

Jane Johnson – Written evidence (OPR0002)

Off Payroll Working

- 1. Has the recent extension of the off-payroll working rules to the private sector made it more difficult for engagers to hire people with the right skills and expertise? To what extent has its introduction contributed to job vacancies?**

1.1 The competition for outside IR35 roles has increased, with the affect that rates are impacted, and engagers offering outside IR35 roles are able to reduce the rates on offer, as many contractors would prefer a lower rate over having to take an Inside IR35 role.

1.2 Meanwhile the calibre of candidates who take up roles that are Inside IR35 has dropped, as fewer contractors wish to take these roles, and therefore there is less competition, and less experienced contractors are able to get roles they may not have been able to compete for prior to the off payroll rules being changed.

1.3 There are many more vacancies for outside IR35 roles, and engagers often end up filling those roles with sub optimal contractors, meaning the end client is paying a premium for people who aren't fit to be offering a contract service.

- 2. For those engagers (and their advisers) who use the CEST (Check Employment for Tax Status) tool to assess employment status, how effective do you consider it to be? Do you have confidence in its results? If not, what further improvements need to be made to it?**

2.1 Computerised tests, including CEST are woefully inadequate. The rules around this legislation are so nuanced, that even high court judges struggle to come to the same conclusion when faced with the same sets of facts around these cases. The rules need a complete rewrite - as no 'tool' could ever truly get each determination correct. There is no one-size-fits-all solution. However, some of the premium tools are far better than the one developed by HMRC, eg. IR35 Shield

- 3. What changes have engagers had to make to apply the off-payroll rules to contractors, in terms of systems, personnel and training? By reference to your own experience, to what extent (if any) do you consider that compliance costs have increased because of the changes?**

3.1 I have remained outside IR35 since the recent changes to the off payroll working rules. The additional overhead is that my business now pays for a private IR35 status assessment for each new contract – as the HMRC version is not up to standard.

4. How well has HMRC supported engagers, contractors, and their advisers with the implementation of the new rules and is any further or different type of assistance needed?

4.1 HMRC has not supported me with assistance. The knowledge and communication from organisations like Contractor Calculator and Offpayroll.org have been far superior in helping me to navigate my way through the legislation. I don't have any confidence that HMRC understand their own legislation and the rules are both confusing and open to interpretation.

5 To what extent has the introduction of the new rules generated disputes between engagers and contractors concerning the status of contractors *vis à vis* the rules and how successfully or otherwise have these been resolved?

5.1 I was assessed by Experis Limited as being Inside IR35, whilst working on a project for Capgemini and HMRC Digital. This was the result of a blanket assessment, and at no point did my requests for an individual assessment get granted. Even my dispute was handled with a templated response, and as a result I left the project, along with many other contractors. This resulted in a huge loss of knowledge on projects that were critical to national infrastructure, including Brexit and Covid projects. This refusal to consider each contractor on their own merits as extremely short sighted and opened up opportunities to competitors of Capgemini to bring people into the same project with an Outside IR35 assessment. I feel that this was a misuse of public money, but I also appreciate the fear of Capgemini in acting this way, when one of their primary clients is HMRC.

6 What behavioural effects have resulted from the introduction of the new rules in the private sector in terms of the arrangements adopted in hiring contractors?

6.1 As stated in Q1. More competition for outside IR35 roles means rates through agencies have reduced, putting contractors under financial pressure and increasing the margins that the agencies take. Less demand for inside IR35 roles means the calibre of candidates for those roles has dropped, meaning the overall perception of contractors and their ability to do great work has been impacted. Of great concern would be significant projects like Test & Trace, where there were many better paid inside IR35 roles being filled by less experienced contractors. Many got away with filling those roles for a few weeks before it became obvious they weren't suitable. The high level of churn in roles because of those less experienced contractors willing to take inside roles is a huge concern for professionals like myself.

7 The Government is proposing a new employment body with powers to enforce employment rights, including for those engaged by agencies and umbrella companies. How effective do you think such a body will be in ensuring workers, particularly the lower paid, are treated fairly?

7.1 There needs to be some careful thought put into who will be managing

this new government body. I have seen the power that HMRC can wield against smaller businesses, and there are very few people or organisations who don't fear coming up against HMRC. They have bottomless pockets to afford legal costs and don't even care about hitting other government departments like DWP or the NHS, who can ill afford to spend time fighting another government department.

7.2 This needs to be an independent body who can act with authority and completely autonomously. They need to not only understand the law, but also to have the bandwidth to keep up with the many organisations who now seek to take advantage of workers faced with having to work inside IR35. These private sector companies are very adept at finding legal loopholes to take advantage of workers who need a vehicle to pay themselves from contracted work. I'm sceptical as to how effective any employment body can be given all of the above.

8 How successful will the draft Finance Bill proposals for earlier publication of information about promoters and avoidance schemes be in protecting individuals from being drawn into such schemes?

8.1 It will depend where these are published in relation to making sure it hits the relevant audience, and how frequently updates are made. The information could easily fall behind keeping up to date with new and emerging schemes which appear to be very easy and quick to establish.

31 October 2021