

IR35 Forum Minutes

Conference Call

21 May 2020

<u>Attendees</u>	
Declan Greaney	Chair, HMRC
Samantha Hurley	Association of Professional Staffing Companies (APSCO)
Lesley Fidler	Chartered institute of Taxation (CIOT)
Lewina Farrell	Recruitment and Employment Confederation (REC)
Frederich During	Association of Chartered Certified Accountants (ACCA)
Justine Riccomini	Institute of Chartered Accountants of Scotland (ICAS)
Samantha Mann	Chartered Institute of Payroll Professionals (CIPP)
Andy Chamberlain	The Association of Independent Professionals and the Self-Employed (IPSE)
Chris James	The Freelancer and Contractor Services Association (FCSA)
Sheldon Brown	Confederation of British Industry (CBI)
David Kirk	Institute of Chartered Accountants in England & Wales (ICAEW)
Christopher Simons	HMRC
Benjamin Jones	HMRC
Mark Frampton	HMRC
Alan Reay	HMRC
Stuart Cook	HMRC
Oscar Plummer	HMRC
Megan Blade	HM Treasury
Owen Williams	HMRC (Secretariat)
<u>Apologies</u>	
Jason Piper	Association of Chartered Certified Accountants (ACCA)
Phil McNeill	Institute of Chartered Accountants of Scotland (ICAS)
Paula Jarnecki	HMRC

Welcome & Introductions

Declan welcomed Forum members.

Review of Action Points

Minutes from the previous IR35 Forum meeting in January were distributed to members by email for comments. Members have submitted requested amendments which will be reviewed before the minutes are published.

The chair reviewed the open action points and agreed their status:

<u>AP Number</u>	<u>Meeting</u>	<u>AP Owner</u>	<u>Action Point</u>	<u>Status</u>
1	Nov 18	HMRC	To research the position on provisional claims and backdating of offsets to be used in calculations and respond	HMRC to review and clarify AP meaning.
2	Aug 19	HMRC	To expand the published note to clarify its position on MoO	Keep open: HMRC to update on plans for expanding notes.
3	Aug 19	HMRC	To respond to the correspondence on MoO from members	Review: HMRC to check all correspondence responded to.
4	Jan 20	HMRC	To look into providing a consolidated version of the Employment Status Manual	Keep Open (Updates to HMRC guidance are ongoing)
5	Jan 20	All Members	To provide HMRC with examples of messaging they think would be effective in deterring the use of loan schemes	Keep Open

Vision of Forum and Plans for future

- HMRC provided an update on the structure of teams within the Off-payroll Working Programme and explained that the delay to the off-payroll working reform gives an opportunity for more customer insight. HMRC are working on how they can assess how ready contractors and organisations are for the April 2021 reform and what steps HMRC can take to help with implementation.
- HMRC explained that the IR35 Forum is relatively unique and that there are few policy areas that have a dedicated group of stakeholders that meet regularly. HMRC highlighted that discussion in the forum is likely to evolve naturally once the Finance Bill process concludes. HMRC therefore wanted to set its aspiration for the year ahead: to work collaboratively with forum members, sharing HMRC plans and work and taking greater input using members expertise and insights. HMRC

highlighted that this might mean needing to ask for confidentiality on some items discussed, in line with the terms of reference for the forum.

- HMRC invited comments on this overall approach. Members welcomed the proposal. With respect to confidential items specifically, members raised the point that there are some things that could amount to a potential conflict of interest and asked that these items be flagged in advance so members can recuse themselves if necessary. A member also expressed the view that confidentiality should not be over-used: whilst there are occasions where this will be necessary, Forum discussions should in principle be a matter of public record.

