

# Mark Coulson – Written evidence (OPR0007)

Dear Sir or Madam

I hope you find the following information useful. I'm going to highlight and illustrate the two biggest issues I've witnessed with the recent IR35 changes and transfer of responsibility to end Clients since April 2021.

1. Misrepresentation of Pay
2. Forcible use of Umbrellas

I'm a self-employed Contractor of 18 years, I've been close to IR35 on a personal level and have witnessed the changes in both the Public Sector in 2017 and more recently the Private Sector in 2021. I'm conversant with the legislation, I do believe there has been historic abuse and, whilst supportive of new measures, feel strongly the implementation has been mis-managed and taken advantage of by Recruiters & Umbrella companies.

## **1) Role Adverts: Misrepresentation & Inducement**

The single biggest issue I've seen for Contractors is advertisements misrepresenting Contractor roles 'inside IR35' and specifically their take home pay. This issue is not being tackled, it contravenes the ASA CapCode and is causing consistent headaches throughout.

Recruiters are the biggest culprits here. I'm going to use a recent illustration (below), with the personal information removed. In this example, the Contractor is being invited to apply for a role inside IR35 on a day rate of £550. They have every reason to believe that £550 is the rate they are to be paid, subject to full PAYE & NI. This on first examination is fine.

However, £550 is NOT what they are being paid, it's a false inducement. Once they've interviewed and secured the role, it's made clear that the £550 was actually the 'umbrella rate' and is subject to Umbrella Fees and deduction of Employers NI, neither of which they should lawfully be required to pay. Suddenly £550 is more like £450 inside, a rate they would never have applied for if it was clear. Unfortunately by this point they are left with a 'Hobsons choice' situation. This approach is prevalent everywhere that I can see and is easily correctable.

**Solution: Make it lawful that any advertised roles Inside IR35 ONLY show the actual Gross take home day rate, do not allow Agencies to falsely advertise roles at charge rates that are then subject to unlawful deductions. The Key information Document (KID) is not being provided until the point of offer (if at all) and therefore is far too late in the process.**

## **2) Forcible use of Umbrella Companies**

My observations are that most Inside IR35 roles offers are conditional upon use of an Umbrella, often due to lucrative arrangements the Recruiter has with the provider. The Contractor is required to pay the Umbrella fees, which is unlawful

as it amounts to the Contractor 'paying to be payrolled', a contravention of section 44(3) Income Tax (Employment and Pensions) Act 2003.

Umbrellas shouldn't even be necessary. There are many Companies that provide Payrolling Services if the Recruiter isn't able to do so. The Umbrella companies are being used both for lucrative rebates to Recruiters and also a smokescreen to enable Contractors to forcibly fund Employers NI costs, unlawfully.

**Solution:**

**At the very least it should be mandatory that Contractors taking inside IR35 roles should be given the option of either Payroll provider OR Umbrella**

*9 November 2021*