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THE GLOBAL RECRUITER

**COMPLIANCE REPORT 2022**



# SAFE & SECURE

**Compliance 2022: A time to be certain**

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## EDITORS WELCOME

SIMON KENT  
EDITOR

While there may have been less significant legislation or rule changing impacting on the recruitment sector compared with previous years, recruitment companies still need to run to keep up with the shifting sands of compliance. The ongoing challenges associated with IR35, the health and wellbeing responsibilities brought by the pandemic, the switch to digital identification and more are enough to keep any business busy.

Uncertainty and different interpretations surround compliance issues, so we hope this special will bring you more clarity and an efficient way forward for recruiters in every sector. We've

brought together some of the leading thinkers and practitioners on compliance, people who are at the fore-front of making sense of the rules and regulations that recruiters need to consider. In this way we hope you'll continue to create compliant processes for your businesses that are both effective and efficient for all concerned.

The everyday need to be compliant can sometimes feel arduous and administratively heavy, but it is also key to providing a professional service, and doing that will always attract the best clients and candidates.



## SPONSORS WELCOME

CHRIS BRYCE  
FCSA CHIEF EXECUTIVE

As soon as most people read the word "compliance", yawning usually sets in and thoughts start to wander in the direction of the coffee machine. Who can blame them? Compliance is often seen as very technical, full of jargon, and sometimes even as a barrier to getting on with business.

In today's world however, compliance should be near the top of everyone's attention list.

There's a simple reason for that – getting it wrong can end up costing you a great deal of money. There's also the not-so-small matter that ensuring the compliance and integrity of your whole supply chain is also Doing The Right Thing by your workforce, whether they're full-time staff or contingent workers.

With government taking a keen interest in our industry from several points of view; ranging from employee welfare to the tax gap, there's rarely been more focus on industry activity.

Midway through last year, the government announced their intention to form the Single

Enforcement Body, and in November 2021 they appointed Margaret Beels OBE, long standing Chair of the GLAA, as Director of Labour Market Enforcement.

DMLE will be bringing together key units from currently separate bodies to a "one-stop-shop". In the background, the Treasury has just closed the first stage of a process which will likely lead to regulation of the umbrella market.

This means that getting compliance right, which should be the default, matters even more than ever and that's why the Freelancer and Contractor Services Association (FCSA), is once again supporting this special edition of Global Recruiter.

As the UK's leading membership body dedicated to raising standards and promoting supply chain compliance for the temporary labour market, our mission is to ensure that all the links in the supply chain are strong, safe and secure.



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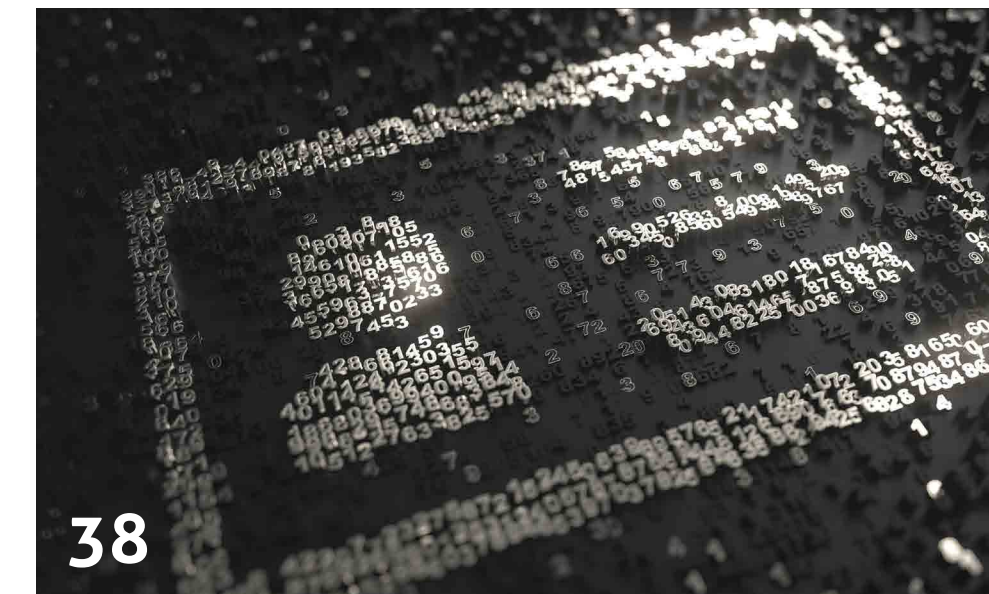


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# Know every link in your supply chain

The off-payroll working rules puts even more emphasis on the need for a compliant supply chain to ensure that tax liability doesn't pass up the chain to you or your clients. How confident are you that you're working with a provider you can trust?

