IR35, Consultants and the Self-Employment Risk

A guide for businesses that engage contractors, consultants and personal service companies. What decides status, who carries the risk after the changes of 2025 and 2026, what getting it wrong costs, and how to document an engagement so that the answer can be defended four years later.

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FUSION LAW

FIVE DECISIONS BEFORE YOU ENGAGE A CONTRACTOR

Decision	What turns on it	Where
Whether this person is genuinely in business on their own account	Everything else. Get it wrong and you carry the income tax, both classes of National Insurance, interest and a penalty, plus a separate holiday pay, minimum wage and pension exposure	Sections 1, 2 and 8
Whether your business is small for off-payroll purposes	Whether you decide status and carry the liability, or the contractor's own company does. Tested at group level, with turnover aggregated across connected businesses	Section 4
Whether there is an umbrella company anywhere in the chain	Whether you are jointly and severally liable for somebody else's PAYE. There is no small company exemption from this one	Section 6
How the engagement is contracted, and whether the contract matches what happens	Whether you have evidence or a document that contradicts you. A contract describing a relationship nobody is living is worse than none	Sections 10 and 11
What the record shows, and for how long you keep it	Whether you can defend an assessment that can arrive four years later, six where HMRC alleges carelessness and twenty where it alleges deliberate behaviour. The statutory record-keeping floor is three years	Section 11

INTRODUCTION

Most businesses engage somebody who is not on the payroll. A consultant on a defined project, a specialist through their own company, a former employee brought back for three months, an interim through an agency, a technician supplied through an umbrella. For most of them the arrangement is exactly what it says it is, and nothing in this guide changes that.

The difficulty is that whether an engagement is what it says it is has never been decided by what the contract calls it. It turns on the true terms of the relationship, and what the parties actually do is the best evidence of those, tested against a body of case law that has been developing since 1968 and was restated by the Supreme Court in 2024. One further change landed on 6 April 2026 and has gone largely unnoticed. A second, which came in for financial years beginning on or after 6 April 2025, is widely misunderstood and is being acted on about two years early.

This guide is written for the business doing the engaging rather than for the contractor. It sets out what the tests are, who carries the risk, what the exposure is worth in cash, how to draft and operate an engagement so that the answer holds, and what happens to all of it when the business is sold.

Where the line runs. We draft and negotiate the consultancy and contractor agreements, we review existing ones against what actually happens, we run the status documentation and the record-keeping, we deal with the indemnities and set-off between the parties, we advise on the employment-rights side of status and on TUPE where a contractor base transfers, and we run the status workstream on a sale.

The tax analysis is not ours. The tax treatment, the deemed employment payment, any HMRC enquiry, position or settlement, and any CEST position sit with our tax colleagues. Payroll operation, including the running of PAYE and National Insurance, sits with our accountancy colleagues. Every figure in this guide is set out so that it can be checked with them, and none of it is tax advice.

We are a non-contentious practice. An HMRC status enquiry is close to contentious work and is not something we take on: our role is the documentation, before HMRC takes an interest. Any tribunal claim is referred out. Saying so plainly is not a limitation: it is how the boundary gets respected when it matters. Where appropriate, we work alongside our tax, accountancy and financial-planning colleagues across Fusion Consulting Group.

WHAT TO DO THIS MONTH

Step	What it involves	Why it comes first
1	Map the population from the purchase ledger, not the HR system	The contracted population and the paid population diverge. The people paid through accounts payable for years with no contract on file are where the exposure sits
2	Ask each agency, in writing, which umbrella companies are in the chain, whether the agency itself is UK resident, and whether it is connected with any of them	Since 6 April 2026 the answer decides whether you are jointly and severally liable for the umbrella's PAYE, and you cannot know it from your own records
3	Establish whether you are small, at group level and across connected businesses	It decides which regime applies to you, and a company that looks small on its own accounts often is not
4	Identify the three highest-risk engagements and read the contracts against what actually happens	A former employee re-engaged as a consultant doing the same job is one of the strongest indicators, and in our experience the most common
5	Check that the status file for each engagement exists and is complete	The determination, the reasons, the CEST inputs and the evidence of working practices are the defence. Without them you have an assertion
6	Diarise the review, and the withdrawal of any determinations if you are about to fall below the thresholds	Falling out of the off-payroll rules requires a positive act before the tax year begins. It is not automatic

1. THE THREE STATUSES, AND THE TWO SEPARATE QUESTIONS

1.1 Three statuses for employment rights

Employment law works with three practical categories. They are not watertight compartments: the statutory definition of "worker" in section 230(3) of the Employment Rights Act 1996 includes anyone working under a contract of employment, so every employee is also a worker. The useful division is between an employee, a worker who is not an employee, and someone who is genuinely self-employed.

Status	The test	What it brings
Employee	Works under a contract of employment, meaning a contract of service. Employment Rights Act 1996, section 230(1) and (2)	The full set: unfair dismissal, statutory notice, redundancy pay, family leave and TUPE protection, on top of everything a worker gets
Worker (not an employee)	The "limb (b)" worker: undertakes to do or perform work or services personally for another party whose status is not that of a client or customer of a business carried on by the individual. Section 230(3)(b). Note that section 230(3)(a) brings employees within the same definition	Paid holiday, the National Minimum Wage, rest breaks and the working time limits, protection from unlawful deductions, discrimination and whistleblowing protection, and pension auto-enrolment where the eligibility conditions are met
Self-employed	The residual category. No statute defines it	Nothing beyond what the contract gives, plus health and safety and some discrimination protection

Discrimination law casts the net wider still. The Equality Act catches anyone under "a contract personally to do work", with no client-or-customer exclusion on the face of the definition. The Court of Appeal has described the effect as pushing the boundary further in the individual's favour: the factors are not essentially different, but the pass mark is lower.

And the definitions are not uniform across the statute book. The Employment Rights Act, the Working Time Regulations, the minimum wage legislation, the Equality Act and the pensions legislation each have their own wording and their own eligibility conditions. An individual can be inside one and outside another on the same facts, so a single answer to "is this person a worker?" is rarely the whole answer.

1.2 Two statuses for tax

Tax law recognises employed and self-employed, and nothing in between. There is no worker status for tax purposes.

> **The consequence, and it is the point most contractor material gets wrong.** The same facts feed both analyses, and the factors overlap heavily, but the questions are separate and the thresholds differ. The same person, on the same engagement, can be genuinely self-employed for tax and a worker for employment-rights purposes. The Government's own guidance states that the two frameworks are separate and not interchangeable. Winning the argument with HMRC does not dispose of the holiday pay claim, and settling the holiday pay claim does not settle the PAYE position.

1.3 The courts approach the two questions differently

This is not merely a difference of subject matter. It is a difference of method, and it is worth understanding before commissioning any status review.

In a claim for statutory employment rights, the written contract is evidence but it is not the starting point. The Supreme Court has held that the question is one of statutory interpretation rather than contractual interpretation, that there is no presumption that a contractual document contains the whole of the parties' agreement, and that terms purporting to classify the relationship or to exclude statutory protection are of no effect and must be disregarded. The rationale is the protective purpose of the legislation: an employer who can dictate the terms would otherwise be able to draft its way out of the statute.

In a tax status case that rationale is absent, and the Court of Appeal has held that the approach does not apply. There the tribunal applies ordinary principles of contractual interpretation to establish the terms, and then asks whether a hypothetical direct contract on those terms would have been a contract of employment. The Supreme Court did not decide the point when it returned to status in 2024: it recorded that the appeal raised no issue on the application of those cases to a contract of employment, so that part of the Court of Appeal's judgment was not in point. The Court of Appeal's decision therefore stands as the governing authority.

What that means in practice. A review that treats "is this person self-employed?" as one question tends to answer neither properly. The engagement should be tested twice: once against the hypothetical contract for tax, and once against the worker definition for rights. Where the answers differ, that is not an error in the analysis. It is the system working as designed.

2. SUBSTITUTION, CONTROL AND MUTUALITY: WHAT ACTUALLY DECIDES IT

2.1 The framework

The starting point is the three conditions set out in 1968 and confirmed by the Supreme Court as the appropriate starting point: the individual agrees to provide their own work and skill in return for remuneration; they agree to be subject to the other party's control to a sufficient degree; and the other provisions of the contract are consistent with it being a contract of employment.

The Supreme Court restated the effect of that framework in 2024, and the restatement is not the one commonly reported.

- Mutuality and control are necessary but not sufficient. They are threshold conditions. Passing them does not make somebody an employee.
- They do not drop out once passed. The court criticised the tendency to focus unduly on the two thresholds and to treat everything else as relevant only if it negatives employment. The nature and extent of the mutual obligations, and the degree of control, remain live at the third stage.
- The third stage is where the case is decided. It requires the cumulative effect of the totality of the contractual provisions and all the circumstances of the relationship.

2.2 Mutuality of obligation

Mutuality is the wage-work bargain: an obligation on one side to pay for work done and on the other to do it personally. Two points have moved against engagers.

- Obligations that subsist only while the work is being done are enough. It is not necessary to show any obligation before the individual turns up.
- A right for either party to cancel the engagement without penalty, before it starts, does not negate mutuality while the contract is in place. The right to terminate is irrelevant at the threshold stage, though the narrowness of the obligations is relevant at the third.

An overarching contract does still lack mutuality where the engager is under no obligation to offer work. Structuring an arrangement as a series of short separate engagements does not, by itself, defeat status: each engagement is tested separately, and mutuality within one of them is enough to get over the threshold.

2.3 Control

The bar is deliberately not set high. Sufficient control may take many forms and is not confined to a right to give direct instructions. It is not necessary that the engager can intervene in every aspect of performance, and in a highly skilled engagement the engager may be incapable of directing the work at all without that being decisive. The Supreme Court also held that sanctions available only after the engagement has ended can form part of the framework of control.

