

JHM Assessments Ltd – Written evidence (OPR0010)

I am self-employed and have a limited company (was Blue Bay Support Services Ltd and is now JHM Assessments Ltd) and much of my work since April 2017 had been undertaken via an employment agency for the National Probation Service (NPS), a public body. There are various factors in my work for the NPS that I believed placed me outside of IR35 and therefore I made a claim for the years 2017 to 2019.

The history is that at no point until March 2019 did the NPS make an assessment as to the IR35 status of the work I was undertaking. This should have happened of course from the outset which I requested but it was never actioned. When the NPS eventually made the assessment (March 2019) they deemed the work to be outside of IR35 and this applied going forward and my case that was eventually submitted to HMRC was that the same therefore applied to my work prior to March 2019 as the work was exactly the same. My understanding is that it is the end client who makes this assessment which they did albeit two years down the line.

In order to action this claim prior to the eventual IR35 assessment I contacted my local MP and he contacted Jon Thompson who was the Chief Executive of HMRC at that time. I was also put into contact with Nicola Barclay from the Tier 2 complaints and compliance team. My discussions with them and via a Technical Director (who assessed my case) 18 months later concluded that my income tax and at a later date my National Insurance (both employers and employees) would be repaid to me and the various adjustments would be made to my company accounts to reflect this. The decision that HMRC made, and I assume as a means of covering their backs, was on a 'without prejudice' basis.

As far as I was concerned this claim had been finalised; the end client agreed my work was outside of IR35 as they do now with my current contracts, which is exactly the same type of work. However, more than a year ago I received a letter and email from HMRC stating that they wanted to check 'employers records' and that further information had been received by HMRC which warranted investigation and as a result of this a compliance check had been opened.

This 'compliance check' took 11 months to conclusion. HMRC finally agreed that some of my work (for one of the offices) was outside of IR35 but not for the other office, where I was paid via an Umbrella Company, doing exactly the same type of work, on the same terms.

Despite the NPS assessing my work as being outside of IR35, separately my arguments adding weight to this claim are as follows;

- 1 - There has been a blanket policy applied to all NPS service providers / temporary staff. This does not distinguish between services remunerated on an hourly basis and services provided on a piece work basis. If I were delivering the same services being paid on an hourly rate, there would be a weaker argument about IR35 as there is mutuality of obligation i.e I would still be paid regardless of the specifics of the services I provided. But we are in a very different

scenario. Essentially paying a tax cost for mutuality of obligation (and other employee benefits) when there are none.

2 - I have no entitlement to holiday, sick pay etc and yet Employers National Insurance is deducted at source.

3 - I am a self-managing resource that is compelled to deliver services within National Standards / customer requirements. I am not offered supervision to ensure I do this. There is no quality control of my work.

4 - I do not participate in team meetings which offer the general setting in which related information is disseminated. Rather I am personally charged with ensuring that my work meets all relevant criteria. This distinguishes me from staff employed on an hourly basis who will be paid to attend team meetings / participate in training / supervision. When I have to undertake training I am not paid for this. This proves I am self-managing, self-employed.

5 - I book my own appointments and for example, offering interview appts in Bristol (where much of work was originally taking place) I was able to substitute with a colleague (also a Limited Company), during times of annual leave and sickness.

6 - I pay for and manage my own DBS. This proves I are self-managing, self-employed.

7 - I determined how I delivered a service to Bristol, Thames Valley, Hertfordshire, Kent, Essex and London NPS offices. I book my own appts and there is no guarantee these will be filled, and no guarantee of the minimum quantity of work. This proves I am self-managing, self-employed.

8 - There is no consistency in the work I am offered. I am effectively not even on a zero hours contract as I commit my time with no guarantee that this will be used by the commissioner. I absorb all the risk associated with service delivery.

9 - Each report I take on is a stand-alone contract paid only on successful completion. There is a differential in pricing for a nil report that demonstrates that NPS accepts that it is a contract for a service and not a contract for services. It is an essential acknowledgement of an outcome-based individualised contract for service.

10 - As a company (with a colleague we have a company website; www.bluebaysupportservices.com), we offer services to other organisations other than the National Probation Service (NPS) and have had such contracts. We do not solely work for the NPS, although currently we do.

11 - All the work I undertake currently is deemed to be 'sessional work'. This is the same work I have been doing for years and the various contracts I currently have via an Employment Agency pay me as a Limited Company, thus outside of IR35.

To conclude, I have been told by HMRC that due to some of my work in their view being deemed to be inside IR35 (despite subsequent IR35 assessments

concluding to the contrary) I have been told that my 'claim for income tax and NIC refund is not valid and that I will be contacted to discuss the recovery of this erroneous amount' (HMRC letter dated 15/10/2021). I have been given conflicting messages from HMRC which has had a significant impact on me and my work. I continue to contest any assessment/opinion/suggestion that my work is inside of IR35, for the reasons mentioned in this submission.

10 November 2021