

Public Accounts Committee evidence session 04.03.2019 – HMRC follow-up

Q no.	Q from	Transcript	HMRC response
BBC and Personal Service Companies			
Q21-22	Caroline Flint	<p>Caroline Flint: In the testimonies that the Committee received from BBC presenters who have used PSCs, a number of them describe being pursued very aggressively by their employer to go on to PSCs, but a number of them also said they had been pursued aggressively by HMRC. Some of them received many text messages telling them to get in touch or the bailiffs would be coming round. Has the way in which HMRC has pursued this been reasonable, when it is the result of a much wider problem at the BBC?</p> <p>Jim Harra: I don't recognise those text messages, and I don't recognise the idea that HMRC uses bailiffs, either. It is the case that we require personal service companies to comply. There has been a high level of non-compliance by them, and we rightly pursue them and insist that they meet their obligations. That includes taking them to tribunal if they won't comply. We do that.</p> <p>Chair: In the case of the text messages, we have some written evidence, which we can make sure is anonymised. We will send that to you.</p> <p>Jim Harra: Please do. Where we have unpaid tax, we certainly send people messages saying that they must pay their tax, but I am not aware that HMRC uses bailiff firms.</p> <p>Caroline Flint: If the individuals are happy to provide some of that anonymised information, we will do so.</p>	<p>If a customer has difficulty paying their tax, they should not ignore the debt but should get in touch with us to discuss their options, such as more time to pay.</p> <p>Our Debt Management teams use text messages to prompt contact from customers regarding any outstanding debts they may have. Using text messages is a cost effective way of encouraging our customers to make contact prior to any visit, and of giving a late opportunity to make payment or agree a suitable time to pay arrangement, thus avoiding additional charges via any enforcement action. We have seen an increase in customer contact, full payments, partial payments and time to pay arrangements as a result of these messages, enabling us to focus our enforcement officer resources on visiting the most persistent non-payers.</p> <p>HMRC does not use bailiff firms. The phrases used in the texts are 'Officer from HMRC', 'Our Enforcement Team' and 'HMRC Enforcement Officer'. The officers referred to in these text messages are HMRC employees whose primary role is to visit the debtor's premises and collect money owed where earlier attempts to resolve the debt through letter and telephone contact with the customer have failed.</p>
Q34-44	Lee Rowley	<p>Lee Rowley: What is your definition of "thoroughly tested"? That is a phrase you used a moment ago, in answer to one of my questions.</p> <p>Jim Harra: We have thoroughly tested the tool. It is an ongoing process. For example, last summer, with a set of expert stakeholders, we worked through a number of scenarios and a number of test cases based on</p>	<p>Testing and Development of Check Employment Status for Tax (CEST)</p> <p>The CEST tool was developed using agile project management principles, which is an iterative approach. In a series of workshops, officials and external experts, including lawyers, tax and IT</p>

litigation outcomes to check that the tool gives the correct answer that you would expect a tribunal to give if the facts had been put before them. We continually update the tool as new tribunal and court decisions are made about employment status, as well as continually increasing its scope so that it can respond to more and more types of cases, and give a lower and lower non-response rate. It is an ongoing, unending process.

Lee Rowley: How many changes have you made to the tool in the last 12 months based on that testing?

Jim Harra: I couldn't tell you offhand.

Chair: Could you write to us?

Lee Rowley: Have you made any? Is it more than zero?

Jim Harra: I am sure we have, because there have been decisions, and we have committed to making further changes to it before the 2020 measures come into force, so that it applies to a wider range of engagements than it currently gives answers to.

Lee Rowley: What about the initial testing that you did? How much testing did you do before you released it?

Jim Harra: We tested it with stakeholders in a test format before February 2017, when we concluded that it was giving good enough results that we would stand by the results that it was giving.

Lee Rowley: What do you mean by good enough results? What were your KPIs?

Jim Harra: Results that our experts regarded as accurate results that they would have given if they had worked the cases manually, rather than using the tool.

Lee Rowley: Who were your experts?