What remains fatal is the complete absence of control. A relationship in which one party has no control whatever over the other cannot sensibly be a contract of employment.

2.4 Substitution and personal service

An unfettered right to send a substitute is inconsistent with a contract of employment, because personal service is the first of the three conditions. A fettered right may not be: the test is whether personal performance is the dominant feature of the arrangement. A right to send another of the engager's own people, or a right subject to approval at the engager's absolute discretion, will not usually be enough.

The clause nobody has ever used, and why both of the confident answers are wrong. A substitution right is not worthless merely because it has never been exercised. A genuine right that has not yet been needed remains a genuine right, and the Supreme Court has confirmed that at the highest level. What destroys a clause is that it is unrealistic: that nobody on either side ever seriously contemplated it operating. The distinction is between a right that has not been used and a right that could never be used.

The practical test, and what it does and does not settle. Ask the hiring manager, not the file. If the answer is "of course he cannot send someone else, we hired him", treat that as the trigger to investigate rather than as the answer. It may mean the right was never real, in which case the clause will not survive. It may equally mean the manager has misunderstood the contract, or would be proposing to breach it, and neither of those defeats a right that genuinely exists. What it does tell you is that the paperwork and the practice have parted company, and that is the condition worth finding before somebody else finds it. If the right is genuine and a substitution happens in the ordinary course, keep the paperwork. Do not arrange one for the record: a staged substitution is evidence of the wrong thing.

2.5 Everything else, which is where cases are won

Factor	What it actually tests
Financial risk	Whether the individual can lose money on the engagement. A fixed price for a defined output, an obligation to rectify defective work at their own cost and in their own time, and their own insurance all point one way. A day rate against a timesheet points the other
Opportunity to profit	Whether the individual can increase their return by working more efficiently. On a day rate for time there is very little scope to
Integration	Whether the individual is part of the organisation or an accessory to it. Company email, a badge, a place on the organisation chart, a line manager, an appraisal, attendance at team meetings and internal training all count
Exclusivity	Whether the individual works for others. Intermittent or assignment-by-assignment working can indicate a degree of independence and lack of subordination, though it is not decisive either way
Equipment	Whether the individual invests in the means of doing the work. Where you must supply something for security or regulatory reasons, say so in the contract and record why

Factor	What it actually tests
In business on their own account	The overarching question. Does this person have a business, with its own clients, its own marketing, its own insurance, its own equipment and its own risk, of which your engagement is one part?

The illustration that makes the point better than any checklist. The 2024 Supreme Court case returned to the First-tier Tribunal, which held in May 2026 that the individuals were self-employed after all. HMRC was reported the following month as saying it would not appeal. Both threshold conditions had been held satisfied as a matter of law, and the third-stage assessment still produced self-employment. The tribunal found the mutual obligations narrow, short-lived and heavily qualified by choice. Anyone treating status as a three-box test is using the wrong instrument.

3. IR35 IN OUTLINE: WHO CARRIES THE RISK, AND WHEN

Four different routes, and it matters which one you are in. They are often lumped together as "IR35" and they are not the same thing. One of them splits into the two IR35 chapters proper; the other three sit alongside them. Getting the wrong one produces the wrong answer about who decides status and who pays if it is wrong.

You engage the individual directly. Ordinary employment status. No special regime, and no size threshold anywhere in it. Keep the two consequences apart, because they do not move together: if the individual is in truth a worker, the employment rights follow, and if the individual is in truth an employee for tax, PAYE and Class 1 National Insurance follow. A limb (b) worker can be genuinely self-employed for tax, and often is. See section 1.

You engage through the individual's own company. Chapter 8 or Chapter 10 of Part 2 ITEPA 2003, and which one depends on your size. Chapter 10, the off-payroll rules, has a small client exemption. Chapter 8 is where you land if you are small, and there the contractor's own company decides and carries the risk.

You engage through an agency and the worker is not using their own company. Chapter 7, the agency rules. The charge falls on the agency, not on you, and the test is a different one: supervision, direction or control. Section 7.1.

There is an umbrella company in the chain. Chapter 11, new from 6 April 2026, and it is not an extension of the off-payroll rules. It works differently, it catches different people, and it has no small company exemption. Section 6.

Where the engagement runs through the individual's own company, that route splits into two regimes, and they are the ones usually meant by "IR35". They do not overlap. Which applies turns on your size and on whether you are a public authority, not on anything about the contractor.

	The original rules	The off-payroll rules
Where they sit	Chapter 8 of Part 2, Income Tax (Earnings and Pensions) Act 2003	Chapter 10 of the same Part
When they apply	The client is not a public authority and either qualifies as small for the tax year, or has no UK connection	The client is a public authority, or qualifies as medium or large and has a UK connection
Who decides status	The worker's own company	You, the client
Who carries the liability	The worker's own company	The fee-payer. Where you contract directly with the worker's company, that is you
The 5 per cent allowance	Still available. The calculation begins by reducing the payments received by 5 per cent	No equivalent

	The original rules	The off-payroll rules
In force since	The original regime, and still the one that applies to small clients	Public sector 6 April 2017; private sector 6 April 2021

A correction worth making, because it is repeated almost universally. The 5 per cent allowance was not abolished in 2021. It was never removed from the legislation, and the calculation in the original rules still opens by deducting it. What changed in 2021 was the scope of those rules, which was narrowed so that they now catch only small clients and clients with no UK connection. The allowance survives in full in every case still within them.

The two chapters are also often described as though one replaced the other. They did not. Each has its own scope provision and the two are mutually exclusive. A medium or large client with no UK connection falls into the original rules, not the off-payroll rules, because the off-payroll rules require a UK connection.

3.1 The question both regimes ask

If the worker had contracted directly with you, rather than through their own company, would they have been regarded for income tax purposes as your employee? That is the hypothetical contract test, and the legislation supplies almost none of the answer. Everything in section 2 of this guide does the work.

3.2 The chain, and how liability moves along it

Where the off-payroll rules apply, the legislation identifies a chain running from you at the top to the worker's company at the bottom. The fee-payer is the person immediately above the worker's company. Liability starts with you and moves down only if certain things happen, and it can move back up again.

Where liability sits	Why
With you, by default	Unless and until you give a status determination statement to the worker. There is no statutory deadline, because the sanction runs from the start. In practice it has to be done before the relevant payment for responsibility to pass down the chain
With the fee-payer	Once you have given the statement, and the fee-payer is a qualifying person, meaning broadly that it has been given the statement, is UK resident or has a UK place of business, and is not controlled by the worker
With the lowest qualifying person in the chain	Where the fee-payer is not a qualifying person. An agency that has not been given the statement is not one, which is why passing it down matters

Where liability sits	Why
Back with you	Where no one below you in the chain is a qualifying person; where you miss the 45-day deadline on a disagreement, until you comply; or where you fail to withdraw your determinations on ceasing to be medium or large, for the whole tax year
With another party in the chain, by recovery	Where HMRC considers there is no realistic prospect of recovering from the deemed employer within a reasonable period, it may recover from others, and in a fixed order: the party immediately below you first, and you only where the same test is met for that party

The practical point. Pushing the deemed employer role down to an agency is good housekeeping but it is not immunity. If the agency fails, the debt can come back up the chain to you.

4. ARE YOU A SMALL CLIENT, AND WHEN DOES THAT CHANGE?

This is the question that decides which regime you are in, and it is more involved than it looks. It is also the question on which a great deal of current commentary is wrong.

4.1 The test for a company

A company qualifies as small for a tax year if the small companies regime applied to it for its last financial year that is relevant to that tax year. The Companies Act conditions are met where the company satisfies two or more of three requirements:

Requirement	Limit
Turnover	Not more than £15 million
Balance sheet total	Not more than £7.5 million
Number of employees	Not more than 50

The figures rose from £10.2 million and £5.1 million, for financial years beginning on or after 6 April 2025. Two or more of the three is enough, so a company can be well over the headcount limit and still be small.

- **The conditions must hold for two consecutive financial years.** Where a company meets or ceases to meet them on its balance sheet date, that only affects its qualification if it happens in two consecutive years. A transitional provision in the 2024 regulations rewrites the earlier year counterfactually on the new figures, so a company does not have to wait two fresh years before the uplift can help it.
- **A company's first financial year is treated differently.** Where the company's first financial year is not yet relevant to the tax year, it qualifies as small for that year.
- **Some companies are excluded from the small companies regime altogether,** whatever their size. Public companies and certain regulated entities are the common examples. Check the exclusions before relying on the figures.
- **Changing your accounting reference date changes the answer,** because both the filing deadline and the length of the period move with it. Turnover is adjusted proportionately for a period that is not a full year.

4.2 When the answer feeds through, and why it is not yet

> **If you have read that the increase took you out of the off-payroll rules, it has not, and for most companies it will not until 2028.** A financial year is only "relevant to" a tax year once the period for filing the accounts for that year has ended before the tax year begins. For a private company that period is nine months from the year end. The first financial year that can be tested on the new figures is the first one beginning on or after 6 April 2025, and its answer does not arrive until nine months after it closes.

Your accounting reference date falls	First financial year tested on the new figures ends	First tax year the new limits can help
5 April to 5 July	April to July 2026	**2027/28**
6 July to 4 April	July 2026 to April 2027	**2028/29**

HMRC's guidance gives 2027/28 as the earliest affected tax year, which is right as an earliest. Both of its worked examples use a 30 June year end, which sits inside that narrow early window. For the two commonest year ends in owner-managed businesses, 31 December and 31 March, the answer is 2028/29. Note also that the trigger is the filing period rather than the date the accounts were actually filed: filing early does not accelerate the answer, and filing late does not defer it.