As a leading provider of umbrella and accountancy services, we've always advised agencies to work with a list of trusted providers.

We have robust processes and controls, audited by our own strong internal compliance team and we also invite external companies in to audit our audits.

When it comes to assessing your providers' compliance, there are a number of things you can do:

1. Send out compliance questionnaires
2. Check actual payslip calculations and PSC management accounts
3. Ensure the provider has third party accreditations
4. Review the financial strength from the latest statutory accounts
5. Carry out your own site visit

For the best assessment of your key providers, we recommend that you use all of the above.



Speak to one of our team today.

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Makes Perfect Sense...

# THE KEY TO COMPLIANCE

**Crawford Temple, CEO and Founder of Professional Passport on the importance of due diligence.**

The Off-payroll legislation that was rolled out last year has given rise to an increase in the number of workers now operating through umbrella companies. Therefore, it is imperative that recruitment companies have robust and rigorous measures in place to conduct checks on any provider they use for their workers. Without these ongoing checks the recruitment company and/or end client could become liable for debts should non-compliance become apparent. There are, however, steps recruiters can take to ensure they, and their workers, continue to remain safe from the many 'have I got a good idea for you' schemes that are prevalent in the market.

Four stage checklist:

1. Decide on your agreed umbrella provider list
2. Conduct checks and balances
3. Carry out ongoing management and due diligence
4. Consider other best practice

## 1: Decide on your agreed umbrella provider list

Many recruiters now operate both a preferred supplier list and an approved supplier list, so what is the difference?

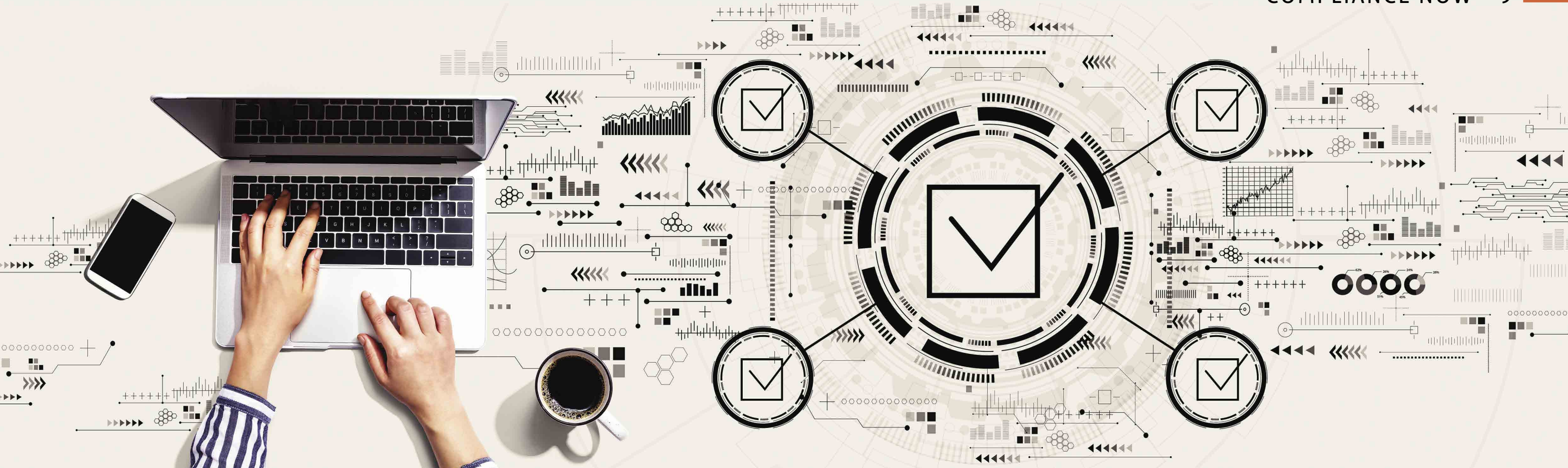
The preferred supplier list is a shortlist of umbrella companies that would be actively promoted to workers who do not currently have a relationship with an umbrella company or are new to contracting. The approved supplier list outlines the names of all umbrellas that have met your criteria and you would be happy to engage with, although you do not actively promote them. This list is important as some of the key benefits for a worker operating through an umbrella is their entitlement to employment rights, pension rights and continuity of employment which can assist workers in securing loans and mortgages. The workers are also often happy with their current provider, understand the systems and processes and have built relationships with the customer services team. Workers with strong existing relationships will resist change to another umbrella.

