

IR35 and the Issue of Control

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The Upper Tribunal (UT) has considered the issue of control in the case of [Christa Ackroyd Media Ltd –v- The Commissioners for HMRC](#) and has upheld the decision of the First-tier Tribunal (FTT) that IR35 applied. The UT agreed that, had Ms Ackroyd's services been provided directly to the BBC (rather than via her personal services company), the BBC would have had sufficient control over her to amount to a deemed employment relationship.

There was no express clause in the relevant contract dealing with control. The FTT and UT therefore had to consider what the implied terms were. It has been acknowledged in previous cases that there may well be positions which have a high degree of day-to-day autonomy – in such cases, the issue is not whether control is exercised through supervision (or even whether supervision is possible) but rather whether the individual was subject to the employer's orders and directions. The significance of control is that the employer can direct what an employee does – not necessarily how he or she does it.

In this case, various findings of fact were made by the FTT (upheld by the UT) as to the degree of control exercised by both Ms Ackroyd and the BBC. These included that the BBC could direct which services it wished Ms Ackroyd to provide and could require her attendance at events. It also found that, whilst some matters would be left to Ms Ackroyd's professional judgment, the BBC could direct what work she did and how she did it. The fact that Ms Ackroyd's contract did not incorporate the BBC's Editorial Guidelines was not fatal – in fact, the findings reached showed that it was not necessary for these to be incorporated precisely because the BBC retained control and could therefore require Ms Ackroyd to adhere to these. Similarly, the facts that Ms Ackroyd had no line manager and was not subject to the BBC appraisal system were not sufficient to override the overall findings of control.

This decision, whilst consistent with the previous approaches taken in respect of the issue of control, highlights again the importance of the written contract terms, and the need to consider all factors when assessing control.

With the spotlight remaining on IR35 and the planned shift of responsibility and risk to private sector end users/clients from April 2020, accurately assessing the deemed status of contractors is key.

Next steps

IR35: Verify - [find out how we can help >](#)

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