4.3 Groups, joint ventures and connected businesses

- **A small subsidiary of a large group is not small.** Where the company is a member of a group and is not the parent, it does not qualify as small unless the parent undertaking also qualifies as small. Size is tested at group level.
- **Turnover is aggregated across connected persons, and only turnover.** Where you are connected with other persons at the end of the year, their turnover is added to yours. Balance sheet total and employee numbers are not aggregated. Connection covers common control, spouses and civil partners, relatives and business partners. The rule is switched off between members of the same group, so it is aimed at sideways structures rather than at vertical ones.
- **The trap that catches owner-managers.** An entrepreneur who owns four unrelated trading companies outright, with no holding company between them, has four companies connected with each other. If each turns over £5 million, each is tested on £20 million of aggregated turnover. Each fails the turnover condition, and any of them that also has more than 50 employees or a balance sheet total over £7.5 million has failed two of the three and is medium or large.
- **A joint venture vehicle is very unlikely to be small.** Where a company is jointly controlled by two or more persons and at least one is an undertaking, the joint venturers are treated as members of a group headed by the joint venture company, and the small test is applied to the group figures. An SPV with modest turnover and no employees will not be small if its corporate shareholders are substantial. Whether a company is "jointly controlled" is an accounting question, so the answer can turn on the reserved matters and deadlock provisions in the shareholders' agreement.
- **LLPs, unregistered companies and overseas companies** are tested on the company route, with the same filing-deadline timing.
- **General partnerships, sole traders and other unincorporated persons are tested on turnover alone,** on different timing rules: a partnership or similar undertaking is tested on its last financial year ending at least nine months before the tax year begins, and any other person on the last calendar year before the tax year.

> **A live point on the non-corporate threshold.** The legislation does not set a separate figure for non-corporate clients. It points at whatever amount is "for the time being specified" as the turnover limit in the Companies Act, which is now £15 million. HMRC's manual still gives £10.2 million for partnerships and other persons without qualification, and has not been updated for the uplift. Work on £10.2 million. HMRC's manual continues to show that figure for non-corporate clients, and its guidance frames the uplift as a change for corporate entities. There is an argument that

the cross-reference is ambulatory and that the figure moves with the Companies Act limit, subject to the same timing rules, but it is not HMRC's published position and it is a question of tax construction rather than ours. For a sole trader tested on a calendar year rather than a financial year the interaction is unresolved in any event. Do not assume the £15 million limit applies to a partnership, a sole trader or any other non-corporate client without advice from our tax colleagues, and if you are anywhere near the line, get that advice before you decide.

4.4 The trap on the way out

Falling out of the off-payroll rules is not automatic. Where you have issued status determination statements and you cease to qualify as medium or large for a tax year, you must give a statement to the worker or the deemed employer, before the tax year begins, saying that you do not qualify and that the determination is withdrawn with effect from the start of the year. If you do not, you are treated as medium or large for the whole of that tax year and the legislation makes you the deemed employer for the engagement. A business that simply stops applying the rules on 6 April has walked into it.

A related obligation people forget. Where your agent or the worker asks you whether you qualify as small for a specified tax year, you must tell them. The deadline is the later of 45 days from receiving the request and 45 days before the tax year starts.

5. STATUS DETERMINATION STATEMENTS, AND WHAT REASONABLE CARE MEANS

5.1 What the statute requires

Two things and nothing else: a statement of your conclusion on whether the hypothetical contract test is met, and the reasons for that conclusion. There is no prescribed form, no prescribed medium and no prescribed length. A one-line conclusion with no reasons is not a statement at all.

The statement must be given to the worker. HMRC's guidance also says to pass it to the party you contract with, and you should: an agency that has not been given the statement is not a qualifying person, so the liability skips past it and travels back up the chain towards you. The statute does not impose that as a duty in terms, but the practical outcome is the same.

On timing, the absence of a statutory deadline is not a licence to take your time. You are the deemed employer unless and until the statement is given. If responsibility is to sit with the fee-payer rather than with you, the determination has to be made, given to the worker and passed down the chain before the relevant payment. Treat it as a pre-engagement step, not an administrative one.

5.2 Reasonable care

A statement made without reasonable care is not a status determination statement. The consequence is not that liability reverts to you: it never left, because the condition for it to leave was never satisfied.

Reasonable care is not defined in the legislation. HMRC's published view, which is a view on an undefined statutory standard rather than a rule of law, is that a client should act as a prudent and reasonable person in its position would, with the standard scaling to the size and complexity of the organisation.

HMRC treats this as reasonable care	And this as a failure of it
Applying the employment status principles accurately and keeping a record of having done so	Determining that every contractor engaged through their own company is caught, without individual consideration
Completing CEST accurately and applying the result. HMRC's published position is that an accurate CEST output can itself constitute a valid status determination statement where the statutory conditions are met (see section 9)	Inputting inaccurate information into CEST
Seeking advice from a qualified professional adviser	Failing to take account of all relevant evidence
Involving someone who genuinely understands the work being done	Making a determination knowing the terms are about to change

HMRC treats this as reasonable care	And this as a failure of it
Making a new determination where the terms or working practices materially change	Subcontracting the process to another party without confirming the conclusion
Training the people who make determinations, and keeping a record of the training	No organisational training or support for those making determinations

HMRC accepts grouping determinations by role, but only on a narrow footing. Both the contractual terms and the actual working practices must be the same across the group. Two developers on identical statements of work, doing the same thing under the same arrangements, can properly share a determination. Twelve people described as "consultants" cannot.

5.3 The disagreement process

If the worker or the deemed employer makes representations that your conclusion is wrong, before the final payment in the chain, you have 45 days from receiving them to do one of exactly two things.

- Give a statement saying you have considered the representations, that you have decided the conclusion is correct, and setting out the reasons for that decision.
- Give a new determination with a different conclusion, stating the date from which you consider it became correct and stating that the previous one is withdrawn.

There is no third option and no power to say nothing. Miss the 45 days and the legislation makes you the deemed employer from the end of that period until you comply. That sanction is temporary and self-curing, which distinguishes it from the two other routes back to you. There is no statutory appeal against a status determination statement itself: the disagreement process is the route the legislation provides, and you decide it. That is worth saying to contractors in plain terms at the outset, because the alternative is finding out about it in the middle of an argument.

6. UMBRELLA COMPANIES: JOINT LIABILITY WITH NO SMALL COMPANY EXEMPTION

In our view this is the change of April 2026 that has attracted the least attention, and for a smaller business it may carry the most risk.

6.1 What the rule does

Where a worker provides services to you and is employed by an umbrella company that carries on a labour supply business, and the worker has no material interest in that company, each relevant party is jointly and severally liable, along with the umbrella, for the PAYE the umbrella should have accounted for on the pay referable to your engagement. National Insurance follows through parallel regulations in force the same day. It applies to payments made on or after 6 April 2026.

Note what the rule does and does not do. The obligation to operate PAYE stays with the umbrella company. It is the umbrella that runs the payroll, deducts and accounts. What the rule adds is a second and third debtor for the same money: if the umbrella does not account for it, HMRC can recover the whole of it from a relevant party instead, without having to go after the umbrella first. You do not take over the payroll, and you do not become the employer for any other purpose. You become liable for somebody else's failure to pay.

The liability is apportioned. Where an umbrella pays a worker for several clients in one period, your exposure is limited to the part referable to the services provided to you.

6.2 Who is a relevant party

Your chain	Who is caught
You → umbrella → worker	**You and the umbrella**
You → agency → umbrella → worker	**The agency and the umbrella. You are not caught**
You → agency 1 → agency 2 → umbrella → worker	**Agency 1 and the umbrella. Only the agency contracting with you is caught; agency 2 is not**
You → agency connected with the umbrella → umbrella → worker	**You, the agency and the umbrella**
You → non-UK resident agency → umbrella → worker	**You, the agency and the umbrella**

One further limb, for completeness. Where you are not UK resident either, and neither is the party you contract with, the legislation reaches the UK resident party closest to you in the chain. That will not bite on a UK company, but it is worth knowing if the contracting entity sits offshore.

6.3 The three features that matter

There is no small company exemption of any kind. The operative Chapter 11 conditions turn on the worker, the umbrella and the shape of the contractual chain, and not on the size of the client or of the agency. There is nothing equivalent to the small client architecture that takes a small business out of the off-payroll rules. Size does not decide whether you are caught; the shape of your chain does. But where a five-person owner-managed company is a relevant party, and it is whenever it engages a contractor directly through an umbrella, it carries exactly the same joint and several liability as a listed company with thousands of contractors.

There is no statutory order of recovery, and HMRC's published position is not the one a client would hope for. The liability is ordinary joint and several liability. Nothing requires HMRC to pursue the umbrella first, to exhaust it, or to give you notice before coming to you. HMRC's Employment Status Manual says that where the tax and National Insurance go unpaid it will pursue recovery of the unpaid amounts from the relevant parties, meaning the agency or the client, and that there may be some circumstances where it is appropriate to pursue the umbrella instead. The explanatory memorandum to the National Insurance regulations puts it the same way: where sums remain outstanding, HMRC can recover them from any jointly and severally liable party. The dedicated compliance approach page still says only that more information will follow, so there is no published sequence or safe harbour of the kind Chapter 10 provides.

There is no contribution mechanism in the legislation. The Chapter says nothing about recovery between the parties who are jointly liable. Whether general contribution principles assist a client that pays is not addressed, and it should not be assumed.

6.4 Companies that only look like umbrella companies

The legislation also reaches arrangements that are presented as umbrella employment but are not. Where one of three cases applies, the individual is treated as employed by that business, the payments are treated as earnings, and the rest of the chain becomes jointly and severally liable for the tax in the same way.