It is also apparent that, in some cases, end clients are driving the criteria by which umbrella companies can be selected. This should not impact any of the checks and balances you carry out to ensure that you too are satisfied that you are engaging with a compliant umbrella. Remember, you are first in line should there be any element of debt transfer.

A starting point in selecting your umbrella list could be to use one of the recognised accreditation standards available in the market. Whilst these provide a useful reference, it is important to understand that choosing an accredited provider does not abrogate your responsibility to conduct your own due diligence. No accreditation standard is recognised in law and the umbrella sector remains unregulated. Professional Passport is the only compliance standard that has insurance backing. This provides additional protection for recruiters and/or end clients as it covers potential legislative debts arising if Professional Passport has been negligent in its assessment of a provider's compliance.







A review of accredited providers will result in an extensive list of umbrella providers. The list can then be honed to meet your own business requirements which could include:

- Companies House Checks
- Length of Time Trading
- Credit Checks and Rating
- Turnover
- Balance Sheet Criteria

Having compiled an overall approved supplier list, you could then approach each one and decide on a final list to promote on your preferred supplier listings.

2: Conduct checks and balances

In addition to the aforementioned checks, it would also be advisable to request copies of payslips and pay reports from each umbrella. Having obtained copies at the outset provides a comparator for any future ones you may request. If you are uncertain on what these should look like, or unclear on how an umbrella should present these, the accreditation standards body such as Professional Passport is usually more than happy to assist.

From the umbrella company employment contracts, recruiters can also learn the key terms of engagement for each worker with an insight into an umbrella’s approach to pay, holidays, Working Time Regulations, Agency Worker Regulations and the Conduct Regulations. If anything is unclear, the accreditation body should be able to answer any questions and queries.

It is also advisable to obtain copies of the insurances held by the umbrella and check that the specific company that you will be contracting with is named on the certificate. Also, be sure to check the levels of cover to ensure they meet your contractual obligations.

Obtain a copy of a bank statement and check it carefully to ensure the named company exactly matches that of the provider listed on Companies House. When adding companies onto banking systems be alert to any ‘could match’ message which would signal that further checks should be made.

Nowadays, review and feedback sites are growing in popularity and can provide a useful reference when checking providers, although do not rely solely upon them. The same would be true for contractor forums where issues are often openly discussed.

3: Conduct ongoing management and due diligence

A major benefit of establishing approved supplier lists is that it allows you to agree on processes with your providers that should simplify the overall compliance across many pieces of legislation.

Key areas to address include:

- Key Information Documents – will the umbrella provide you with your generic template versions to give to candidates when they first register? Will they then provide tailored versions when they engage with you on a specific assignment? How will they keep you updated to ensure you meet the requirements to issue a new document on a material change, for example when a worker auto enrolls into the pension?
- Conduct Regulations – where a worker is able and willing to opt-out of the regulations how does the umbrella handle this? How will they provide you with the written notice within the required timeframes to ensure you can also provide the required written notice to the client?
- Working Time Regulations – how is this handled? Are you also notified of any workers who have remained within the regulations and therefore have constraints on the number of hours they can work?

- Agency Worker Regulations – how are you communicating with workers to ensure they have comparable pay and holiday entitlement after the 12-week period?
- You could also agree on operational processes and procedures or a code of expected standards with the umbrellas. This could cover:
- Operating under a Master Terms Agreement resulting in a simpler notification process of the assignment information.
  - Service Level Agreements to ensure your workers receive the highest levels of customer service, in line with your own. This could also include standards around areas of holiday pay, margins and costs.
  - Agreed Operating Principles and Standards covering areas such as your stance on provider office visits to promote their services, incentives to consultants – financial or otherwise.

Within these initial agreements, you should also seek to agree on what information the provider should supply to allow you to meet your ongoing due diligence obligations and how often. By agreeing on this at the outset you are both able to ensure you have the correct terms within your GDPR agreements to allow this to happen. This will cover areas such as:

- Copies of payslips and pay reports
- RTI checks
- Copies of PAYE and VAT account status

Regarding payslip checks, it is often also worth asking the worker for these. We have seen many occasions where workers have stated that they do not receive a payslip. This is a legal requirement and must be provided on or before the worker is paid, so a worker claiming they have not received a payslip can be an indicator that not everything is as it should be. We have also seen situations where non-compliant providers want to control the information sent to agencies, whether directly or through workers, and so produce the payslips on demand.

These may not accurately represent the transfers that took place. One way to validate that would be to see the worker’s bank statement showing the corresponding credit into their account.

