

Select Committee on Economic Affairs

Finance Bill Sub-Committee

Draft Finance Bill 2019-20: off-payroll working rules

Monday 10 February 2020

3.25 pm

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Members present: Lord Forsyth of Drumlean (The Chair); Lord Bridges of Headley; Lord Desai; Baroness Kramer; Lord Monks; Lord Rowe-Beddoe; Lord Tyrie.

Evidence Session No. 1

Heard in Public

Questions 1 - 12

Witnesses

I: Anita Monteith, Tax technical lead and Senior Policy Adviser, Institute of Chartered Accountants in England and Wales (ICAEW); Justine Riccomini, Head of Taxation (Scottish Taxes, Employment & ICAS Tax Community), Institute of Chartered Accountants of Scotland (ICAS); Jason Piper, Head of Tax and Business Law, Professional Insights, Association of Chartered Certified Accountants (ACCA).

II: Colin Ben-Nathan, Chair, Employment Taxes Committee, Chartered Institute of Taxation (CIOT); Meredith McCammond, Technical Officer for LITRG and Chartered Tax Adviser, Low Incomes Tax Reform Group (LITRG).

Examination of witnesses

Anita Monteith, Justine Riccomini and Jason Piper.

Q1 Lord Bridges of Headley: Good afternoon. Thank you very much for coming. Lord Forsyth, our Chair, apologises for not being here at the start. He is battling to get in but, thanks to the transport situation today, he is somewhat late. He may well emerge as our proceedings continue. I remind you that this meeting is in public and is being webcast, and a transcript will be sent to you for correction as necessary.

Would you like to introduce yourselves? Once you have done that, if any of you wish to give an opening statement, we can hear that. If not, we will just plough straight on.

Anita Monteith: Thank you for inviting me today. I am the senior tax policy adviser with the Institute of Chartered Accountants in England and Wales. I have worked in this area for a long time, and I should mention that a few years ago I was a special adviser to the House of Lords Committee on Personal Service Companies.

Justine Riccomini: I am from ICAS, the Institute of Chartered Accountants of Scotland. I am the head of taxation for employment taxation, Scottish taxes and the ICAS digital community.

Jason Piper: Thank you for the invitation to come here today. I am the head of tax and business law at ACCA, the Association of Chartered Certified Accountants, which is a global body for professional accountants.

Lord Bridges of Headley: Excellent. Thank you very much. Do any of you wish to give an opening statement, or shall we plough straight on? Let us dive straight in.

Q2 **Lord Desai:** You come from the business side. Do you think that businesses are ready for the changes that will come in on 6 April? Do you think they will need more time or more help? Mind you, businesses always ask for a delay. That has long been my experience. They ask for tax cuts and delays, so you have to be wary of that. From your perspective, as you know businesses, how ready are they for the changes?

Anita Monteith: It varies. To be ready, you have to have certainty about the rules, and for that you need to have had long enough to consult on the detail of the rules. ICAEW would say that we do not have the necessary certainty at the moment. Also, everyone in the supply chain needs to be aware of the rules and to be ready. The very largest businesses will have an HR department and a contracting department. Both those departments will have a different take on the rules and what they need to do, and they need to work closely together. If it is an international business as well, that brings an extra problem.

Right down at the other end of the supply chain is the person doing the work. The people working within personal service companies also need to be ready, and not just the ones working for the largest entities. Everybody needs an awareness of the rules so that they know whether they might be affected.

Justine Riccomini: I agree. Larger employers might be in a better state of readiness than small ones due to the fact that they might have in-house tax departments and a large HR department, as well as possibly a procurement department. However, I would not say that anyone is completely ready, because the legislation is not yet ready. Thus, people have been able to prepare only as far as they can, given the information currently available to them.

In the small and medium-sized sector, there is less readiness and more uncertainty. As you can imagine, there are many unrepresented

businesses and taxpayers. They are not knowledgeable about taxes generally, let alone about something as complicated as this has now become.

Jason Piper: We would echo the same concerns about the legislation not having been finalised. Even though we have had draft clauses and some draft guidance that businesses have been able to look at, the implementation of the rules was being set out by HMRC as recently as Friday of last week. Only at that point was it confirmed that the rules apply only to services provided after 6 April. Until then, nobody knew whether they might apply to any services paid for after 6 April, even if already being performed now.

To still be finessing the rules and making those changes this close to implementation has to be a concern for business. The largest ones now often ask for 12 or even 24 months' notice to change their systems and processes. Yes, they know the general shape of what the regulations will do and of what they have to deal with, but the fine detail is not yet certain.

Baroness Kramer: Do you have a remedy in mind that would deal with this set of problems?

Anita Monteith: Lord Desai has already alluded to everybody asking for an extra year. I guess we always have a tendency to ask for extra time. To be fair in this particular case, the start date was put back by a year but then time was wasted, and we did not get any detail about what the rules would look like until relatively recently.

Given that it is unlikely that implementation will be put back again—I am being realistic rather than saying what I would want to happen—we need real assurance from HMRC that the enforcement, when it comes in, will be proportionate. We do not want to see any draconian measures being taken by individual officers.

Justine Riccomini: We too have concerns about the rollout of the education programme for businesses and individuals. It was unfortunate that the election process also played a part in stopping that. Nevertheless, there has been a significant delay in the rollout of communications to the people who will become deemed employers in the future so that they can take part in the education process and become knowledgeable about the issues that they will have to deal with.

Anita Monteith: We still have sitting with HMRC around 100 questions that we have asked on specific individual, technical matters. We have been told that we are not going to get answers to those specific questions. Instead, the answers will become apparent from the guidance.

Baroness Kramer: Even if HMRC provides what it believes to be clarity, am I right in understanding that very often in cases related to IR35, which sits at the bottom of all this, where HMRC makes a ruling and it is appealed to the tribunal, the level of overturn of HMRC decisions is very

high? Is it possible to achieve a level of clarity, or will that be impossible until there is much greater certainty even beyond the questions that you are asking?

Anita Monteith: It comes back to the point I made at the beginning: why does it matter if someone is on or off payroll? It matters because of the cost. I was told a long time ago that there are two things that businesses worry about: one is cost and the other is risk. If it were possible to have certainty about how people should be classified for work purposes—you as the worker and the person engaging you—this would not matter. The rules are too complicated.

Lord Desai: Is it not normal in these things that nothing gets bedded down until a while after something has been introduced? Once people understand the rules, they will find ways of circumventing them, so would it not always be the case, as it has been in the past, that things have to be bedded down, and after three or four months everybody understands what they are doing? It is nothing new.

