

National Union of Journalists—supplementary written evidence (FOJ0088)

Communications and Digital Select Committee inquiry into the future of journalism

The first movement towards putting journalists on PAYE was in the early 1980s when a new tax office was established, London Provincial 22, to investigate the then Fleet Street practice of paying printers in cash. The Inland Revenue, as they were known then, issued a blanket instruction to all newspapers and magazines that those people – such as sub editors, casuals etc – should be on PAYE. This remains the HMRC position today, with HMRC spending much time ensuring individuals are within the PAYE net and not treated as self-employed.

These individuals therefore are paid via PAYE, taxed at source and paying tax and NICs at an employee rate. This applies to those who work regularly but also those on ad hoc arrangements, short-term or zero hours contracts. Companies/engagers often insist (for a quiet life), that these individuals are taxed at source.

These individuals are regarded for tax purposes as employees. However, in the eyes of the engager/company and for the purposes of employment legislation, they are self-employed or at best, 'workers'. They have no entitlement to rights such as a contract of employment, maternity or parental leave, statutory sick pay, unpaid parental or dependency leave, the right to request flexible working, or protection in business transfers, protection against unfair dismissal or redundancy pay and rights.

Nor are they able to claim business expenses costs such as travel against income in the way that an individual who is considered self-employed by HMRC under self-assessment can.

Companies, newspapers and magazines particularly, use PAYE freelances for their core operations, with many working there week in week out, year in year out – yet those loyal individuals have now been cast adrift. The NUJ has taken up countless cases where companies' initial response was to callously terminate work immediately or with no more than a couple of days' notice and refuse to furlough individuals under the Government's Coronavirus Job Retention Scheme.

Other companies have just wanted individuals to be on hand to be able to do some shifts on an ad hoc basis throughout lockdown even though they are not offering them same level of work and income.

For those not working for a company at the Government's initial cut-off date of 28 February – including for caring responsibilities and at least one newspaper makes PAYE freelances have an enforced break of 4 weeks in order to break continuity of service – these individuals were not eligible to be furloughed or for the Government's Self-Employed Income Support Scheme.

The dehumanising effect of how PAYE freelances have been treated in this crisis cannot be overemphasised and to then find themselves ineligible for Government support under the various COVID-19 related compensation schemes has left them in financial crisis and treated as second-class citizens.

As is the similar situation of those who operate through limited companies.

Companies/engagers also often force individuals to incorporate and supply their services via an intermediary – a Personal Service Company (PSC)/limited liability company/loan out company. The engager then contracts with the PSC to supply that individual's services. Often this is used to enable an organisation/engager to escape their employment responsibilities to individuals and employment rights and tax and NICs.

In April 2017, the relevant tax rules (known as IR35) were changed in the public sector, which included the BBC. The Income Tax (Earnings and Pensions) Act 2003 applied to payments made on or after 6 April 2017 and under the rules it became the responsibility of the engager/hirer to assess whether the PSC is entitled to be taxed "off payroll". The responsibility for the correct payment of tax and NICs shifted to the public sector organisation/engager and away from the individual.

To coincide, in March 2017, HMRC launched its online Employment Status Indicator Tool, the 'Check Employment Status for Tax' service (CEST) which was used by engagers including the BBC, however, critics of CEST have slammed it as inaccurate, with contracting bodies claiming their own tests consistently find it returns flawed assessments.

An individual deemed by the engager to come within IR35 then has to be paid via PAYE as an 'employee', with tax and not only employee NICs, but also employer NICs, deducted at source.

The key problem here is that individuals are left in a "halfway house", with no contract of employment or the rights and protections that come with employment, but being considered employees for tax purposes only. These individuals also now have no entitlement to financial support under the government's Self-Employed Income Support Scheme.

Members have relayed their own situations to us.

"I work for xxxx and about three years ago they said that freelancers could no longer continue freelancing for them but were being 'migrated' to either PAYE via an umbrella company (deducting a huge fee) or to work via limited companies. I felt I had to go down the limited company route because I still needed to work for them and couldn't afford to have my day rate cut because although the company agreed to raise rates by 7.5% the actual cost of the umbrella/PAYE option worked out about 15%. It's been a nightmare in terms of accounting. The manager has now said that I come within IR35 and I'm going to have to be taxed at source. I'll get nothing in return. Managers are being asked to carry out assessments and put these through internal systems. The managers are also worried because they have had little training and are worrying about HMRC and legal liability if the company is sued over this."

"I set up as a limited company a couple of years now because most of the companies that I work for insist on it. For one client, the work is very 'loose' and involves them requesting jobs via email, which I pick up. I have always invoiced them at the end of each month, stating that I am responsible for my own tax and NI affairs. However, now they are saying that I have to go on PAYE for IR35 purposes. I've had acknowledgment that they want to 'keep me on' but I'm also worried about the contract I signed with them as it says that I indemnify them for any resulting costs, charges fines and/or liability to pay any taxes or compensation. Am I going to have to pay all the costs?"

In 2017, the government commissioned the independent Taylor Review which highlighted that the lack of alignment in employment law and in tax law is a source of confusion for individuals, organisations and the wider public.

In December 2018, the government in its Good Work plan accepted the recommendation to align the two systems to ensure the differences were reduced to an absolute minimum, responding that the government would bring forward detailed proposals, yet so far, these proposals have not materialised.

Good work: the Taylor Review of modern employment practices

<https://www.gov.uk/government/publications/good-work-the-taylor-review-of-modern-working-practices>

Good Work Plan

<https://www.gov.uk/government/publications/good-work-plan>

House of Lords Economic Affairs Finance Bill Sub-Committee Report: Off-payroll

Working: Treating people fairly

<https://publications.parliament.uk/pa/ld5801/ldselect/ldeconaf/50/50.pdf>

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