The case	What it catches
Held out as the employer	A business that participates in the arrangements and either is reasonably assumed by others in the chain to employ the worker, or has taken steps intended to give that impression, when it does not in fact employ them
Direct supply on a self-employed footing	A business supplying the worker directly on a self-employed basis in circumstances where the agency rules would otherwise treat the worker as employed, and where it did not find the worker the engagement
The worker's own company, dressed up as a payroll vehicle	A company in which the worker does have a material interest, where others in the chain would reasonably assume that a substantial proportion of what it receives is paid out to the worker as earnings, and in fact it is not

The third case is the one most likely to catch people out, because it is the opposite of what the label suggests. It is not about third-party umbrellas at all. It reaches the worker's own personal service company, where the company is treated by the chain as a payroll vehicle but does not actually pay the money out as earnings. If it applies, the off-payroll rules step aside and the umbrella rules take over, and an agency or client in the chain can be pursued for the tax. A client who has satisfied itself that a contractor is "outside IR35" has not, by doing so, dealt with this.

6.5 What to do about it

- Ask each agency, in writing, to identify every umbrella company in the chain, to confirm whether the agency itself is UK resident, and to confirm whether it is connected with any umbrella in the chain. Those last two are the questions that decide whether you are caught as well as the agency; the umbrella's own residence is not the test. You cannot answer any of it from your own records.
- Put warranties to that effect into the terms of business, with an obligation to notify any change before it takes effect, and an indemnity behind them. Recognise that the indemnity is worth the agency's covenant strength and no more.
- Where you engage an umbrella directly, with no agency, understand that you are a primary debtor from day one. Carry out proper due diligence on the umbrella: how long it has traded, who runs it, whether it is accredited, and whether it is part of a group with a history of failures.
- Treat any promoter marketing an arrangement said to sidestep the new rules as a warning sign, and take advice before going near it.

One trap that catches finance directors. Where an HMRC officer considers that you are or may be jointly and severally liable, the officer may disclose information to you about it, including the identity of the umbrella and the nature and extent of its liability. Onward disclosure of that information without HMRC's consent may constitute a criminal offence. Whether it does turns on what the information is, on whether consent was given and on the exceptions that apply, but forwarding the letter to the agency, to the umbrella or to an adviser without first checking is exactly the fact pattern the restriction is aimed at. Obtain HMRC's consent, or specific advice, before anything leaves your building.

7. AGENCIES, CONTRACTED-OUT SERVICES, AND AGENCY WORKER RIGHTS

7.1 Agency workers who do not use their own company

A separate regime catches workers supplied by an agency who provide their services personally and are not using an intermediary. Where the manner in which the worker provides the services is subject to, or to the right of, supervision, direction or control by any person, the worker is treated as holding an employment with the agency, and the remuneration is treated as earnings from it.

> **Two things to take from that.** First, "they come through an agency" does not mean there is no exposure anywhere: it means the charge falls on the agency rather than on you, which is a different point. Second, the supervision, direction or control test in the agency rules is a genuinely different test from the hypothetical employment test in the off-payroll rules. Confusing the two is common and expensive.

And one adjacent regime this guide does not cover. Separate rules catch managed service companies, where a scheme provider is involved in running the company through which a worker supplies their services. They are aimed at the composite and scheme-company market rather than at a contractor's own genuine company, and they will very rarely touch an owner-managed business engaging contractors. If a third party is involved in setting up or running the company your contractor uses, take advice: that is the fact pattern those rules are looking for.

7.2 Contracted-out services: where the argument usually is

HMRC's position is that if you buy a genuine service rather than labour, you are not the client for off-payroll purposes and the obligations sit with the supplier, and that if you buy hours of labour dressed up as a service, you are the client and the obligations are yours. There is a great deal riding on which side of that line an arrangement falls, and the law provides remarkably little help.

There is no statutory definition of "client". The legislation defines it only relationally, as the person for whom the worker personally performs, or is obliged personally to perform, services. Nothing in the off-payroll rules mentions outsourcing, managed services or statements of work. "Fully contracted-out service" is HMRC's phrase, not Parliament's.

HMRC's stated position is that where a person enters into a contract for a fully contracted-out service, they will not be the client, and that contractual terms alone will not decide the matter: they must also be followed in practice to have any weight. Its Guidelines for Compliance go further, saying that no matter how a service is labelled, if it includes any element of labour supply the recipient must decide whether it or the service provider is the client, and that the existence of a statement of work does not automatically show a truly contracted-out service.

The factors HMRC identifies are these:

Factor	What HMRC looks at
The nature of the businesses	Where the type of service provided by the worker aligns closely with the nature of your business, or of a department within it, that indicates you are the client

Factor	What HMRC looks at
The service provider's contract	Whether the provider has responsibility for agreeing the specification of the service and for ensuring its quality, and whether it has an opportunity for profit beyond taking a percentage of the worker's fee
The relationship in practice	Who the worker actually provides their services to. Control, allocation of risk, and how far the worker is integrated into your business

Two honest observations, and they cut in opposite directions. There appears to be no reported tribunal decision on contracted-out services or on the identity of the client under these rules. Everything currently in circulation traces back to HMRC guidance, which is not primary law and binds neither taxpayers nor tribunals. That is a risk, because there is no judicial gloss to rely on. It is also an opportunity, because HMRC's factors are not binding on a tribunal either.

What follows for the drafting, and this is squarely our ground. A statement of work will not save an arrangement that operates as a day-rate body shop. The contract must allocate specification, quality, remedy for defective performance and profit risk to the supplier, and your operational people must then actually behave that way: no picking the individuals, no directing how the work is done, no managing them through your own processes. Where the contract and the conduct part company, expect the conduct to be treated as the better evidence of what was actually agreed.

7.3 Agency worker rights, which do not depend on the tax answer

A separate body of law gives agency workers rights against the hirer and the agency, and it runs on its own definitions. It is easy to miss on a status review, because a status review is usually commissioned as a tax exercise and this is not a tax question at all.

From day one, an agency worker is entitled to access the collective facilities and amenities you provide to comparable workers, such as canteens, childcare and transport, and to be told about relevant job vacancies available to comparable employees at the same establishment. Both of those obligations fall on you as hirer rather than on the agency, for the obvious reason that the agency does not control your site.

After twelve weeks in the same role with the same hirer, the worker is entitled to the same basic working and employment conditions as if you had recruited them directly.

Equal treatment covers	And does not cover
Key elements of pay: basic pay, overtime, shift and unsocial hours allowances, risk payments, and bonus or commission directly attributable to the amount or quality of the work	Occupational sick pay, and occupational pensions
Duration of working time, and night work	Occupational maternity, paternity, adoption and parental bereavement pay
Rest periods and rest breaks	Redundancy pay, statutory or contractual
Annual leave	Loyalty and long-service bonuses not tied to the amount or quality of the work, share and profit-share schemes, and benefits in kind other than fixed-value vouchers
For pregnant workers, paid time off for antenatal appointments	Expenses incurred in carrying out the work

Notice pay is commonly listed as excluded and is treated that way in practice, on the footing that notice is a termination term rather than a working condition. It is worth knowing that the exclusion appears in the published guidance rather than on the face of the Regulations.

The twelve-week clock is worth understanding, because it is what most arrangements are built around. It resets to zero on a new assignment with a new hirer, or after a break of more than six weeks. It also resets on a move to a new role, but only where the duties making up the main part of that role are substantively different and the agency has told the worker in writing what the new role involves: all three limbs are needed, and the written notice is the one most often missing. It pauses and resumes across a break of up to six weeks, sickness absence of up to 28 weeks, annual leave, a shutdown, jury service or industrial action. And it continues to accrue through pregnancy, childbirth and maternity, adoption or paternity leave, although only for the originally intended or likely duration of the assignment, whichever is longer. Rotating a worker between nominally different roles to keep the clock at zero is the kind of arrangement that attracts attention: there is a specific anti-avoidance provision aimed at it, it treats companies under common control as a single hirer, and it asks what the most likely explanation for the pattern of assignments is.

There are information duties on both sides. Before the assignment the agency must obtain from you the identity and nature of your business, the location, the job details, the qualifications required, the health and safety risks and the expenses. For the twelve-week entitlements you must give the agency the level of basic pay, details of overtime and shift or unsocial hours allowances, the types of bonus scheme and the annual leave entitlement. Where a worker makes a written request, the agency has 28 days to respond in writing.

Pregnancy carries specific obligations. After twelve weeks the worker is entitled to paid time off for antenatal appointments, which both you and the agency must permit and the agency pays for. Where the supply is ended because of a risk identified under the health and safety regulations, the agency must offer to propose her for suitable alternative work if it has any, on terms not substantially less favourable than those that would otherwise have applied, and if it has none must pay her for the

remaining expected duration of the original assignment. These duties run only for the expected length of that assignment, not beyond it. On disclosure of a pregnancy you must carry out a risk assessment.

> **Neither an umbrella company nor a personal service company takes the individual outside these rules by itself.** The question remains whether the statutory agency worker conditions are met, and the structure does not answer it. The Regulations say in terms that being supplied through, paid through or employed by an intermediary does not prevent agency worker status, and the published guidance is explicit that an individual working through an umbrella company who finds work through an agency is covered, and that simply putting earnings through a limited company does not in itself put someone beyond the scope of the rules. A genuine contractor in business on their own account, with a real client relationship, is outside them. The structure is not the answer; the substance is. A business that has satisfied itself on the tax position and assumed that the agency worker rights fall away with it has assumed something that is not so.

7.4 The Conduct Regulations

Agencies and employment businesses are separately regulated, and although the obligations sit largely on them, three of them affect you as a hirer and are worth knowing about.