Update: Finance Bill

- HMT explained that due to the current Covid-19 pandemic the normal timeframe for the passage of the Finance Bill has been disrupted. The resolution was moved on Tuesday 19 May 2020 and was reintroduced to amend for the delay in the reform. It was voted through the House of Commons and now progresses with the next stages of the Bill. The next stage is line by line scrutiny by the Public Bill committee.
- Members asked about a proposed amendment to delay the reform until 2023/4. HMT explained that the amendment was not selected for debate but it may be discussed at a future stage. They reiterated the Government's intention for the reform to come into effect in April 2021.
- Members stated that they had not seen the full text of the amended final legislation and asked if HMRC could provide a link to the legislation along with a summary of the amendments.

HMRC to send Members a link to the text of the legislation and a summary of amendments. (AP6)

- Members stated that for the Public Sector reform in 2017 they only received the final legislation 10 working days before the reform was implemented and said they hoped that wouldn't be the case this time. HMT explained that the next stages of the bill are not yet timetabled and that the risk of the text changing depends on if/what amendments are selected. HMRC expects the Finance Bill to gain Royal Assent in summer 2020 but highlighted that regardless of any delay, Royal Assent is expected well in time for the April 21 reform.
- Members queried reports that there would be a further review of the Public Sector reform. HMT explained that there was a commitment to conduct further external research. Members were critical of previous external research and its conclusions. They stated that they would expect future research to have broader scope. HMRC explained that research was conducted genuinely independently, which should provide confidence in the conclusions. HMRC confirmed that the scope for the future research is not yet defined, but offered to explore whether it is possible to share the scope with members for discussion.

HMRC to explore the feasibility of sharing the scope of research for the Forum for early discussion, given governance constraints. (AP7)

Update: Litigation

- HMRC shared an update on the recent Upper Tribunal decision on PGMOL. HMRC explained that they didn't agree with the decision and were seeking leave to appeal to the Court of Appeal.
- HMRC explained that MoO is an area where there has been a divergence of opinions across the tax and employment rights tribunals. It is hoped the Court of Appeal will take on the case and provide a ruling to provide clarity to the area.
- Members expressed a view that it could be 18 months before any ruling from the Court of Appeal would be handed down and that during that time they would need to consider the Upper Tribunal ruling as settled law, which would be at odds with HMRC's approach. HMRC highlighted that there were also other recent judgments aligned with HMRC's view, supporting HMRC's view that a Court of Appeal decision would provide clarity. HMRC considered that we should get the Court of Appeal's decision on whether to hear the case in the coming months.
- Members asked if HMRC could share a link to their press release relating to the Upper Tribunals decision along with a link to the Tribunal decision. (Note: it has since transpired that there was no press release.)

HMRC to share link to Tribunal Decision and Press Release. (AP8)

Update and discussion: HMRC 2021 Compliance approach

- HMRC set out two elements of their compliance approach they have been keen to explain publicly and for customers to understand.
- The first is that the compliance work planned for after the reform takes effect is forward looking. HMRC has publicly committed and included in its guidance that it will not use information gained from the reform to open historical enquiries into PSCs, unless there is reason to suspect fraud or criminal behaviour. HMRC explained that publicising this commitment required Commissioners' agreement to exercise their discretion.
- The second is set out in HMRC's compliance statement for 20-21, published in February alongside the review. This sets out our intention to use a supportive and educational, rather than enquiry-based approach in the first year, supported by commitment not to charge penalties, unless there is reason to suspect fraud or criminal behaviour.
- HMRC explained that from its perspective these two elements represent a substantial commitment that should provide reassurance to customers. HMRC felt that customer perception did not match the strength of the commitments and that

the position may not be understood or trusted. HMRC asked members how best to communicate these commitments to provide reassurance to customers.

- Members explained that part of the problem arises from a general perception of HMRC rather than the off-payroll policy in particular. They raised previous instances where HMRC were perceived to not follow their own guidance or provide unclear interpretation of its guidance in Tribunal cases.
- Members stated it may be helpful if there was more understanding around how cases were selected for enquiries, and explained that the section relating to that in guidance was hidden under the FOIA.
- Members were encouraged that the approach had been confirmed by Commissioners, but noted that this may not mean much to the contractor population. Members felt that the Commissioners' decision should be shared more widely with rep bodies who would appreciate the commitment it represents.
- Members stated that recruitment businesses were more inclined to trust HMRC and more broadly that clear, tailored comms products delivered in partnership with representative bodies would be more productive. In addition, they shared feedback that events where HMRC were able to get in front of organisations and answer questions were always well received but understood that this wasn't always possible due to time constraints.