Justine Riccomini: There is a bedding-down period with every change. One thing we have a bit of an issue with is that we are still seeing a bedding-down period from the public sector regime that was introduced in 2017. It seems as though this change to the private sector, which is an entirely different animal altogether, is being railroaded in when we do not really know what the outcomes from the public sector are; we can see some things that have happened, but we do not have a lot of definitive information about it.

A suggestion from me about delays and so on might be to recognise that, until we are completely sure of our footing in the public sector regime, a delay for the private sector regime is not a completely ridiculous request.

Q3 **Lord Tyrie:** First, good afternoon and welcome, Ms Monteith. You have worked in various capacities for the Treasury Select Committee, so we know each other reasonably well, and thank you for that work. Is the CEST tool fit for purpose?

Anita Monteith: The Check Employment Status for Tax tool is a blunt instrument. If it were easy to have a set of tests that could accurately determine someone's employment status, that would have been done. We have worked with HMRC in this area for many years, and various attempts have been made, but we have never really had something that works. The CEST tool is necessary in order to guide people towards what might be the right answer. There are still quite a lot of cases where it is unable to determine someone's status. In particular, we have something called mutuality of obligation, which still cannot be or is not dealt with by CEST.

Lord Tyrie: On the first point, HMRC says that the CEST tool will deal with 85% of cases. In absolute terms, how many does that leave, even if that figure is correct? What number of people does 15% suggest?

Anita Monteith: I do not know how many people use CEST.

Jason Piper: The contractors being affected by this have been saying that the number is 230,000, and 15% of that is 40,000-odd people.

Lord Tyrie: May I move quickly to Ms Riccomini? The evidence from ICAS, which I will paraphrase slightly, states that the obligation being placed on employers here is to acquire a comprehensive understanding of a complicated legal and tax concept or set of concepts. Is it realistic to expect this minority of cases that we have just talked about, which even the Revenue accepts cannot cope with using CEST, ever to learn those concepts?

Justine Riccomini: I do not think it will be possible for people to become employment status experts, especially in such a short period of time. It is an extremely complicated issue.

Lord Tyrie: I am trying to address the time point. Is it realistic to expect a significant proportion of the people being affected by this ever to arrive at the point of proficiency required to implement it at a level that could be described as adequate?

Justine Riccomini: I do not think so.

Lord Tyrie: Okay. Does anybody on the panel disagree with that view?

Anita Monteith: We are told that if you get to the end of the CEST tool and you get “undetermined”, you are told to call HMRC in Newcastle. I am not sure how satisfactory that is as a way of resolving your particular status.

Lord Tyrie: Perhaps I may put the second point that I want to raise, which is that this will place a burden on the Revenue. It will need to staff for that and heaps of calls will be made to it, so it must have some idea about the compliance burden. No doubt that is a question that it might be worth this Committee asking HMRC when its representatives come to see us. They will be listening to this session and they can prepare an appropriate answer. Have any of you or those in your organisations made an estimate of the compliance burden on employers and costed it out?

Justine Riccomini: It is extremely difficult to put an actual cost on it. There is a difference in opinion between HMRC’s idea of what the cost burden may be and what businesses’ opinion is. They are completely different. I think HMRC has a simplistic view of what the cost burden may be.

Lord Tyrie: You represent three independent bodies. It would be very helpful to the Committee to be told your best estimate of that compliance burden. Of course, all the questions worth asking about public policy are difficult to answer, and some become impossible to answer, but if it turned out to be relatively straightforward over the long run, we would have a different attitude to it than if it generated a large compliance burden, possibly with the need for advice.

Lord Bridges of Headley: I want to pick up on the points you have

made about the preparedness of HMRC. These points must be made to HMRC. As of now, what have you been told about its preparedness for this?

Anita Monteith: HMRC will always tell you that it is ready. Perhaps I may add that the other number that has been endlessly discussed is the extent of the tax gap. I am not volunteering to suddenly come up with a magic number now, but it is part of the equation that needs to be factored in.

Jason Piper: Going into the complexity of this, one of the other statistics that often gets thrown around is HMRC saying that 90% of contractors get it wrong, which tends to suggest that they are either unwilling or unable to engage with the system. That might lead us to consider whether we should look at the system and change it if the rate of errors being made is that high.

I do not think we have allowed for a split between which contractors are incompetent, which are ignorant and which are actively trying to avoid. However, if the error rate is that high, we will need to look again at the system and the underlying problem, because this is a very complex area.

One other issue with the CEST tool is that it seeks to set out the relationship prospectively based purely on the terms. However, as has already been alluded to by Baroness Kramer, when these cases are brought before a tribunal, it will often come to a different conclusion from that of HMRC. One thing a tribunal relies on is what has actually happened in practice. There have been cases where the nature of the agreement changed during the engagement and an individual is held to have been outside the IR35 rules for the first few years, and on the same contractual terms on paper ended up inside IR35 by the end of their time with that particular end user.

Lord Tyrie: Do any of you have any confidence in the proposals for dispute resolution?

Anita Monteith: I think it is inadequate. We need a much better system for doing that. We wanted an independent dispute resolution process, but what we actually have is client-led one. At the moment, there is an open-ended amount of time for the worker to start the process. The only time limit is for the client company to get back to the worker, having been challenged on it—where there is a 45-day time limit.

First, we need a time limit for starting the thing. Secondly, we need a better process, so that if the client says, "No, I stand by my original determination", the worker needs a better way to challenge that again properly and independently. At the moment, it would appear that we have to use the self-assessment system, which is very contrived and cumbersome and can take a long time to resolve an individual's dispute status. It is very inadequate, and my view of why that is is that the cost of this system depends on the number of statutory obligations. That is how the admin burden is added up. Having more obligations might be

seen to add to the cost of implementing it, but actually it would help people to arrive at certainty more quickly.

Lord Tyrie: Do the three of you have, broadly speaking, an agreed approach to dispute resolution which you think could substitute for what is being proposed?

Anita Monteith: It should be an independent.

Jason Piper: Yes.

Justine Riccomini: Yes, it should be an independent.

Lord Tyrie: It might be helpful if you put on paper—individually if you cannot agree, or collectively—what you think such a system might look like.

Justine Riccomini: We would be happy to do that.

Q4 **Lord Monks:** Returning to the public sector—you have already touched on the experience in the public sector and how it is very different from what we face in the private sector—what lessons have we managed to learn from the experiences there so far, and have they had any appreciable effects on the rules for the private sector?

Anita Monteith: We got an appeals process. We used not to have one at all, so at least now you can appeal to the client.

The other thing is the cut-off rules for bringing in the new system. We never had proper cut-off rules when it was brought into the public sector, and the announcement last week nods us closer to a decent cut-off between old and new rules, even though it is still not 100% crystal.