- Information flows to you and from you. The agency must obtain and give specified information about the engagement, and there are restrictions on fees, including when a transfer fee can be charged for taking a worker on directly and the requirement to offer an extended period of hire as an alternative. If you intend to hire a contractor permanently, read the transfer provisions before you have the conversation.
- Vetting. The agency must confirm identity and that the worker has the experience, training, qualifications and authorisations the role needs. For work with vulnerable people, including anyone under eighteen, it must also obtain two references from people who are not relatives, obtain copies of any relevant qualifications or authorisations, offer both to you, and take all other reasonably practicable steps to satisfy itself the worker is suitable. Note that this is not a DBS requirement: where a check is needed, that comes from the safeguarding legislation, not from these Regulations. If the vetting is being done at all, it should be evidenced.
- Pay must not be withheld. An employment business must not withhold pay from a worker it has supplied for work done, whether or not the hirer has paid it and whether or not a timesheet has been produced. A hirer pressing an agency to hold pay back over a disputed timesheet is asking for something the agency is not permitted to do.

The Regulations also apply to work-seekers supplying services through a limited company, covering both the company and the individual. There is an opt-out, but it is narrower than it is often taken to be. The company and the individual must both agree to it and give notice of that agreement to the agency, and that has to happen before the introduction or supply: an opt-out signed after the contractor has started does not take effect until they stop working in that role. The agency must tell you the opt-out has been given, so you should have a record of which of your contractors are opted out and which are not. There is no opt-out at all for work with vulnerable people, and the agency cannot make its services conditional on opting out. Records must be kept for at least twelve months and produced on a notice from the Fair Work Agency.

8. WHAT GETTING IT WRONG COSTS

Two heads of exposure, entirely separate, on different timetables, decided by different questions and claimed by different people.

8.1 The tax head

The figures below are HMRC's published rates and limits for 2026/27 and the statutory time limits. They are set out so that they can be checked, and any modelling built on them should be run past our tax colleagues before it is relied on.

Element	Rate or limit	Note
Employer secondary Class 1 National Insurance	15% above a £5,000 secondary threshold	For 2026/27. The low threshold means it bites on very nearly the whole of a re-characterised engagement. Do not net off the Employment Allowance: see below
Employee primary Class 1	8% between £12,570 and £50,270; 2% above	For 2026/27
Income tax	20%, 40% and 45% on the usual bands	For 2026/27, England, Wales and Northern Ireland. Scottish rates and bands differ
Apprenticeship levy	0.5% of the pay bill, where it exceeds £3 million, with a £15,000 allowance	A re-characterisation increases the pay bill and can push a business over the threshold
Interest on late-paid PAYE and NIC	7.75%, from 9 January 2026	Set at base rate plus four points. It runs from the original due date and is not discretionary
Penalty	Nil for reasonable care; up to 30% careless; up to 70% deliberate; up to 100% deliberate and concealed	Behaviour-based. An unprompted disclosure moves the floor of the range, not the ceiling. Reductions are available for telling, helping and giving access to records
Assessment window, tax	4 years; 6 if careless; 20 if deliberate	Determinations under the PAYE regulations follow the general income tax time limits

Element	Rate or limit	Note
Assessment window, National Insurance	6 years	Currently constrained by the Limitation Act. HMRC consulted in July 2026 on aligning it with the income tax limits; that consultation closes on 12 October 2026 and is a proposal, not law

One thing not to net off, and it is the commonest modelling error on this exposure. The Employment Allowance is available to eligible employers for 2026/27 at £10,500, and it cannot be set against the secondary Class 1 National Insurance a deemed employer pays on a deemed direct payment. Those are "excluded liabilities" under section 2(4) of the National Insurance Contributions Act 2014, which strips out anything arising under the intermediaries regulations, and that covers both the off-payroll rules and the original IR35 rules. They are also left out when working out how much of the allowance you have used. The allowance is not lost, and it still runs against your ordinary payroll; it simply cannot touch this liability. Budget for the 15 per cent in full.

An illustration. This is a composite and not a real engagement. A contractor at £500 a day for 220 days is £110,000 a year. Employer National Insurance alone, at 15 per cent above the £5,000 threshold, is roughly £15,750 for that one person. Across twenty contractors that is over £300,000 a year, before any income tax, employee National Insurance, interest or penalty. Four years of that, at current rates, is over £1.2 million in employer National Insurance alone. A real look-back is computed year by year at the rate for each year and the earlier ones were lower, so treat this as an order of magnitude rather than a calculation, and run any modelling past our tax colleagues before relying on it. It is still the number that moves a price on a sale, and it is why buyers look for this.

The relief that cuts the number down, and the limits on it. Since 6 April 2024, HMRC may set off tax already paid by the worker and their own company against the deemed employer's PAYE liability, so that the same income is not taxed twice. It is available for deemed payments going back to 6 April 2017, but only where the assessment, settlement offer or recovery notice lands on or after 6 April 2024.

What can be set off is wider than income tax. HMRC's published position is that the worker's and the intermediary's income tax and corporation tax, and their primary Class 1, Class 2 and Class 4 National Insurance, are all available, while employer secondary Class 1, VAT, the apprenticeship levy and unrelated liabilities are not. Two qualifications go with that. The income tax and corporation tax set-off has a bespoke statutory basis in the 2024 regulations; the National Insurance element does not, and rests on a general discretion in a 2001 regulation dealing with the disposal of contributions not properly paid, which is correspondingly softer and which on its face excludes Class 4. Treat the National Insurance side as HMRC practice rather than as a right.

Three further limits matter. It is a discretion rather than an entitlement. The amount may be HMRC's best reasonable estimate rather than a reconciliation of actual returns. And employer secondary National Insurance is outside it altogether, so the single largest element of the bill survives in full.

8.2 The employment-rights head

This one is not assessed by HMRC, does not follow the tax time limits, and turns on whether the individual was a worker or an employee for employment law. Holiday pay, the National Minimum

Wage and pension auto-enrolment attach to worker status. Unfair dismissal, statutory notice and redundancy pay require employee status.

Head	What it is worth
Holiday pay	A claim for unlawful deduction from wages must normally be brought within three months, and where there is a series of deductions time runs from the last in the series; a gap of three months or more does not automatically break the series. A two-year backstop limits how far back a tribunal may look on that route. It does not cap the exposure generally: on its wording the backstop does not reach a claim on termination under the Working Time Regulations, a point accepted by a tribunal but not yet decided on appeal, and where an employer has not recognised the right to paid leave, or has not given the worker a real opportunity to take it, the four weeks of core annual leave carry forward and accumulate. On a misclassified contractor engaged for years, that can mean the whole engagement rather than two years of it. See section 8.3
National Minimum Wage	Arrears are revalued upwards to the rate in force when the notice is served, not the rate that applied at the time. The penalty is 200 per cent of the underpayment per worker, capped at £20,000 each, with a 50 per cent reduction where arrears and half the penalty are paid within 14 days. Every case with arrears of £500 or more is considered for public naming, and arrears of more than £100 are enough where the employer has had another notice of underpayment within the previous six years, has an enforcement order or undertaking outstanding, or has an unspent conviction for a minimum wage offence. Naming is not automatic: an employer may make written representations on three narrow grounds, of which the public interest ground is applied restrictively. On enforcement, see the note below the table
Pension auto-enrolment	Where the individual is an eligible jobholder, contributions are backdated. The minimum is 8 per cent of qualifying earnings, of which the employer minimum is 3 per cent, and on enforcement the Pensions Regulator may require the employer to pay the individual's share as well as its own. Eligibility turns on age, the earnings trigger and working or ordinarily working in Great Britain, and the percentage bites on the qualifying earnings band rather than the whole fee. Fixed penalty £400, with escalating penalties from £50 to £10,000 a day by headcount

Head	What it is worth
Unfair dismissal and redundancy	Employee status only. From 6 April 2026 a week's pay is capped at £751 and the maximum compensatory award at £123,543. Two changes are coming. Tribunal time limits extend from three to six months on 1 October 2026, and the test is the relevant date rather than the date the claim is presented: the extended limit applies where the act, conduct or failure complained of, or the last in a series, occurs on or after that date, so a claim about an earlier event keeps the three-month limit however late it is brought. And on 1 January 2027 the unfair dismissal qualifying period falls from two years to six months and the statutory cap on the compensatory award is repealed outright, both applying where the effective date of termination falls on or after that date
Discrimination and whistleblowing	Available to workers, and uncapped

On who actually enforces the minimum wage, the answer has two halves and both matter. Since 7 April 2026 the statutory enforcement function has been the Secretary of State's, under Part 5 of the Employment Rights Act 2025, and is exercised through the Fair Work Agency, and a notice of underpayment is now issued under sections 103 to 108 of that Act rather than under the older free-standing regime. In practice HMRC officers still do the work, acting as Fair Work Agency enforcement officers under an arrangement with the Secretary of State, and are expected to transfer into the Agency in April 2027. If you are investigated, expect an HMRC officer at the door; the powers, the notice and the penalty are the Agency's.

8.3 Holiday pay: what a re-characterised contractor is actually owed

This is the head that is most often mis-modelled, in both directions, and the reason is a dividing line introduced in 2024 that most contractor material has not caught up with.

For leave years beginning on or after 1 April 2024, irregular hours workers and part-year workers accrue leave at 12.07 per cent of the hours worked in each pay period, capped at 28 days. Accrual continues through sickness and statutory leave on a 52-week average. For those workers, and only those workers, holiday pay may be rolled up as a 12.07 per cent uplift, provided it is paid at the same time as the pay for the work and shown as a separate item on the payslip.

Most contractors are neither, and the consequence depends on the shape of the engagement rather than on its length. "Irregular hours" means the contract itself makes the paid hours wholly or mostly variable. "Part-year" means the contract requires work for only part of the year and there are unpaid periods of at least a week inside its term. A contractor engaged full-time on a fixed five-day pattern for a six-month project is neither. Leave accrues across the leave year, and on termination they are paid the share of 5.6 weeks matching the share of the year that has passed, less any leave already taken. Six months produces about 2.8 weeks, which lands in the region of 12 per cent of the fees, subject to the actual dates. Do not model a short fixed engagement as though it produced a full 5.6 weeks.

