working practices back up what is written on paper, or else they could eventually find themselves receiving punishment at a tax tribunal:

"The average length of a contract for some contractors, particularly in IT and engineering, can last longer than an average employee contract. So the argument that self-employment is all about risk, opportunity and change, and offering your skills to a range of clients isn't always entirely convincing.

"If your contract describes you as being self-employed on a contractor basis, but the client is your only client and you're subject to quite a

lot of control, the warning signs are there.

Simply putting those words on paper won't be sufficient. If the degree of dependency is seen as high, there's a definite risk you'll be challenged by the tax authorities."

Sinclair agrees, adding: "Contractors will often agree contract terms with a client that they want to rely on in order to demonstrate their IR35 position. Obliquely, this case does provide a reminder that, if your terms don't accurately reflect the reality of your relationship there is a very real possibility that they will be disregarded."

## Contracting sector says clearer guidelines required

Whilst contracting bodies were pleased to see the tribunal recompense members of the 'gig economy' workforce, they were also quick to point out that the outcome will not result in a huge influx of self-employed claiming workers' rights.

"While it is right and proper for workers' rights to be protected, it is important that the distinction is made between lower paid and potentially vulnerable workers who need this type of protection and professional contractors and interims who do not need such protection," comments Tania Bowers, General Counsel at the Association of Professional Staffing Companies (APSCO).

According to Recruitment and Employment Confederation (REC) Chief Executive Kevin Green, the outcome places further emphasis on the Government's [employment practices review](#) to help create clearer guidelines surrounding modern self-employment:

"The government should provide greater clarity to employers and individuals about who is legitimately self-employed. We expect the Taylor Review to explore innovative and creative thinking aimed at solving some of the challenges created by new ways of working and 'gig economy' business models."

## Worried about IR35 status?

If you are concerned about whether your contract could impact negatively on your IR35 status, or if you are unsure about how demonstrate you are genuinely in business on your own account, [use our IR35 guides](#). Our [online interactive calculators](#) will show how much you could lose if you don't take action now.

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