4: Consider other best practice

There have been many reports recently of Umbrella Company cloning. This involves a company with a very similar name being set up in an attempt to assume the identity of the genuine umbrella. We are hearing of instances where these companies are requesting bank account changes whilst posing as the genuine company or engaging workers where the recruitment company believes it is their genuine umbrella. Companies must ensure they know who they are dealing with and do not allow changes to banking details without confirmation with a contact at the genuine umbrella.

Many accreditations will not approve a provider who operates certain models and Professional Passport has compiled a list: <https://www.professionalpassport.com/Approved-Providers/Our-Compliance-Standards>

You should familiarise yourself with these arrangements and if you receive any intel suggesting one of these models could be in operation you should contact the accreditation body immediately. In recent months we have seen attacks by ransomware on umbrella providers causing severe issues for the providers and workers engaged. Seek confirmation of their end-to-end security measures as well as the measures they have in place for disaster recovery in the event of such an attack which will provide some peace of mind.

By implementing the four-stage due diligence checks, recruiters can stand themselves in good stead knowing that they are minimising any risks to themselves and their workers. Good employment practices are critical throughout the supply chain. Don’t be caught out. ■





**PROTECTED BY LAW**

Holiday pay must  
reach the right  
destination

**Many reports on holiday pay retention suggested providers are relying on contractual terms that are not often not read or understood by the workers. As such, many workers were completely unaware that they had lost holiday pay entitlement.**

To combat these practices by providers, Professional Passport has worked with the main software providers to the sector, and developed standards with the developers for payslips and pay reports.

Every time a worker receives their pay they can see:

- **Their holiday pay position**
- **Any amount accrued in that period**
- **What has been paid in that period**
- **Any carried forward balances**

Professional Passport requires all of its providers to communicate with all workers prior to their 'holiday year' end to provide them with:

- **Updates on amounts available**
- **Advice on claiming the amounts**
- **Advice on requesting a concession to roll over into the next holiday year**

#### **The Right to Audit and Verify**

As part of our terms operated with our **Approved Providers**, we have a right to request reports to confirm and verify the standards are being applied correctly.

## **Why Professional Passport?**

### **We are Independent** ✓

We act independently of providers, recruitment companies, and end clients to set the highest standards of transparency and compliance.

### **We are trusted** ✓

Operating with knowledge and expertise, Professional Passport liaises with all the enforcement bodies including HMRC, BEIS and EAS.

### **We are insured** ✓

Professional Passport is the only insurance-backed accreditation available in the UK.

**Find out more at [www.professionalpassport.com](http://www.professionalpassport.com), or contact us at [info@professionalpassport.com](mailto:info@professionalpassport.com).**



# A YEAR ON

## One year on from the introduction of the Off-payroll reforms Dave Chaplin, CEO of IR35 Shield reflects on the impact of the changes on the supply chain.

Parliament definitively set the course for the IR35 meteorite to hit the private sector after the House of Commons vote on 6th July 2020 failed to secure a further two-year delay. Shortly after, on 22nd July 2020, the extension was enshrined in statute.

Unfortunately, by early 2021, many firms were unprepared and without a proper assessment regime. Still suffering from the business disruption created by the pressure of Covid-19, some firms chose to implement either a blanket ban, an overly risk-averse approach or moved projects offshore.

But frankly, who could blame them? Covid-19 pressure and the complexity faced by firms engaging with hundreds of contractors, meant that pressing the reset button and temporarily blanket banning contractors who operated via limited companies was the least worse option.

Almost half of the respondents to the recent IR35 Shield Impact Survey said their client had adopted a blanket ban at implementation time. But, seven months later, that figure had reduced to 41%, as bans began to lift when firms began competing for in-demand talent. Recent studies commissioned by HMRC, the National Audit Office and the House of Lords have highlighted the considerable problems created by the new Off-payroll reforms. But, on a more positive note, we are seeing small niche consultancies flourish due to the legislative advantage over their larger competitors.

### The rise of the small consultancy

Services provided to medium and large clients by niche consultancy firms have increased due to the advantages arising via the small companies' exemption. When a hiring firm fully contracts out services to a small consultancy, as defined by the Companies Act, the rules revert to the original legislation whereby the contractor retains responsibility for the assessment and the accompanying tax risk. The exemption is not a tax loophole, and firms should be very cautious. If HMRC can prove that the consultancy provides labour, not services, then the new legislation applies, and the client becomes exposed. Firms should robustly stress test their procedures

around this aspect because there is no reasonable care provision in the legislation to protect firms who decide in good faith that the services are fully contracted out.