Lord Monks: Are there any further changes that you would like to see, coming from the public sector experience, which might be relevant to making this go better in the private sector?

Jason Piper: We are still waiting to properly evaluate the impact of the changes in the public sector. It is really too early to have a proper grasp of the impact certainly in relation to appeals, or of the long-term impact on the contracting community and on structuring how the public sector services its own needs.

On the question of specific learning points that we can take away, Anita mentioned a couple that we have managed to implement. The read-across may be quite limited because of the very different populations. We think that the way the public sector engages and uses its contracting community is quite distinct from the way the private sector engages and uses contractors.

The legislation was originally written with a focus on one very particular concern, the use of personal service companies, which have already been inquired into at least once. This legislation was deliberately written to be very, very broad, and could affect a far wider range of arrangements,

contracting services and different bodies. That was less of a concern in the public sector. We think that in the private sector there will be a much wider variety of different engagement terms and processes, which makes it harder to work out what we should be trying to finesse in the system to make it work better.

Lord Monks: Have you seen in the public sector a tendency for the engagers to make a blanket determination rather than go through all the hassle of individual assessments, and so on?

Anita Monteith: Yes.

Jason Piper: Yes.

Justine Riccomini: Yes.

Lord Monks: They minimise their risk by simply saying, "This is how it's going to be".

Justine Riccomini: There has been a tendency to make blanket decisions. I am not sure that that will change in the private sector either, because if you have a lot of contractors working with your business and a lot decisions to make, and it takes 30 to 90 minutes to conduct a status determination statement piece per person, you can imagine that if you have a couple of hundred of those people working for you, you could be there till kingdom come trying to prepare those statements. So it is inevitable that there will be some sort of blanket decision-making.

Adding to what has already been said, we know that lots and lots of contractors left the public sector to work elsewhere, and certain parts of the public sector have had terrible problems with resourcing and recruitment and have suffered terribly.

Lord Bridges of Headley: Which parts are you thinking of particularly?

Justine Riccomini: The NHS has had a lot of problems. That is one big example.

Jason Piper: There are specific reported examples of particular contracts. At the Ministry of Defence, for example, 31 out of 32 contractors walked off a particular job.

Justine Riccomini: Construction.

Jason Piper: Yes. We could provide a list of those, as reported in the press.

You talk of blanket decisions. There is one place where we may have seen a link across from public sector to private sector. It has already been reported that Barclays, Royal Bank of Scotland and GlaxoSmithKline, among others, have taken a blanket decision of a sort: that they will no longer employ any off-payroll workers.

Lord Monks: Hold on, the Royal Bank of Scotland?

Jason Piper: Yes. They are managing the risk that way simply by pulling out of the sector altogether.

Justine Riccomini: Yes.

Q5 **Lord Rowe-Beedoe:** We have been informed that HMRC reckons that the annual cost of business was £14.4 million. Is that realistic?

Anita Monteith: No. I do not know what the actual cost would be, but I cannot imagine how it could possibly be as low as that.

Justine Riccomini: It is extremely low.

Lord Rowe-Beedoe: How can we get a better, more accurate number for what these costs could be?

Anita Monteith: Sadly, I do not think we will know accurately until after the event. History shows that this is what tends to happen. We need to know why these rules are being introduced. I come back to the difference in the cost of being employed or self-employed, and the benefits you get of being employed or self-employed. We just go round and round this.

I have been working in this area probably since 1999, when it all started. We have the same discussions over and over again. It is obviously a very politically sensitive topic, but we have to grapple with it as a nation once and for all. We have seen, in the public sector, mass movement into the private sector. Are we now going to see, in the private sector, people moving to and working for smaller entities only? That is doubtful: I do not think there is enough work in the small sector. Will they go abroad? Quite possibly. Certainly the best ones who do not mind travelling and who want to travel will go abroad. It is about certainty, I think.

Baroness Kramer: I think HMRC has suggested that, for an individual worker who believes that they are being miscategorised through in effect a blanket decision, there will be a challenge process. Is that realistic, or is it so burdensome on any worker that it makes no sense—you either accept what you are offered or you go off and do something different? I am just trying to understand.

Justine Riccomini: There is an imbalance of power, which we are very concerned about. It does not tie in with the Good Work Plan; people are being categorised as quasi-employees without any employment rights; their deemed employer is paying employers' national insurance contributions; and possibly, if they are a big enough business, they will also pay the apprenticeship levy on the payments to that individual. However, the individual has no employment rights to accompany that. It is very one-sided, and I cannot imagine an individual running a small personal service company being able to have that kind of argument and win.

Anita Monteith: Even if you did begin that type of argument, it is not clear what will happen to your pay during the process. These things can take quite a long time to sort out. Our members tell us that contracts are

being renegotiated. Of course, in effect, the cost of the employers' national insurance is being moved down to the worker. The goalposts are changing. If this was straightforward and cheap to operate, we would not be seeing large businesses saying, "We're not going to deal with PSCs any more". But they are.

Justine Riccomini: Sadly, as well, there is a point about the cost. One thing that I wanted to say about that is that the legislation that we are currently looking at looks at the situation through only one lens. It does not take account of the impact on other aspects of doing business, such as mergers and acquisitions. We are seeing the contractual aspects—the tax warranties and the indemnities that need to be taken into account when you prepare a due diligence report—absolutely blowing a hole in mergers and acquisitions deals, because people are having to take out huge tax warranties et cetera to cover potential unknown liabilities.

Accounting principles also need to be taken into account in the transfer of liabilities legislation. It does not take account of things like the insolvency legislation, legal costs or anything to do with the Companies Act, setting up companies and becoming insolvent. It is a very difficult situation.

The Chair: I apologise for not being able to get here for the start of the session, and I am sorry if this has already been covered. Given all these difficulties and problems, and the timescale being proposed, when you talk to HMRC what response do you get in respect of those problems and difficulties?

Anita Monteith: As you get closer to the deadline for implementing things, the consultation process begins to hit the buffers. There are so many unanswered questions. It seems to be going ahead regardless. We had an announcement last week.

We talked a minute ago about the cut-off for old and new contracts, which helps a bit but is really just a nod in that direction. We have some very simple questions—the questions are simple, but the answers less so—about accounting for the changes. We had months of discussion with HMRC after the public sector changes, and I do not think we ever concluded on what the correct accounting treatment should be. I think our financial reporting colleagues eventually sorted it out.

This appears to be driven by the prospect of income for the country. There is a very large number attached to it, and I have no doubt that that income will arrive, whether through people who are truly employees now, or through those who have just been taken on to the payroll en masse. I suspect it will be the latter.