Where it does become expensive is a different shape of engagement, and that is the one to look for. Take a rolling or framework consultancy agreement running across the whole leave year, under which the contractor is paid only for the weeks you actually use them, and where the contract

does not itself require them to work only part of the year. They are not a part-year worker, so the 12.07 per cent method does not apply to them. They are entitled to 5.6 weeks, and a week's pay is the average of the weeks in which they were actually paid: weeks with no pay drop out of the calculation altogether rather than reducing the entitlement. A consultant at £2,500 a week engaged for twenty weeks across the year is owed 5.6 weeks at £2,500, which is £14,000 against £50,000 of fees. The 12.07 per cent method would have produced £6,035. That is what Harpur Trust v Brazel decided, and the fewer the paid weeks, the worse the ratio gets.

And it is very hard to argue after the event that the day rate included holiday pay. The rolled-up route discharges the liability only where the holiday pay was actually paid in that way: at the same time as the pay for the work, and itemised on the payslip. A contractor paid against invoices with no payslip and no separate holiday line satisfies neither condition, and the route is unavailable to them in any event unless they are an irregular hours or part-year worker.

The older end of a claim is the expensive end. The 2024 reforms are prospective. Any leave year that began before 1 April 2024 is governed by the earlier position, which is the more generous one for the individual, and on a long misclassified engagement that is where most of the exposure sits.

The two-year backstop is not a cap on holiday pay exposure, and it is regularly presented as one. It applies to claims for unlawful deduction from wages. A worker whose engagement ends and who claims payment in lieu of untaken leave brings that claim under regulation 30 of the Working Time Regulations, not under Part II of the Employment Rights Act 1996. The backstop applies only to a complaint brought under the deduction from wages provisions, so on its wording it does not reach a regulation 30 claim. The point was accepted by the employment tribunal in Smith v Pimlico Plumbers and recorded without disapproval by the Court of Appeal, which did not itself need to decide it. Separately, the Regulations now provide that where an employer fails to recognise the right to paid leave, fails to give a reasonable opportunity to take it or fails to warn that it will be lost, the four weeks of core leave carry forward, including leave that was taken but not paid. Accumulation stops at the end of the first full leave year in which the failure has ceased. For a contractor treated as self-employed for several years and then found to be a worker, the exposure can extend well beyond two years and, where the right was never recognised at all, may reach across the engagement. That depends on the carry-forward conditions being met and on the route by which the claim is brought.

And do not assume a flat 8 per cent pension liability. Automatic enrolment applies to a jobholder aged at least 22 and under State Pension age, earning more than the £10,000 trigger for 2026/27 in the relevant pay reference period, and working or ordinarily working in Great Britain under their contract. The 8 per cent is calculated on qualifying earnings, which is the band above £6,240 and up to £50,270, not on the whole fee. On a £40,000 engagement the contributions bite on about £33,760; on a £120,000 engagement on about £44,030. The figure is real but it is smaller than the headline suggests, and for some individuals there is no duty at all.

9. CEST: WHAT IT DOES, AND WHAT IT DOES NOT DO

HMRC's Check Employment Status for Tax tool is worth running and worth keeping, with the inputs and not merely the answer. It is not a safe harbour and it should never be described as one, either to a board or to a contractor.

9.1 What HMRC says

HMRC's stated position is that it will stand by all results given by the tool as long as the information given remains accurate and is in accordance with its guidance. It will not stand by results achieved through contrived arrangements deliberately created or designed to get a particular outcome, which HMRC characterises as deliberate non-compliance. That characterisation matters, because deliberate behaviour reaches the twenty-year assessment window and the higher penalty range rather than the six-year careless one. Where working arrangements change materially, HMRC's position is that the original determination no longer holds and the tool should be run again.

9.2 Replacement options on a takeover

- **Every condition is assessed afterwards.** "Accurate", "in accordance with our guidance" and "not contrived" are all matters HMRC decides on enquiry, years later, against the arrangement as it was actually operated rather than as it was described when the tool was run.
- **It is a view on status, not a binding ruling.** HMRC's own words are that the tool gives HMRC's view. It creates no statutory clearance, no binding ruling and no estoppel. A tribunal deciding status applies the common law tests to the facts, and the CEST output has no special standing before it.
- **It does not weigh the mutual obligations.** CEST does ask whether a contract exists, and HMRC treats that as establishing the basic requirements of mutuality. But HMRC states in terms that the answer to that question does not affect the determination, and the tool does not go on to evaluate the nature or extent of the mutual obligations. That is the element most often in issue in a genuine contractor arrangement, and the tool does not reach it.
- **It frequently returns no answer at all.** On the most recent usage data HMRC has published, which covers 2019 to 2021 and predates the 2025 revision of the tool, about one use in five produced an outcome of "unable to determine".

> **It can, however, serve as the status determination statement.** HMRC's published position is that an accurate CEST output can constitute a valid statement, provided the statutory conditions are met: a conclusion, the reasons for it, and reasonable care in reaching it. CEST supplies the first two. It cannot supply the third, because reasonable care is yours and depends on the accuracy of what you typed in and on whether you considered how the engagement actually operates. The output can be the document; the file behind it is what makes the document good.
>
> **Keep the whole result, not a screenshot.** The questions, the answers you gave, the outcome, the reasoning and the version of the tool. CEST does not store your result. An output without its inputs is close to unusable in an enquiry, because nobody can show what question was actually asked.

One figure worth knowing before anyone tells you this is straightforward. The Committee of Public Accounts reported in May 2022 that government departments and agencies owed, or expected to owe, HMRC £263 million in a single year through incorrect administration of these rules. Those are organisations with direct access to HMRC and no shortage of advice.

10. CONSULTANCY AGREEMENTS THAT REFLECT REALITY

Drafting is not a defence on its own. What a well-drafted agreement does is describe accurately a relationship that is genuinely independent, so that when the question is asked four years later the answer is written down and the evidence supports it. What a badly drafted one does is create a document that contradicts the working arrangements, and that is worse than silence, because it can be read as evidence that the parties knew what the right answer looked like and drafted around it.

Factor	What a defensible clause looks like	What makes it worthless
Substitution	A right to supply a suitably qualified substitute at the contractor's own cost and risk, with your right to refuse limited to objective grounds: qualifications, security clearance, conflict of interest	Refusal in your absolute discretion; approval with no stated criteria; a right to send only another of your own people; a clause the hiring manager would reject on sight
Control	You specify what and by when, through deliverables, milestones and acceptance criteria. The contractor decides how, when and where, subject only to stated operational constraints	A line manager, an appraisal, a place on the organisation chart, inclusion in disciplinary or performance processes, attendance at internal meetings unconnected with the deliverable, holiday booked through your system
Mutuality	Engagement on a defined statement of work with a scope and an end point. No obligation on you to offer further work and none on the contractor to accept it. No availability retainer	A rolling annual consultancy agreement with a three-month notice period and a monthly retainer paid whether or not work is done
Financial risk	A fixed or milestone fee for a defined output. Rectification of defective work at the contractor's own cost and in its own time. The contractor's own professional indemnity and public liability cover at stated levels. The contractor bears its own overheads and training	A day rate against a timesheet, paid for time rather than output. Expenses reimbursed at cost. No rectification obligation and no insurance
Equipment	The contractor provides its own. Where you must supply something, for access to a system or for security or regulatory reasons, the contract says so and says why	A clause saying the contractor provides its own equipment, against a company laptop, a company phone, a desk and a parking space

Factor	What a defensible clause looks like	What makes it worthless
Status hygiene	An obligation on the contractor to notify any change in its own working practices, and a right for you to re-determine status on a material change	Nothing, so that the determination made at the outset silently goes stale

Strip the employment precedent language out. Holiday, sick pay, benefits, a grievance procedure, a probationary period and employee-style restrictive covenants belong to a different document. The vocabulary goes with them: “salary”, “annual leave”, “line manager”, “probation”. Each one is a small piece of evidence against you, and collectively they tell a story the contract’s own status clause cannot outrun.

A word on the status clause itself. A clause saying the parties agree the contractor is self-employed and not an employee is worth having for clarity between the parties, and it is worth very little against HMRC or a tribunal, and nothing at all where it contradicts what actually happens. Neither is bound by what the parties chose to call the relationship, and in a rights claim a term purporting to exclude statutory protection is disregarded outright. Include it, but never let anyone treat it as the answer.

And on indemnities from the contractor’s company. Where the off-payroll rules apply and you are the deemed employer, the PAYE liability is your own statutory liability to HMRC. An indemnity cannot transfer it, reduce it or discharge it, and it gives HMRC no reason to assess anybody else. What it gives you is a right of recourse after you have paid, worth exactly the covenant strength of a company that is typically a single-director shell with no retained reserves, and which may well have been dissolved by the time the assessment arrives. A personal guarantee from the individual behind it is the mechanism most likely to improve recovery, and it is heavily resisted. Have the indemnity. Do not treat it as mitigation in a board paper.

11. DOCUMENTING THE RELATIONSHIP, AND KEEPING THE RECORD

11.1 What a status review actually involves

- **Map the population.** From the purchase ledger, not the HR system. Sole traders, personal service companies, members of LLPs, agency workers, umbrella workers, overseas contractors, non-executives, family members, and above all former employees re-engaged as consultants. For each: the engaging entity, the start date and unbroken duration, the engagement route, the rate and basis, the work actually done, who they report to in practice, and whether the individual has ever been on your payroll.
- **Triage by risk.** The high-risk profile is well established: a long unbroken engagement, full-time hours, a role also performed by employees, integration into the organisation, a substitution right nobody believes in, no financial risk, equipment provided by you, a notice period, exclusivity. A former employee re-engaged to do the same job remains the commonest high-risk profile we see.
- **Test the contracts against what actually happens.** This is the stage that gets skipped and the stage that matters. Interview the hiring managers and the individuals. HMRC's own guidelines say the same thing from the other direction: look at the day-to-day working arrangements, consider whether the written terms are inconsistent with the working practices or have been varied by verbal agreement, and ask whether refusing a substitute would happen in practice.
- **Document the outcome.** A written determination per engagement with the reasons and the evidence relied on, a decision log, the CEST output retained with its inputs, and a remediation list with owners and dates.