Jim Harra: We have employment status teams in HMRC who work cases—for example, cases that are in dispute, cases that might be going to tribunal or cases that fall outside the tool. Of course, the tool supersedes an earlier online tool called the employment status indicator, which we already had for a number of years. We have that expert team, whose job it is to put the decision making into this tool from the books and from their head. We then test that with external stakeholders as well.

professionals, developed the set of rules that underpin the tool. The workshop participants agreed the key relevant facts and points of law and then tested the rules that went into the tool to ensure it gave the correct answer. The rules were then tested against live and settled cases. Stakeholders, including the BBC, were involved in testing and developing the tool in a series of workshops run by HMRC across the UK. We have not retained the scripts or other material from testing, including workshop attendee lists as this was not a project requirement. The results of the testing is the set of rules used by the tool, and is contained in the coding and decision matrix. These are publicly available: github.com/hmrc/off-payroll-decision/blob/master/docs/1.2.0-final.xlsx.

The settled cases used in testing are subject to taxpayer confidentiality. However, some of the Tax Tribunal cases used in testing have been made public:

www.gov.uk/government/publications/cest-tool-tested-against-tax-cases/test-results-produced-after-cests-development.

In two of the twenty four cases, CEST returned a different outcome to the First-tier Tribunal decision, which HMRC did not appeal. First-tier Tribunal decisions do not set a binding precedent. HMRC takes many factors into account when deciding whether to appeal First-Tier Tribunal judgments.

In these specific cases, the judgment in Castle Construction (Chesterfield) Ltd acknowledged that the case was finely balanced. In the case of Novasoft Ltd, commentators expressed surprise at the results. HMRC would expect to contest similar cases in future, and the CEST results reflect that position.

Success criteria for CEST and KPIs

The Committee wished to know what success criteria we set for CEST. The key success criteria for developing CEST were for it to:

Lee Rowley: How many thousands of scripts did you develop in order to verify its correctness?

Jim Harra: I can't tell you offhand, but I can give you details of the testing that we have done.

Lee Rowley: You could write to us with that. What was the threshold it had to pass for accuracy, percentage-wise?

Jim Harra: We believe it gives the correct answer—

Lee Rowley: What was the percentage threshold it had to pass before you released it?

Jim Harra: There is no question of us releasing a tool that we believe gives incorrect answers.

Lee Rowley: What was the percentage threshold?

Jim Harra: There is no threshold of incorrect answers that we tolerate.

Lee Rowley: You must have had a sign-off process in order to get this tool out, so you must have had a threshold.

Jim Harra: There is no threshold of incorrect answers that we tolerate.

What we have tolerated is a threshold of cases where the tool will not give you an answer. When we released it, it did not give an answer in about 15% of cases. We are committed to expanding it so that it gives answers in more cases.

Lee Rowley: So your success criteria were 100%, and you will write to us to explain how many thousands of scripts you assessed that 100% on.

Jim Harra: I will write to you to describe the process that we have gone through to continually test that.

Please could you write to the Committee outlining:

- How many changes have you made to the tool in the last 12 months based on testing?

- What initial testing did you do and what was the nature of this testing??

In particular, what testing did you do before the tool was released?

- What results did the testing show? How did you measure these results?

Did you have specific KPIs?

- Which external stakeholders did you test the tool with?

- be 100% accurate
- give an answer at least 80% of the time
- be widely used

These criteria have been met, with the service being used more than 800,000 times since its introduction. CEST makes a clear decision of employment or self-employment 85% of the time. CEST outcomes (on average around 40% employed and 60% self-employed) are in line with our expectations and understanding of case law. Although its use is advisory and not mandatory, if CEST is completed correctly and in accordance with our guidance, HMRC will stand by the results.

In the 15% of cases where CEST cannot reach a decision it returns an 'unable to determine' answer. We provide further guidance and a telephone helpline to support customers when this happens. The NAO report shows the BBC have been getting decisions in 100% of cases using CEST above the 85% average.

Have there been any changes to CEST in the last 12 months?

The Committee asked if there have been any changes to CEST in the last 12 months. There have been 29 minor changes in this period to update software and correct issues such as broken links. However, there have been no significant changes to the CEST rules in this period as there has been no change to the underpinning principles of employment status for tax and the tool continues to return accurate results.

We are confident in CEST and the answers it provides, and we are working with stakeholders to look at how CEST and wider guidance can be enhanced, to best help customers make employment status determinations. Changes and enhancements to CEST are in development with stakeholders, and will be available for customers to use in advance of reform to the off-payroll working rules in the private sector in April 2020.