Lord Desai: A very strange business seems to be going on here. A concession was offered to self-employed people, so everybody exploited that and now there is no difference between an employee and a self-employed person, except that you can limit taxation. We have created an elaborate system. Would it not be better to eliminate the self-employed tax concession? Then everybody would be the same and we would all live

happily ever after. We could even offer a tax cut if we did that.

Clearly, tax avoidance has become huge. I have been complaining about this for years, so that is not a problem. It is an anomaly which people have exploited, taking advantage by defining themselves as contractors when they were employees before. We know that it happened at the BBC. Why not just eliminate the root of the anomaly? All problems would be solved. I should say that I am not on the government side, so this is not government policy.

Anita Monteith: It is a very complex jigsaw puzzle. Very often, people talk just about the cost—the taxes and national insurance paid by the employed and the self-employed. But you also need to consider all the benefits, as Matthew Taylor was asked to do. Who gets holiday pay, sick pay or jobseeker's allowance? Are they entitled to universal credit, or whatever, depending on what they have paid? It is very complicated. We know that we enjoy and are lauded for having a very good contract workforce in the UK. It is very flexible. We would not want to throw that away.

When Matthew Taylor was asked to do his future of work piece, he was specifically told not to include tax. I think all of us, and the other professional bodies, went to see him one after another and said, "You have to include tax. If you don't look at the entire piece, you won't get a full answer, and we'll just come around to this again". That is what has happened: we are talking about it again. As far as I know, Matthew Taylor's work is sitting on a shelf somewhere. It is such a waste and so frustrating.

The Chair: Just going back to my previous question, I noticed that the other two witnesses did not want to comment on HMRC's attitude. Without putting words into your mouth, would you characterise HMRC's position as saying, "We just don't want the hassle of determining employment status and arguing about it, so we're going to pass the buck. We want to maximise our revenue, and if that means that some people cease to be able to operate as self-employed or as small agencies, tough"?

Justine Riccomini: I would certainly say that HMRC has been intransigent in its response to our various appeals for sense checks on this along the way. IR35 was conceived 20 years ago. It was a sickly child when it was conceived, and I do not think it has got any better along the way. The measure that is being brought in from April 2020 should be treated as a temporary sticking-plaster arrangement. That would be my recommendation. Treat it as a temporary sticking plaster to harness the revenue that is obviously needed; we have seen a decline in national insurance receipts over the years, and this is designed to remedy that.

I suggest that we convene some kind of working party, which would probably include the Office of Tax Simplification, to tackle the conundrum of employment status as a whole, because this is not working. People will

find ways to avoid it. You only have to go on Google to realise that there are hundreds, if not thousands, of mini umbrella company providers advertising their services. They are telling people, who then go and discuss it down the pub or wherever, that they can take home 90% of their earnings. Nobody can do that, so that is clearly not right, but it is happening.

These things on the internet are not being shut down, so people think there is an alternative way of avoiding this. So my recommendation is to use this procedure as a temporary sticking plaster to get the revenue in, but in the meantime take a long-term view of how to seriously fix this.

Q6 Lord Rowe-Beddoe: I have a small question on the shifting of costs. Have you seen any evidence of the costs being shifted from HMRC to businesses?

Jason Piper: I think we have. This answers the point that I was about to bring up, which is that when this legislation was first introduced, the test fell upon the contractor—the smallest party. In order to tackle the issue of services of labour, with employment flowing in one direction and cash flowing in the other, the latter of which the individual can control, the IR35 test analyses those two things.

The employment test is always difficult to analyse. You need input from both ends. The contractor knows some of the information and the end-user knows some of it. Analysing the flow of the cash is in the hands of the contractor—the individual at the far end. The contractor knows whether they control their company and can take money out as dividends and avoid tax in that way, if that is what they are trying to do, or whether they are a partnership, with the money flowing through exclusively to that partner and therefore falling within the relevant bits of that section. In every case, the information required to answer that question sits with the contractor.

When HMRC was responsible for investigating, it would focus on cases where there was definitely a targeted problem. It would go to someone who had the information and knew that they would have to give it HMRC for their tax return, so that was fine. By handing that test to somebody outside the organisation, we still have the problem of checking the employment status, for which evidence is needed from both sides, but now the contractor potentially has to tell a third party what their payment mechanism is to enable that third party to establish whether it is an intermediary within Sections 51, 52 or 53.

With limited companies, that may be done easily, especially with a company listed on the Stock Exchange, where it is obvious that there is no control over the cash flow. With other entities which HMRC historically might not have investigated so much, such as partnerships providing services, the only way you can tell how the cash moves is to see the partnership's partner share agreement.

The question of how many partnerships will be keen to share that with a third party if they ask for it to establish whether IR35 applies based on the intermediaries legislation is potentially more of an issue, but this is something that every large end user will now theoretically have to think about with every services contract. They will be asking, "If it could look like employment, do we have to consider IR35?" To answer that question, they will need information that flows up and down the chain. There is a get out for what is called "contracted services", which effectively asks the IR35 question again.

Lord Bridges of Headley: If we got clarity on the day after the Budget on a number of the other issues that we have discussed, and just talking about the pure implementation of this policy, would it really be possible to implement this effectively come the new tax year?

Jason Piper: It is unlikely that it would be implemented completely, simply because of the huge breadth of the IR35 legislation. This is anti-avoidance legislation. It is deliberately drafted to catch as many as possible of the ways round that people might have tried. Very early on the test was: does it look like employment, and can you control the cash? Individuals started to claim that they were performing their functions as a director—an officer. An officeholder is by definition not an employee, and therefore IR35 was not in point.

A further clause was then brought in which said, "Okay, if it looks like employment or is categorised as the duties of an office, you are inside IR35". That led to an issue that has been addressed in the public sector rules: although most officers of a company can also be employees—so an employment anti-avoidance rule might be sensible—the statutory auditor of a company is an officer of the company, who by definition can never be an employee. But the way that the legislation was written, IR35 could in theory apply to them.

Clearly, that is not what Parliament had intended or what HMRC was planning to go after, but theoretically the legislation could have caught it, so that has now been expressly written back out. That is just one example of how broad this issue goes. An individual could be an intermediary. As far as I know, what you do if your intermediary is an individual is not dealt with in the CEST tool, but it is in the legislation that that is one of the tests that you have to consider if you are looking at whether IR35 applies to the contract.

Lord Bridges of Headley: That is a lot of food for thought, to put it mildly.

Anita Monteith: The rules for determining whether you are employed or self-employed under a particular contract have not changed. They are exactly the same. If it was easy, if a different person was looking at it through a different end of the telescope, you should get the same answer, but that is not happening. That should tell us that something is wrong.

Lord Bridges of Headley: On that note, thank you very much. I think you have kindly said that you will provide some extra information, which we will come back to you on. Thank you very much for sparing the time to come along today. It has been very useful.