> **A word on privilege, and it is a qualified one.** A status review produces a document that a buyer's diligence team, and potentially HMRC, may one day read. A spreadsheet on a shared drive headed, say, "most of these are probably inside" is a gift to both. Involving a lawyer does not make an exercise privileged, and it certainly does not make everything generated in it privileged: legal advice privilege attaches to confidential communications between lawyer and client for the purpose of giving or receiving legal advice, and a good deal of what a status review produces is factual material that is not privileged at all. Where the risk is real, take advice on how to scope and run the exercise at the outset, rather than deciding afterwards that you wish you had.

11.2 The record-keeping mismatch

Under the PAYE regulations, PAYE records must be kept for not less than three years after the end of the tax year to which they relate. HMRC can assess for four years as a matter of course, six where the loss of tax was careless, and twenty where it was deliberate. A business keeping the statutory minimum may find it cannot defend an assessment it can still lawfully receive.

Our recommendation. Keep the status file for at least seven years from the end of the tax year in which the engagement ended. That aligns with the period a tax covenant on a sale would normally run and covers the careless-conduct window with a margin. It does not cover the twenty-year window that applies where HMRC alleges deliberate behaviour, and no proportionate retention period would; the answer to that exposure is the quality of the contemporaneous record rather than its age. Revisit the period if the proposal to align the National Insurance time limits with the income tax limits is enacted, because the tail would then lengthen considerably.

Keep for each engagement	Keep at company level
The signed contract, every statement of work and every variation	The size determination for each tax year, to evidence any reliance on the small client exemption
The status determination statement and its reasons	The status policy and the decision log
The CEST output, with the inputs	The escalation route and who owns the decision
The evidence base: the file note of the hiring manager interview, the working practices questionnaire, anything showing a substitution offered or exercised	Training records for the people making determinations
Invoices and the payment record	Correspondence with each agency and umbrella in the chain, including the responses on residence and connection
Any representations under the disagreement process, and your response, with dates	The date and outcome of each periodic review

12. STATUS ON A BUSINESS SALE

Contractor status is one of the reliable ways for a transaction to lose momentum in week six, because it is invisible until somebody looks in the right place.

12.1 How a buyer finds it

A competent buyer's solicitor does not start with the contract file. They ask for the purchase ledger, because the contracted population and the paid population diverge, and the individuals paid through accounts payable for years with no contract anywhere are exactly where the exposure sits. They will also ask for every status determination statement with its reasoning, the CEST outputs with their inputs, any representations under the disagreement process, evidence of the target's own size determination for each year, and all HMRC correspondence including any employer compliance review.

12.2 Where the liability goes

Structure	What happens
Share sale	The company is the same legal person before and after. Its PAYE, National Insurance, levy, interest and penalty history stays inside it and the buyer acquires it with the shares
Asset sale	The buyer does not take the seller's tax history. But it is not clean. Where there is a relevant transfer or a service provision change, anyone who is in truth an employee and is assigned to the organised grouping that transfers moves across with their accrued rights. And where the arrangements continue after completion and the off-payroll rules apply to the buyer, the buyer becomes the client for those engagements, with the same misclassified population

Two qualifications before anyone relies on that. TUPE does not operate on an asset sale simply because assets change hands. There must be a relevant transfer of an economic entity retaining its identity, or a service provision change, and the individual must be assigned to the organised grouping that transfers. Whether a misclassified contractor population meets either test is a question of fact, and on some deals the answer is that it does not.

And whether workers, as distinct from employees, transfer at all is genuinely unresolved. The definition in the regulations covers an individual who works for another person under a contract of service "or otherwise", which is wider than the employment law definition of employee, and an employment tribunal has held that workers are within it. That decision is first instance and not binding, no appellate court has decided the point, and the Government's 2026 call for evidence on TUPE did not ask the question. The safe planning assumption is that they may transfer, and the transaction documents should allocate the cost if they do rather than leaving both sides to find out from a tribunal three years later.

12.3 Warranties, indemnities and disclosure

A warranty is the wrong instrument for a known, quantified, contingent liability. A warranty claim is measured by the difference between the value of the shares as warranted and their actual value, with

causation, remoteness and a duty to mitigate all in play. An indemnity is a payment obligation, and if it is drafted to operate pound for pound it does so without any of that. Whether it actually does depends on the drafting: scope, exclusions, the claims procedure, any notification conditions and whether mitigation has been expressly disapplied all bear on it, and an indemnity drafted loosely can end up being argued as a damages claim after all. On an earnings-multiple valuation a one-off historic assessment is a balance sheet item, so a £1 million assessment may reduce the warranted value of the shares by considerably less than £1 million and the buyer recovers less than the cash it has to find.

The argument that actually moves the price runs the other way. If the contractors have to go onto the payroll going forward at materially higher cost, that is a recurring cost, and the buyer will argue for the multiple on it. Sellers should expect that argument and model it before the first meeting rather than meeting it across a table.

- **Disclosure will usually defeat the warranties, and usually will not touch the tax covenant or a specific indemnity.** None of that is automatic: it turns on what the sale agreement says. The effectiveness of disclosure is measured against the language the parties agreed rather than against any implied standard of fairness, so the wording matters, and a well-advised buyer will bargain for a fair disclosure standard and a well-advised seller against one. But a covenant and an indemnity are payment obligations rather than statements of fact, and the whole premise of an indemnity is that the risk is known. A seller who "gets ahead of it" by disclosing has usually done the opposite of transferring the risk: it has told the buyer precisely what to indemnify against, handed over a price argument, and created a documented record that it knew, which is evidence going to the longer assessment windows if HMRC ever reads it.
- **The de minimis is what quietly destroys the protection.** Status claims do not arrive as one large claim. They arrive as many small ones, one per contractor per year. Unless claims arising from the same subject matter are aggregated and treated as a single claim, or the de minimis and the basket are disapplied for the specific indemnity, the buyer's protection is theoretical.
- **Match the period to the assessment window, not to deal convention.** General warranties commonly run for eighteen months to two years, which expires long before HMRC's window closes. Tax warranties and the tax covenant commonly run to seven years, and that is where status protection has to live.
- **Do not cede conduct of an HMRC enquiry to the seller.** The seller's incentive is to fight the historic position. The buyer's is to regularise going forward. A fought historic position makes the going-forward position worse, and the buyer is the one living with the consequence.

12.4 Price, retention and escrow

Tool	Buyer's view	Seller's view
Price reduction	Best. Cash never paid out and never chased	Worst. A certain, immediate, irrecoverable loss on a liability that may never crystallise
Escrow	Funded and insulated from the seller's later solvency	Acceptable. Still the seller's money, delayed, and it earns interest

Tool	Buyer's view	Seller's view
Retention held by the buyer	Funded, but invites a set-off dispute	Preferred over escrow where the seller trusts the buyer
Specific indemnity	Weakest of the protections: unfunded, and worth the seller's covenant strength years later	Best. Costs nothing today and may cost nothing ever

The common landing is a hybrid: the change of arrangements takes effect after completion on an agreed timetable, the buyer prices the increased going-forward cost into its model and takes it off the price, and the historic exposure sits behind a specific indemnity with a funded retention or escrow of two to three years covering the front end. Release the retention in tranches as each tax year falls outside the assessment window, and tie release to defined events rather than merely to the passage of time where an enquiry is live.

One reason regularising before completion rarely works, and it is not said out loud often enough. Changing the arrangements can be read by HMRC as evidence that the historic position was wrong, and both sides know it. That is a reason to think carefully about how a change is made and documented. It is not a reason to leave an arrangement you believe to be wrong in place: once you know an engagement is misclassified, continuing it unchanged is a separate and worsening problem, and the behaviour question that drives the penalty range and the assessment window is looking precisely at what you did once you knew. The right answer is usually to correct the position promptly and get our tax colleagues' advice on any disclosure to HMRC at the same time, not to wait for a convenient moment.