HMRC to consider providing a background briefing on its compliance commitment for forum members and other rep bodies. (AP9)

Update and discussion: CEST

- HMRC provided some of the latest CEST client usage stats and asked for input on future developments. Members asked if contractor usage insight could also be shared, and noted that they had seen evidence of contractors using CEST to challenge determinations.

HMRC to share contractor usage details. (AP10)

- A member stated that the question on whether a client would accept substitution appeared to be determinative for both inside and outside determinations. HMRC clarified that that other aspects such as financial risk were also taken into account and that CEST relies on inputs to a number of questions rather than one key question. HMRC noted that the code underlying CEST and decision process is publicly available, and offered to share the flowchart of responses with members.

HMRC to share CEST flowchart with Forum members. (AP11)

Education and Support Programme update

- HMRC explained that the delay to the off-payroll working reform provided an opportunity to readdress some areas of concern. HMRC outlined their plans to

engage with sectoral bodies in the lead up to April 2021 and asked members for input and engagement in identifying which sectors were less prepared.

- Members explained that due to the current impact of Covid-19 organisations were not currently focussed on the off-payroll reform, and that this is something that may cause issues going forward. They agreed that large organisations were more prepared for the reform and that medium-sized businesses should be targeted. Members said they will help to facilitate talks with medium-sized businesses to aid them in preparing for the reform.
- Members emphasised the need for clear and transparent messaging with process mapping and routes to success. Members raised the point that there were still those who believed the reform would not go ahead and that there needs to be a reassurance from HMRC that sets out what is happening, when, and why the reform is being implemented.
- Members stated that, whilst not focussed on it at the moment, the recruitment sector was aware and prepared for the reform and that future education should be aimed at the end clients who need to understand their obligations and requirements. Members also suggested working with agents and tax advisors.
- Members asked if, going forward, it would be possible to update educational materials with the answers to technical questions HMRC had received, as these often represented the questions members are receiving. Members also asked that HMRC provide greater detail when visiting organisations as the majority now understand the basics of the policy.
- Members explained that HMRC's efforts were being hindered by 'unscrupulous schemes', which they also expected to see an increase in. They stated there was a need for more education on how to identify non-compliant schemes and that this needs to be communicated to contractors. They also stated that HMRC should better publicise schemes that had been closed down. HMRC explained that they were limited by taxpayer confidentiality, especially where enquiries take a long time to complete, such as those that result in criminal prosecution.
- Members asked if HMRC could liaise with BEIS and provide an update on non-compliant umbrella schemes.

HMRC to look into providing an update on Umbrella companies. (AP12)

AOB and close

A Member offered to draft a paper on Offsets for potential discussion at a future forum meeting.

David Kirk (ICAEW) to share paper on Offsets with forum members. (AP13)

- Members also asked if it would be possible to hold future meetings as video rather than conference calls. HMRC said they would look at potential options for the next call.

Continued Action Points:

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New Action Points:

<u>AP Number</u>	<u>Meeting</u>	<u>AP Owner</u>	<u>Action Point</u>
6	May 20	HMRC	To send members a link to the text of legislation and a summary of amendments
7	May 20	HMRC	To share scope of external public sector research once defined
8	May 20	HMRC	To share link to press release and PGMOL Tribunal decision
9	May 20	HMRC	To consider providing a background briefing on the compliance commitment to forum members and rep bodies
10	May 20	HMRC	To share CEST contractor usage stats
11	May 20	HMRC	To share a flowchart of CEST questions with Forum members
12	May 20	HMRC	To look into providing an update on Umbrella companies

13	May 20	David Kirk (ICAEW)	To share paper on Offsets with forum members prior to next meeting
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The next meeting is scheduled for the 21 August 2020 2pm – 4pm