Examination of witnesses

Colin Ben-Nathan and Meredith McCammond.

Q7 **The Chair:** I apologise again to the Committee for not being in my place earlier, and I thank Lord Bridges for stepping into the breach. It sounds as though he has done so rather better than I would have. I will ask the first question, which relates to what we have just been discussing.

The proposed rules will put the responsibility for determining status as employed or self-employed on the end client. Are the proposed rules for determining status as a deemed employee or someone who is self-employed sufficiently clear, and do they adequately reflect how contractors operate? I think we have been given a flavour of the answer to that question, but it would be interesting to learn the views of your own organisations.

Meredith McCammond: When end clients are determining status, they just have to apply the general employment status tests. Sometimes they can be quite complex, because they are often based on subjective criteria and they can be difficult to use and apply. That tends to be where there are hard cases that may be on the borderline. Certainly the people who we represent, who are lower-income workers in limited companies, would not tend to be on the borderline; rather, they will be very clearly employed and to have a form of master/servant relationship with their engagers.

When having to decide the status for those workers, we do not think there will be too much of a problem. From a practical perspective, not that many engagers are going to have to make determinations for lower-paid workers, because my understanding is that from April 2020, lower-paid workers who have been put into limited companies by their agencies will be taken out of those limited companies and put into other arrangements that will help to save their engagers some tax.

Colin Ben-Nathan: From the CIOT perspective, the issues we have heard about relating to the employment and self-employment of individuals have been with us for many years. It is a difficult area, and the marginal cases are very difficult; there is no question about that.

What I think is driving this is, as has been mentioned before, a sense of the leakage of tax and national insurance, which is estimated at around £1.3 billion a year from 2023-24, and the sense that something must be done. The question is: what is it that must be done? We had the public sector rules in April 2017, so the argument is that in order to create a level playing field, given that many who were perhaps in the public sector

have moved over to the private sector, there is a need to do the same, as it were, in the private sector.

But yes, there is no question but that the rules are difficult in marginal cases. I agree that you might take the view that while for many cases the rules are a bit more straightforward, when we talk about the rules we need to be careful because there are no statutory rules; rather, we are talking about case law, which is perhaps something that we can move on to when considering what potentially to do.

Baroness Kramer: I want to jump in on a comment made by Ms McCammond. You said that low-wage workers would not be greatly impacted by this, because the agencies through which they obtain their work will be moving them out of limited companies and into alternative arrangements.

Having been involved with some of the loan charge issues, I am very aware that many low-paid workers were moved into structures that were well beyond the understanding of someone with a PhD, never mind someone who might have left education early. They then found themselves unwittingly bound up in the loan charge. Could you give me a better idea of what you mean by these arrangements? You said that they would be arrangements that would save the end client or employer tax.

Meredith McCammond: Perhaps it would be useful if I explain that in supply chains in which there are low-paid workers, there does not tend to be a lot of spare money floating around, so the margins which intermediaries can make tend to be very low. In order to maximise their profits, they will try to find ways of reducing their employment costs, because those costs come out of their margins. One of the ways in which that has been done until now is by putting workers into limited companies. If you are an agency and you put a worker into a limited company, when you pay that limited company you do not have to operate PAYE and no employers' NIC charge is made.

You are absolutely right to say that one of the things we saw with the public sector changes was the movement of workers out of limited companies and into loan arrangements. We have been given specific examples such as locum nurses. They use loan arrangements, because where an umbrella company pays the worker in the form of a loan, that does not attract an employer NIC charge, so this keeps coming back to the employer NIC point.

Even though the loan charge has now hit, and as you have rightly pointed out it has caught loads of people out, it is important to recognise that loan arrangements are still out there in the marketplace. Indeed, in his recent report on the loan charge, Sir Amyas Morse highlighted the fact that around 8,000 people, 3,000 of whom are new users, are still in loan arrangements despite the loan charge, so alarm bells should be ringing at HMRC.

Not all umbrella companies are going to use loan arrangements, because they tend to be quite vicious. Some umbrella companies are good and take the welfare of their workers very seriously, while some might try to find a halfway house whereby they still find ways to save money but they do not use such vicious things as loans. I will be happy to talk the Committee through some of models I am aware of that are waiting in the wings to mop up workers come April, or I can put that information in written evidence—whatever would suit the Committee.

Baroness Kramer: Written evidence would be helpful to us.

The Chair: Yes, it would be helpful, as would the original report on the loan charge, because it would give us information about which organisations are still doing this.

Meredith McCammond: That is no problem.

Q8 **Lord Bridges of Headley:** Perhaps we could come on to the beloved subject of CEST. My question is straightforward: is CEST fit for purpose?

Colin Ben-Nathan: CIOT commented on CEST before it was updated in December. We said that we felt that improvements were definitely needed because, in our view, at that point it was not fit for purpose.

We now have an updated version of CEST known as CEST version 2. As has been said, it is an instrument that provides a safe harbour for those who use it correctly, but it is a blunt one. We are dealing here with a whole variety of sectors across UK plc and it is very difficult to build a tool that will deal with all those sorts of permutations. Again, as has been said, the tool itself recognises that it will give three answers: yes, no or don't know.

The task for HMRC—I have a lot of sympathy with this—has been to try to bring down the “don't know” percentage from 15% to something lower. Even then, you can debate the output of the tool, but you may not necessarily get the same result. We have seen the cases going through the courts, although we ought to be a little careful here because they are often marginal, while obviously these changes are designed to deal with a whole swathe of people, a number of whom, as was originally described in the 1999 press release, are the people who had been employees on the Friday but came back on the Monday as purportedly self-employed through their personal service companies. This is a difficult problem, because significant revenue is at stake.

Lord Bridges of Headley: Thank you for that answer. How many of the issues that you highlighted in your July 2019 press release—the main ones being the mutuality of obligation, multiple engagements, contractual benefits and whether someone is in a business on their own account—do you think HMRC has now addressed, bearing in mind the points that you have made, to the degree that you feel satisfied?

Colin Ben-Nathan: To be fair, the points that you mention have been addressed in “business on own account”. Mutuality of obligation seems to

be something that HMRC does not describe as such in the current version of the CEST tool. I am sure that when you hear from the Revenue it will say that many of the questions that arise on mutuality of obligation are actually inherent in "business on own account". Our own view is that life would be clearer if there was a section on mutuality of obligation, simply because if you look at the case law, mutuality of obligation is discussed every time.

Lord Bridges of Headley: If, say, 10% to 15% of cases still get the "don't know" answer, how satisfied are you that HMRC has the resources to address that 15%? Please both feel free to come in. Can you give us some indication of the number of cases that that 15% would represent?

