

PCG: supporting and protecting freelancers, contractors and consultants

Summary

PCG's key policy demand is clarity in the law covering employment status:

- confusion that has recently arisen in case law should be removed, ideally by legislation enacting and clarifying the current position established in the common law
- difficulties in employment law should be addressed with employment legislation and not tax legislation
- as recommended by the International Labour Organisation in 2006, employment law should not interfere with commercial contracts;
- PCG believes that such clarity can and should be achieved without impinging on protections rightly extended to vulnerable workers.

Introduction

PCG believes that all workers should have the right to be self-employed and to work on a freelance basis, if they wish to, and when it is commercially appropriate. A combination of factors including confused common law and bad practice by some companies means that this right is not always or available or straightforward.

Employment and tax status should ideally be indivisible: where work should be done by an employee, the worker should be engaged as an employee and given the appropriate rights; where work can be carried out on a commercial basis, the enterprise should be taxed as such, and neither expect employment rights and protections nor have them foisted upon it.

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Case law developments

A trend has recently developed in case law towards granting employment rights to workers who have not traditionally been thought to have any. The courts' logic is readily apparent: where an engagement is not commercial in nature but instead essentially an employment relationship, they pin employment obligations on the end-client. Unfortunately, while the logic is discernible, the law itself is not clear: it is impossible to say exactly what makes an engagement genuinely commercial and when employment rights are in fact owed.

ILO

In 2006 the International Labour Organisation recommended that employment law should not interfere with commercial arrangements. This offers a useful way of pinning down some of the distinctions between different types of working relationships. Freelancers work on a commercial basis:

- they make contracts to provide services, but not to enter into the personal service of another person or organisation
- they are not under the direction and control of their end client, whereas an employee is
- there is no mutual obligation on either party to provide or perform work such as exists in an employment relationship.

These three tests represent the key indicators of employment status in the United Kingdom, as currently set out in the common law.

Disguised employment and IR35

When announcing the intermediaries legislation, or "IR35", in 1999 the Treasury stated that its aim

was to put an end to disguised employment. This rested on the critique that disguised employment is primarily tax-motivated and undertaken by individuals wishing to avoid tax. Unfortunately this critique was mistaken: IR35 has failed to stop disguised employment, which remains a problem in the UK.

IR35 is tax legislation aimed at solving a problem relating to employment status. It is PCG's position that employment status issues in general, and disguised employment in particular, should be addressed by employment legislation and not tax legislation.

Possible solutions and reforms

Although options do exist other than legislation, as outlined below, PCG believes that the only way to achieve proper clear and non-exploitative working relationships in the UK is via legislative reform. This would involve establishing and clarifying the current position in statute.

An alternative to legislative reform would be to encourage clients to adopt best practice when hiring freelancers. It is therefore vitally important that efforts be made to educate end-users to this effect.

PCG offers template contracts which ensure freelancers are hired on proper business-to-business terms. All agency contracts and notes are freely available to download from PCG's website and their use is not restricted to PCG members. PCG also offers accreditation to agencies via its Approved Contract Scheme. Contracts which display the Approved Contract Scheme logo have been vetted by PCG's legal experts and are passed for use.