13. COMMON MISTAKES, AND WHAT THEY ACTUALLY COST

The mistake	What it costs
Assuming the £15 million threshold already applies to you	Applying the wrong regime for up to two tax years. If you stop issuing determinations on the strength of it, you are the deemed employer by default for every engagement in the meantime
Ceasing to be medium or large and simply stopping	You are treated as medium or large for the whole tax year and become the deemed employer for the engagement. A withdrawal statement before 6 April prevents it
A blanket determination that every contractor is caught	HMRC treats it as a failure of reasonable care, which means what you issued was not a determination at all and the liability never left you
Running CEST and filing the answer without the inputs	The output alone is unusable in an enquiry, because nobody can show what question was asked. It is also weak evidence of reasonable care on its own
Relying on a substitution clause nobody has ever used, and nobody would ever accept	The clause is likely to be disregarded as unrealistic, leaving personal service established. Non-use alone is not the problem; the problem is that it could never be used
Re-engaging a leaver as a consultant to do the same job	One of the strongest indicators of continuing employment. It is likely to go to the top of any HMRC or buyer review list, and it is very difficult to defend
Assuming an agency in the chain means no exposure	For the off-payroll rules the agency is the fee-payer by position in the chain, but it becomes the deemed employer only if you have issued and passed down a valid determination, and HMRC can come back up the chain if the agency fails. For the umbrella rules the agency's residence and connections decide whether you are caught
Taking comfort from an indemnity given by the contractor's own company	It does not stop HMRC assessing you and gives you no defence. It is a right of recourse against a company that is usually a shell by the time the bill arrives
Keeping the status file for the statutory three years	The assessment window is four years, six for carelessness and twenty for deliberate behaviour. A three-year file cannot answer any of them
Forwarding an HMRC joint liability disclosure to the agency or the umbrella	May constitute a criminal offence unless HMRC has consented. Check before it is circulated

The mistake	What it costs
Treating the tax answer as disposing of the employment-rights question	A person can be self-employed for tax and a worker for rights. Holiday pay, minimum wage and pension arrears sit on their own timetable and are claimed by the individual, not assessed by HMRC
Leaving the determination in place after the working arrangements change	A determination made on terms that no longer apply is evidence of a failure to reconsider, and HMRC treats failing to re-determine on a material change as a failure of reasonable care
Asking whether the umbrella is UK resident	The wrong question. What decides whether you are caught alongside the agency is whether the agency contracting with you is UK resident, and whether it is connected with the umbrella
Assuming an umbrella or a personal service company takes the worker outside the agency worker rights	Neither does so by itself. The Regulations say that supply through, payment through or employment by an intermediary does not prevent agency worker status, so the statutory conditions still have to be worked through. Where they are met, twelve weeks in the same role brings equal treatment on basic conditions
Treating the two-year holiday pay backstop as a cap on the exposure	It applies to unlawful deduction claims. On its wording it does not reach a claim on termination under the Working Time Regulations, and unrecognised leave carries forward across the engagement

14. THE CONTRACTOR STATUS RISK CHECKLIST

Work through this for each engagement that is not on the payroll. An answer in the right-hand column is not fatal on its own, and a run of them is. Keep the completed sheet with the status file.

The engagement

Check	Yes / No	Look again if
Is there a written contract, signed, and is the current statement of work in place?		No
Has the engagement run for more than twelve months without a break?		Yes
Does the individual work broadly full-time hours for you?		Yes
Is the same role performed by anyone on your payroll?		Yes
Was the individual ever your employee?		Yes
Is the engagement for a defined output rather than for time?		No

The factors

Check	Yes / No	Look again if
Is there a genuine right of substitution, with refusal limited to objective grounds?		No
Would the hiring manager actually accept a substitute?		No
If a substitute has ever been offered or used, is it documented?		No
Does the individual decide how the work is done?		No
Is the individual free from your appraisal, disciplinary and performance processes?		No
Is the individual off the organisation chart, without a line manager?		No

Check	Yes / No	Look again if
Is there any obligation on you to offer further work, or on the individual to accept it?		Yes
Does the individual bear the cost of rectifying defective work?		No
Does the individual carry their own professional indemnity and public liability cover?		No
Does the individual provide their own equipment?		No
Does the individual work for other clients?		No

The regime, and your obligations

Check	Yes / No	Look again if
Have you established whether you qualify as small, at group level?		No
Have you aggregated turnover across connected businesses?		No
Have you identified the tax year from which any change of size takes effect?		No
If the off-payroll rules apply, has a determination been given to the worker?		No
Has the determination been passed down to the party you contract with? (HMRC guidance, and it protects the chain)		No
Does the determination state reasons rather than a bare conclusion?		No
If the determination was grouped by role, are the engagements in the group genuinely identical?		No
Is there a documented process for responding to representations within 45 days?		No

Check	Yes / No	Look again if
If you are about to fall below the thresholds, is the withdrawal diarised before 6 April?		No

The supply chain

Check	Yes / No	Look again if
Do you know every entity between you and the individual?		No
Is there an umbrella company anywhere in the chain?		Yes
If so, does the umbrella contract directly with you?		Yes
Have you confirmed in writing that the agency contracting with you is UK resident?		No
Have you confirmed that the same agency is not connected with any umbrella in the chain?		No
Is any business in the chain presented as an umbrella that may not actually employ the worker?		Yes
Where a contractor uses their own company, does it actually pay out a substantial proportion of what it receives as earnings?		No
Do your terms of business carry warranties on residence and connection, with a duty to notify changes?		No

The record

Check	Yes / No	Look again if
Is the CEST output retained together with the inputs?		No
Is there a file note of the conversation with the hiring manager?		No
Are the determination and its evidence kept for seven years from the end of the tax year?		No

Check	Yes / No	Look again if
Is there a diarised periodic review, and a trigger for re-determination on material change?		No
Have the people making determinations been trained, and is that recorded?		No

15. STATUS REVIEW WORKSHEETS

Two working tools. Worksheet A is completed once for the business. Worksheet B is completed once for each engagement that is not on the payroll, and kept with the status file.

Worksheet A: the business

Question	Where the answer comes from	Answer	Consequence to check
Do we qualify as small for the current tax year?	The last financial year whose accounts filing period ended before 6 April		If yes, the original rules apply and the contractor's own company carries the risk. If no, the off-payroll rules apply and we do
Which financial year did that answer come from?	Accounting reference date plus nine months for a private company		Filing early does not accelerate the answer and filing late does not defer it
Are we a member of a group, and is the group small?	Group accounts and the parent undertaking's position		A small subsidiary of a large group is not small
Are we connected with any other business, and what is the aggregated turnover?	Common control, spouses and civil partners, relatives, business partners		Turnover is aggregated; balance sheet total and headcount are not. Two of three conditions must still be met
Are we jointly controlled by two or more persons, one of which is an undertaking?	The shareholders' agreement and the accounting analysis of joint control		The joint venturers are treated as a group and the test runs on group figures

Question	Where the answer comes from	Answer	Consequence to check
From which tax year does any change of size take effect?	The table at section 4.2		Acting a year early is as expensive as acting a year late
If we are ceasing to be medium or large, has the withdrawal been diarised?	The determinations currently outstanding		Withdrawal must be given before the tax year begins, or we are treated as medium or large for the whole year
Is there an umbrella company in any of our supply chains?	Written confirmation from each agency		There is no small company exemption from the umbrella liability
Is each agency that contracts with us UK resident and unconnected with an umbrella?	Written confirmation, refreshed annually		If either answer is no, we are a relevant party as well as the agency

Worksheet B: the engagement

Factor	What the contract says	What actually happens	Where they differ, and what we do about it
Personal service and substitution			
Control over how the work is done			

Factor	What the contract says	What actually happens	Where they differ, and what we do about it
Obligation to offer and to accept work			
Financial risk and rectification			
Equipment and facilities			
Integration: reporting line, appraisal, meetings, systems			
Exclusivity and other clients			
In business on their own account			

Record	Held?	Note
Signed contract and current statement of work		
Status determination statement, with reasons		
Evidence it was given to the worker and passed down the chain		
CEST output, with the inputs		
File note of the hiring manager interview		
Evidence of any substitution offered or exercised		
Agency and umbrella confirmations on residence and connection		
Date of last review, and the trigger for the next		

How to use Worksheet B. Complete the middle column from the contract and the third column from a conversation with the person who actually manages the work. Where the two columns agree, the engagement is far easier to defend and the worksheet is the evidence. Where they differ, the fourth column is the decision: change the contract, change the practice, or accept that the engagement is inside and deal with it deliberately. A worksheet with an empty fourth column against a real difference is worse than no worksheet, because it records that the difference was noticed and nothing was done.

16. How Fusion Law can help

We act for owner-managed and growth businesses on the contractual and documentary side of contractor engagement, and on the transactions where it eventually surfaces.

Contractor and consultancy agreements. Drafting and negotiating agreements and statements of work that describe the arrangement as it is actually operated, with substitution, control, mutuality, financial risk and equipment provisions that are both accurate and defensible.

Contract reviews across a population. Reading existing agreements against what actually happens, interviewing the hiring managers, identifying the engagements we consider at risk, and producing a remediation list with owners and dates.

Status documentation and process. The determination and its reasons, the disagreement process and the 45-day discipline, the periodic review, the re-determination trigger, and the record-keeping that makes all of it defensible years later.

Supply chain terms. Terms of business with agencies and umbrella providers: the information obligations, the warranties on residence and connection, the notification duties, the indemnities and the set-off, and the due diligence that sits behind them.

Indemnities and set-off between the parties. Drafting them properly, and advising honestly on what they can and cannot achieve where the statutory liability is your own.

The employment-rights side. The worker status analysis, the holiday pay, minimum wage and auto-enrolment exposure, the agency worker rights that run alongside all of it, and the remediation of an engagement that has to change, managed with the claim risk in mind.

TUPE where a contractor base transfers. Whether the population transfers, the information and consultation decision, and how the risk is allocated in the documents.

The status workstream on a sale. Diligence responses, the warranty and indemnity architecture, disclosure strategy, the retention and escrow mechanics, and the conduct provisions.

Who does what

Workstream	Led by
Contractor and consultancy agreements, statements of work, agency and umbrella terms of business, status documentation and process, the employment-rights analysis, TUPE, and the status workstream on a sale	**Fusion Law**
The tax analysis, the deemed employment payment, quantification of a tax exposure, any HMRC enquiry, position or settlement, and any CEST position	**Fusion Tax, or your own tax adviser**

Workstream	Led by
Payroll operation, the running of PAYE and National Insurance, and the numbers behind a remediation	**Fusion Accountancy, or your payroll provider**
Personal financial planning for an individual whose engagement changes	**Fusion Financial, where the individual wants it**

We do not undertake the tax analysis, HMRC enquiries or settlements, or CEST positions. Saying so now avoids the gap that opens when everyone assumes somebody else has the tax point. We are a non-contentious practice: we do not run tribunal or court proceedings, and where a status dispute becomes genuinely contentious we refer it out. Where appropriate, we work alongside our tax, accountancy and financial-planning colleagues across Fusion Consulting Group.

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