Colin Ben-Nathan: I do not have the figures, so I cannot really say more than what was said previously. However, if you are talking about hundreds of thousands of contractors, you can do the maths on the 10% to 15%. It is considerable.

That is the problem that HMRC and the Treasury have been wrestling with. The alternative approach would have been to put more sanctions on the contractor to get it right. If you are not going to look at it from the point of view of deduction at source, which is obviously how we normally apply PAYE for employees, the other approach is to say, "We really need you to get this right". I suspect that the resources question is what is on their minds. How will they deal with those hundreds of thousands of people? Would it not be easier to use the public sector model as a basis, if you like, to look at those who are doing the engaging? That is what they have been struggling with.

Meredith McCammond: I would like to make some comments about the CEST tool from a usability perspective. I wonder if some of the 10% to 15% of cases got up-in-the-air answers because the people operating the tool did not understand the questions. I know that sounds a bit strange, but we tested the tool quite significantly, not from a technical but from a pure usability perspective. We ran it through a reading-age checker, and before the recent tweaks the language came out as reading age 12, which is the same as the *Harvard Law Review*.

We did not think there was any way that workers would be able to understand the questions, which you could extrapolate to some engagers as well. HMRC seems to have worked quite hard on the language and the questions are now much easier to understand. With easier to understand questions, you are more likely to get accurate answers. That may help cut down on that gap of people who do not get good, solid responses.

Colin Ben-Nathan: There is a related point. I agree that the questions are easier to understand at first glance but, in dealing with those who are using the tool, there is now detailed guidance on what the questions actually mean. However, the introduction to the guidance is at the front. There is a small note that says, "You might find it helpful to have a look at the attached guidance", but then you turn the page to deal with the questions and you have moved from page 1. It is a simple thing, but

there is no integrated link at each point. I have had clients come back and say, "We've done the CEST and answered the questions. Do you know, we're outside it?" We think, "Can that be right? Have you looked at the guidance", and they say, "What guidance? Where was that?"

There is an ongoing review on smooth implementation. Some steps could definitely be taken—some are low-hanging fruit—to get this to land a bit more easily if, as seems likely, it is going to proceed.

Lord Desai: I have a suspicious mind. No matter how detailed a test you prepare, there will be incentives for people to invent new categories that will always defeat that effort. Is there any simple way of doing this, perhaps by having some sort of outline or algorithm that could capture all this and make it very simple?

Colin Ben-Nathan: You raise a very good point. CEST is a set of algorithms and there are certain key questions within it. If you answer them in a particular way, you will get a particular answer.

There is also a behavioural reaction to CEST in terms of how people might choose to work going forward. There is the question of whether your work is a supply of labour or services, and you can see finessing. I suppose one comes back to the big target here: how much will we be able to do to improve the compliance record? Then the question is: what is the collateral damage in terms of those who are perhaps not assessed correctly?

The Chair: If I use the CEST tool and it gives me an answer, and then the Revenue comes back and says, "Your status is wrong", am I indemnified because of that? Presumably, getting that answer depends on what you understood the questions to mean. How could you determine that?

Colin Ben-Nathan: That is absolutely right. HMRC has said, "We'll give you a safe harbour, but it's conditional. You need to have answered the question correctly". There lies the debate. Have we answered the questions correctly? Have we read the guidance and understood it? How many years have we been dealing with employment status? It is not straightforward in marginal cases but, to be fair, in cases of someone working 9 to 5 on the premises, reporting into an integrated team, with no substitution, it is relatively straightforward.

Q9 **Baroness Kramer:** If I were to sit here with officials from HMRC present—they have been involved in some of these engagements in various ways—they would be very concerned about umbrella companies becoming the primary mechanism through which people employ folks who are not on the full-time payroll but who provide their services on a contractual and temporary basis. I cannot see how the scheme does not drive people towards umbrella companies.

We obviously have the public sector experience and we see news reports from the private sector but, from the experience you have seen, are companies opting to play safe by going essentially for blanket

categorisation and in effect making it clear that if you want to work for them, you have to become an employee of an umbrella company? If that is true, what are the consequences for the way we police umbrella companies, the services they provide and the amount of money they take? Do we have a full understanding of the consequences?

Colin Ben-Nathan: On whether companies are making blanket assessments, my experience with larger clients that are looking at this is that they are being careful, because they know that if they do not take reasonable care, any PAYE liability that is due and not accounted for somewhere down the chain will fall to them. That is the way the law sits at the moment, so they are being careful.

On the other hand, they are also asking themselves whether they really want to deal with all these personal service companies anyway. Often, they will say that they will review their cost base, because this is an opportunity to do that. They might take people on as part-time or full-time employees directly. They might ask that they work as individuals through agencies, where there are special rules for dealing with agency workers that require PAYE and national insurance to be accounted for by the agency. Or they might look to umbrella companies.

There have been some interesting discussions about umbrella companies, including with HMRC. They come in all shapes and sizes, and obviously there are concerns about those that are not compliant. My sense is that HMRC is looking to the end clients to take control of their supply chain from a governance perspective. Whether they will succeed in that, I do not know.

Baroness Kramer: When you say “end client”, do you mean the worker?

Colin Ben-Nathan: I mean the business that wants to engage contractors. There are a variety of responses. One is to engage through umbrella companies. Why? Because there is also an employment law aspect to this. There is the tax aspect, which we are talking about, but there is also the employment law aspect. If you take someone on as a full-time or part-time employee, that comes with employer responsibilities, as mentioned, in relation to employment rights and so forth. If they are engaged through an umbrella company, the umbrella company is the employer and has those responsibilities. The question is: will it discharge them? WORDS OMITTED

Q10 Lord Bridges of Headley: I know that Lord Monks wants to come in on broader points, but perhaps I could ask a couple of quick questions. In August last year, HMRC published the introductory guidance to the changes coming in in April. On 5 September, you put out a very comprehensive note going into some of the details, including some of the points that the Chair mentioned.

First, what has HMRC’s response to that been, given that you said that technical guidance should really be available at that point? Secondly, what are the gaps? Thirdly, what are the consequence of those gaps?

Colin Ben-Nathan: I would preface that by saying that the public sector introduction of these changes was rushed. There is no question about that. The whole idea was to learn from that and give ourselves time. However, the reality is that over the last year, as we are perhaps all well aware, other matters focused the attention of the previous Government, and then we had an election and so forth. Therefore, we have lost time.

To answer the specific question, the guidance put out last summer was very basic. It was not technical guidance at all. After that, HMRC began to develop more technical guidance, on which it has consulted. In fact, last Friday it released in draft for public consumption where it has got to on that guidance, but time will be needed to digest it.