		<ul style="list-style-type: none"> - How many thousands of scripts did you develop in order to verify the tool's correctness? - If you did not have a percentage threshold that the tool needed to pass for accuracy, how did you determine that the tool was fit for release? - What was the process for continually testing the tool? 	
Q44 – 46	Chair	<p>Chair: Can I ask something about this? One of the issues that has been raised with me—particularly on tech and IT—is that the way people work in certain sectors means that they will be paid more to work on a personal service company arrangement, because there will never be a full-time employment role in that and they will hop around. However, even if it were possible for them to be paid as an employee, they would be paid less, so the argument has been put to me that the tax take would be pretty much balanced. Have you done a detailed analysis of the tax take differences by applying the tool—particularly for the roll-out in 2020?</p> <p>Jim Harra: The CEST tool is not a liability-assessing tool, so it does not tell you how much tax you owe.</p> <p>Chair: Exactly. Have you done some assessment of that elsewhere in HMRC? This is a bit different from the public sector, where whole types of business and methods of doing business have grown up, rightly or wrongly, because the economy is currently very international, particularly in sectors such as tech and IT. Have you done any analysis of individual sectors—those ones or others—to show what you would get if all those staff were employed on lower salaries than they would earn through this route?</p> <p>Jim Harra: I am not aware that we have. The changes that we introduced in 2017 and will introduce in 2020 do not alter the ability to use personal service companies, if that is what people want to do, for other reasons. They merely apply the 2000 tax rules, which say that regardless of which of these two models you use, the tax outturn must be equivalent.</p> <p>Chair: We might pursue that with you offline, because it is not quite the direct point of today's session.</p>	<p>The Committee also asked if we had made an assessment of the impact on tax receipts if contractors were paid less as a result of the reform. Contractors' pay may vary for any number of reasons. HMRC estimates the reform has raised £550 million in income tax and National Insurance Contributions in its first year. www.gov.uk/government/publications/off-payroll-working-in-the-private-sector-ir35-budget-2018-brief.</p>
Q46 – 48	Chair	<p>Chair: We might pursue that with you offline, because it is not quite the direct point of today's session. When Ms Flint was questioning you, you said</p>	<p>Length of time to complete off-payroll enquiries</p>

that you were looking at people who were avoiding tax, and that is one of the reasons you pursued this. We have very clear evidence, and Lord Hall has now acknowledged, that BBC presenters were asked or told to go on to personal service companies. They were not deliberately choosing to do that to avoid tax; they were told, “If you don’t do this, you will lose your job.” Do you think it is appropriate to use that tax avoidance pursuance route—five years to a tribunal, huge costs and so on—as a solution? Let us be clear that none of us is saying that people should not pay the tax they owe, but is that approach the best way when they are all trying to reach a settlement, too?

Jim Harra: I am not aware that I described it as tax avoidance; if I did, I apologise. The use of a personal service company is not a contrived tax avoidance scheme—

Chair: Sorry; perhaps I misphrased that. They avoided tax by using a PSC, even if it was not a tax avoidance vehicle.

Jim Harra: Since 2000, people have not been able to escape employment taxes by using a personal service company, because those tax rules said that regardless of whether you use a PSC or not, the same tax applies if the nature of the underlying relationship is equivalent to employment. We found that when we placed that compliance obligation on to PSCs, there was a very high level of non-compliance by them for a variety of reasons, from ignorance or carelessness through to deliberate non-compliance. We are not applying avoidance measures to tackle this; in fact, the measure that applies—the tax level—is exactly the same as it was in 2000. All that we have done is to say that apart from the PSC, there are people in the supply chain who ought to have obligations in this space, particularly the engagers.

Chair: What timeline do you aim for? In an ideal world, how long would you expect a tax investigation to be open on somebody before it goes to a tribunal? From some of the evidence that we have had privately, we hear that five years is common. Do you think that is an acceptable time?

Jim Harra: I think it varies considerably, depending on the point that is at issue and whether we can settle by agreement or the dispute ends up in litigation. The vast majority of our inquiries are much quicker than that. I can get you some details about the elapsed time on inquiries.

The Committee asked about the time taken for HMRC to conclude off-payroll enquiries and concerns that cases were taking five years to complete.

The average time taken to complete an off-payroll enquiry is 18 months from start to finish. There can be significant variation from this as determining the employment status of an individual depends upon the facts of their engagement. While the decision is normally straightforward, in some cases it can be more complex, and establishing the facts can be a lengthy process, depending on how quickly information is provided by the individual worker, their end clients and in some cases employment intermediaries. Where cases are contested and progress to tribunal and subsequently to appeal, they can take considerably longer to conclude.

Chair: That would be very helpful. We know that there are tribunal issues across Government, not just in HMRC. We may come back to you in writing on some of those points, because we have had some quite interesting evidence, but I think we will have to leave it there for now.