You might ask: where are we now? It was issued on 7 February, which does not give everybody a huge amount of time, but unfortunately we are where we are. Having said that—again, experience will differ between medium-sized and larger-sized companies—larger companies have been aware of these changes. I am talking about those with hundreds or thousands of contractors, and they have had to work on the basis that these rules will come in, so they have done the best they can to assess their workforce using CEST or other means to be in a position to deal with the status determinations, or they have decided to reduce the number of personal service companies—in a number of cases in the financial sector, quite significantly.

Meredith McCammond: Thinking about the gaps and what might happen after April 2020, we would really like to have some discussions with HMRC to make sure that it has its finger on the pulse of what is going on on the ground with the movement of workers into schemes come April 2020. We know that HMRC has faced some challenges in policing umbrella companies. Often, that comes down to the insolvency regime that underpins umbrella companies. It means that if ever HMRC catches up with them for tax losses, there is always an ultimate backstop—they can just fold and HMRC will be left chasing the tax from no one.

In April 2020, some other rules are coming in that will help HMRC to clamp down on that kind of problem. Those rules say that company directors can be held jointly and severally liable for the debts of limited companies in certain circumstances. If HMRC were able to use those new powers, and able to publicise when it had used them so that it created a deterrent effect, that would help to clamp down on some of the more unscrupulous umbrella company arrangements that we see.

A big worker awareness project is required for people still going into loan arrangements. I know that HMRC is working on some communications to flag to workers that these schemes are still being peddled and what they need to watch out for, but the problem is that so far HMRC has been very passive about communications on the loan arrangements. It tends to just publicise new guidance on GOV.UK, which is put up silently. Unless you are looking for something, you will not find it—you will not trip over it.

What is really required from HMRC is specific outreach work to flag up the issues for workers. That might range from putting up posters in canteens in end-client premises warning workers about loan arrangements all the way through to asking unions and other worker representative bodies to help to cascade messages. It is about being creative with communications. If that were to happen, that would plug some of the gaps that will come up from April 2020 onwards.

Lord Rowe-Beedoe: On what you said a moment ago, I was disturbed to hear you imply that you were having difficulty in having a meeting with HMRC on this subject. Is that correct?

Meredith McCammond: We have had lots of meetings with HMRC on the loan charge.

On umbrella companies, there is a bit of a blind spot within HMRC as to how the temporary labour market works and all the dark arrangements and engagements that can come out of that. We would be very happy to sit down with HMRC and tell it everything that we know about the inner workings of the labour market. We think that that would be really useful for its policymakers to take on board when designing new rules and regulations around this sector.

Lord Rowe-Beedoe: I would have thought that that was pretty obvious, particularly with the rush that there will now be with implementation and introduction in the next couple of months.

The Chair: This all has a rather familiar feel from when we looked at the implementation of the loan charge arrangements. When we did that inquiry, I got a large number of emails from people who were in a very distressed position, but that has now largely been put right. However, with this inquiry we have already had 300 emails all broadly giving the same story, which suggests to me that there is real pain out there. The timescale of this seems disproportionate, or are we just getting a false view of it? I have been very surprised by the extent to which this inquiry has provoked a reaction. That says to me that there is real pain out there.

Meredith McCammond: There is a lot of sensitivity, particularly about the loan charge, and that makes the timing of these new rules very interesting. It would have been really useful to have more time to evaluate the impact on the public sector of engager burdens but also when it comes to workers moving out of public sector limited companies and into other arrangements.

The Chair: From the emails that have come in, I have been quite struck to learn that there is no communication. People are not getting information and, in so far as they get a response, it is "Look on the website" or whatever. There is no proactive effort. Is that fair or unfair?

Colin Ben-Nathan: If this scheme proceeds in April, we would certainly encourage HMRC to ramp up the publicity and communication. That is

very important. Obviously there is also an ongoing review at the moment, which makes things slightly difficult. It is put across as, "These rules are due to come into force in April", because of course nobody wants to prejudge the outcome of the review. However, we are now so close to the implementation date that that message needs to be put across.

The Chair: If you were the Chancellor of the Exchequer, what would you do?

Colin Ben-Nathan: I would need to think very hard. That is a difficult question to answer. I might think of it in two ways. I would say that these are very difficult issues. The public sector went through this in April 2017. There will be difficulties here—there is no question about it—so if there is any question of penalties for mistakes made in all good faith, please take a relatively light touch during the first period. Would I proceed? I would want to see the outcome of the review that is being conducted, but perhaps in principle, not least given that many businesses have taken on board what is due to come in in April, it is a little difficult to put the gears into reverse, and, having put in all the effort, some businesses are keen for it to proceed.

I would also say that over the last few years, and particularly over the last year, we have been very preoccupied with discussions on Brexit and there have been difficulties in government with majorities and so forth. So I would ask whether there will now be an opportunity to step back and look strategically at how we tax labour in this country and whether we can formulate a plan on the employed and the self-employed.

As has been pointed out, the issue that particularly sticks out here is employers' secondary national insurance contributions. As Lord Desai mentioned earlier, that is a key issue and it needs to be addressed for all sorts of reasons. However, would I proceed? It is a personal view, but perhaps, given where we are, I would push for a gentle landing.

Lord Tyrie: You said that you would take a decision as Chancellor on the basis of the outcome of the review. Do you have confidence in it?

Colin Ben-Nathan: I have been involved in some quite detailed discussions with HMRC and the Treasury. It is not an independent review, because as far as I know it is being conducted by HMRC and it is being done very quickly. The question might be asked: do I feel that the CIOT and others are being listened to? I believe that we are being listened to, and I hope that there will be a list of points, one of which was announced on Friday, that represent that listening. A gentle landing in terms of penalties is important, so yes, I do think there is listening, but clearly it is not an independent review.

Lord Tyrie: Ms McCammond, you said earlier that there are dark arrangements developing in the labour market and that the Revenue has a blind spot about them. Given that, do you think that Ministers are taking decisions and designing rules on the basis of advice that is itself being derived from ignorance? I refer to the blind spot.

Meredith McCammond: I would not classify all limited companies, umbrella companies and so on as dark arrangements, but in some circumstances they can be. What underpins them all are the fault lines in the system, which Colin has just mentioned: that is, the fault lines between tax and national insurance, employment and self-employment, tax law and employment law, and temporary workplaces and permanent workplaces. Those fault lines drive distortive behaviour, so all that measures such as IR35 and the off-payroll working rules do is put sticking plasters over them.

A much better way of dealing with all this would be to have a wholesale, comprehensive review of the system that underpins the labour market and see if we can smooth over some of those fault lines. That is because sticking plasters do not work and what is actually required here is a long-term, sustainable solution. That is where protection for the most vulnerable and lowest paid workers lies.

Lord Tyrie: That is the advice you would give if you were an official giving advice to Ministers. I am asking you whether you think the advice that is being given to Ministers at the moment has been derived from ignorance and therefore Ministers should be very wary of it.

Meredith McCammond: I do not know what advice is being given to Ministers, but I would be surprised if HMRC has a full understanding of what is going on out there with regard to the arrangements so that it can advise them properly.

Lord Tyrie: Because you consider that it has a blind spot about these dark arrangements.

Meredith McCammond: That is right.

Colin Ben-Nathan: Perhaps I may add that the issue, when we talk about legislation and rules and procedure, is compliance with the rules. In some of these darker arrangements, what we are actually talking about is evasion, which of course is a different matter and a different approach is required there.

Q11 **Lord Monks:** Following on from the discussion we have just been having, you have talked about changes in the labour market with the rise of self-employment, the so-called gig economy, zero-hour contracts and all the stuff that seems rather novel, even if in some cases they are new names for old practices. You spoke of a comprehensive review. Would that review include aligning employment law with tax, and do you have any views on how that might be done? This is not a new subject, and people have been wrestling with it for many years, so I would be interested to know whether either of you has a view on it.

Colin Ben-Nathan: I do. In fact, Matthew Taylor completed his report and it was published in July 2017. The Government responded to the form of the Good Work Plan in the December. Consultations were issued early in 2018, one of which was on the question of employment status, in particular the alignment for tax and employment law purposes.

However, the thought that has occurred to CIOT is that underlying all that now is indeed perhaps to begin to codify what we mean by employment, certainly for employment law purposes and then for tax, in order to have some solid ground on which to build, rather than the debate we are having on shades of grey and case law. That is increasingly difficult to do, particularly in a gig economy where people are working in all sorts of different ways. So I agree with Lord Monks.

Meredith McCammond: Perhaps I may add to that the simplification perspective. Particularly when thinking about the low paid, it would make sense to copy employment status across from one regime to the other. It does not make sense for someone to be employed for tax purposes and be deemed to be in a master-servant relationship for those, but then be in a self-employed relationship for employment law purposes.

Our view as representatives of the very lowest paid is that if you are in a master-servant relationship for tax purposes, that would indicate that you need some kind of basic suite of protection from employment law. I appreciate that it can get more complicated than that, because questions then arise about what employment rights workers should get. Should they be full employee rights or worker rights?

There are then questions about which entity in the supply chain should be in charge of handing out those rights. Then there are questions about whether that copy-across should apply just to the very lowest paid or to those who are higher paid. They may not need such protections on the basis that they have more power and influence over their engagers. There are lots of interesting questions here, and I am waiting with bated breath, as I think we all are, to see the outcome of the employment status consultation and whether there will be some way forward in that.

Q12 **Baroness Kramer:** My question is very narrow, because Mr Ben-Nathan mentioned almost in passing that essentially a large number of personal service companies have disappeared, or else a large number of businesses have determined that they will not work with them in the future in the same private sector.

Do you have any numbers on that? Do we have any way of getting a grip on the size of this change and potentially what its impact will be? We can all look at a lot of people who would regard themselves as being self-employed, but we would say that they would be much better off if they were employees. But there is also a very significant category of people whose actual role requires that they become an individual specialist who is then used almost on a mercenary basis in project after project by company after company, and they are absolutely critical in the roles that they play. It would be really interesting to try to get a grip on what will happen and what the impact of that will be.

Colin Ben-Nathan: I cannot give exact numbers, but I can certainly give anecdotes from the banking sector in which thousands have been engaged up to this point under personal service company arrangements. The view has often been that it is just too difficult and too much hassle

going forward. Companies are saying, "Let's take on those who we want to take on and, with those we don't, we can trim the cost base".

For subject-matter specialists, there is no blanket response. Obviously, business looks to the flexibility of the workforce and will therefore accommodate those who say, "Actually, I work for a variety of different clients. That is my business. I am a consultant and I do good work for you. This is the basis on which I wish to contract with you, and if you don't want to contract like that, that's it". The bargaining power then goes the other way. In those circumstances, my experience is that the businesses concerned will say, "In your case, we'll make an exception".

Baroness Kramer: I have talked to people in the creative industries, for example, and they often need to be committed to one project for a year or 18 months, so they do not have multiple clients. Again, in something like concept car manufacturing, there are specialist designers who you bring in for those periods. You need to employ them on-site and they are part of teams. If you go through CEST, they almost invariably come up as being employees, but they have no opportunity to use any employment rights that might be offered. They are not relevant, given the pattern of work.

Colin Ben-Nathan: We would highlight a potential imbalance. Under these rules, those concerned would be subject to PAYE and national insurance, but as things stand they have no employment rights as such with their end client. That question was raised in the employment status consultation that was issued a couple of years ago now and we are still looking for a policy decision.

Lord Bridges of Headley: I want to pick up on that precise point and on what Lord Monks said. I do not want to put words into your mouth, but it strikes me that we are not seeing the best of joined-up government here. On the one hand, we have HMRC doing IR35. On the other, we have BEIS, I take it, looking at employment status.

As you so rightly said, come the end of this year, if I am someone affected by IR35, I will be saying, "Hold on, why am I being treated in this way in tax terms and in another way for employment rights?" Am I right in saying that government needs to get a lot better at joining up on these? Is it just a classic case of government trying to catch up with the impact of a very fast-moving employment situation, with the impact of digital et cetera?

Colin Ben-Nathan: I entirely agree. All I would say is that successive goes at this have run into political problems, because there are a variety of views on what the answer should be. Maybe it will be different this time around, I do not know. However, I agree that the joined-up approach is the way to go and there is some work to do.

Lord Desai: If you look at the distribution of self-employment, is it concentrated on the low-paid and high-paid sectors, with nothing in between? Are people using contractors for low-paid work as a way to

make employment status precarious? At the high-income end, is it just tax avoidance? Would that be too drastic a way of looking at this problem?

Meredith McCammond: No, that is quite accurate. We certainly see lots of self-employment at the very low-paid end of the scale and would question whether it is self-employment. That is not just in the context of IR35 but in pure vanilla-type arrangements, where we see lots of what we would call false self-employment. That happens purely so that engagers can try to avoid some of the employer obligations that they have, such as employers' NIC and national minimum wage.

There are also less obvious obligations, such as the need to operate auto-enrolment and grapple with the RTI payroll system, through which employers now have to submit information to HMRC every time they pay someone. There are a lot of driving factors towards self-employment at the lower end, but the factors would not necessarily be the same at the higher end.

The Chair: Thank you both very much. That was very helpful. We will just have a short discussion before completing proceedings.