### £263m tax bills and one gaping hole

The National Audit Office investigated the implementation of the IR35 tax reforms in the public sector and published its findings on 10th February 2022.

They unsurprisingly identified that public sector bodies had little time with new guidance and tools before April 2017 and that they have incurred additional costs in recruiting and retaining contractors. HMRC guidance since then has dramatically improved.

The report also highlighted that upon the release of the financial statements of government departments for 2020-21, they revealed a combined £263 million paid, owed or expected to be owed in additional tax for failing to administer the reforms correctly. But, then came the bombshell – in point 19 of their summary: "HMRC's current approach to correcting cases of non-compliance results in it collecting more tax in total than is due, and it does not yet have a plan to address this."

To the dismay of many tax professionals, the Off-payroll rules have created double-taxation, pushing the entire tax bill onto the hirer, leaving the contractor with no tax to pay when a position is unwound, for which they can apply for a rebate. However, the report reveals "HMRC does not actively promote this and it is unclear how many workers reclaim their taxes in practice."

This gaping hole in the legislation means that in the public sector, if HMRC successfully overturns an "Outside IR35" decision, and the contractor reclaims their tax, then the Treasury ends up with a net loss.

HMRC have been aware of this absurd anomaly around the lack of offsets for over 18 months, yet it remains unresolved. In the meantime, hirers and agencies should plug the holes with appropriate contractual clauses.



### The House of Lords enquiry follow-up

The House of Lords Economic Affairs sub-committee conducted a follow-up enquiry into Off-payroll in December 2021 and published a 14-page letter sent to the Financial Secretary to the Treasury. Whilst rightly praising HMRC for improving their online guidance, they also highlighted the difficulties firms face and identified the same tax offsets issue as the NAO. The Committee also expressed concern about the proliferation of unregulated umbrella companies and welcomed the call for evidence conducted by HMRC, urging expediency towards regulation. The Committee also said that "It is unfair that individuals are treated as employees for tax purposes but without the rights which are normally associated with employment." That's true, but don't hold your breath for the currently shelved Employment Bill to be revived and resolve that anytime soon.

### HMRC's commissioned study

HMRC commissioned their study, which aligned with some of the findings by the National Audit Office and House of Lords. These included:

- 38% of central bodies said that rates paid to PSC contractors had increased due to the impact of the reforms.
  - 34% of central bodies reported it had been more difficult to fill contractor vacancies since April 2017.
  - 53% of central bodies said that it had been difficult for them to comply with the reforms.
  - 61% of central bodies agreed the reform had been burdensome.
- Despite HMRC having considerable control over the report they commissioned IFF Research to conduct, even they could not spare HMRC's blushes this time.

### CEST isn't up to scratch

According to our research, firms are reducing their reliance on HMRC's Check Employment Status for Tax tool (CEST). Almost all contractors signal they do not trust its accuracy, nor do they trust HMRC's non-statutory promise to stand by the results. This decline in use is perhaps also due to the multiple government bodies who used CEST and followed HMRC's education and guidance, but which are now facing combined tax bills and fines of £263 million. Alice Jeffries of the CBI made a fundamental point, quoted in the House of Lords report: "where HMRC guidance and case law diverged, 'businesses are left in the position where they are told if they take this to court they will get one outcome, but HMRC is saying that it can rely on another outcome.'" Both the National Audit Office and the House of Lords have made recommendations that HMRC revisit and improve CEST.

### Looking to the future

Many of the studies and surveys are reaching similar, but expected conclusions – implementing such large-scale tax change during a pandemic was never going to be smooth. The question is whether the negative consequences remain for the long term. As the IR35 dust is settling, green shoots have emerged – firms are discovering that wholesale blanket measures make them non-competitive and are reconsidering their stance. Small consultancies thrive as contractors turn away from recruitment agencies unequipped to cope with the new regime. This year we are likely to see more clarity and certainty in the IR35 case law as we await three critical Court of Appeal judgments. HMRC will achieve its compliance objectives, and agencies supporting clients with robust compliance will gain the competitive edge. ■



# SUPPLY RIGHT

**Chris Bryce, Chief Executive of Freelancer and Contractor Services Association Ltd (FCSA) on compliance in the supply chain.**

One of the thorniest issues facing our industry today is the hangover of our own backstory and the, often outdated, received perception of the most important community in the supply chain – the workers themselves.

When I was a contractor employment businesses recruitment agencies were not held in the highest esteem by my peers. They were seen as a necessary evil. Yes, they were a way – almost the only way – to get work from end hirers but once that task was done, they sat back in their plush offices and took their commissions from the workers' top-line. And in the old days those commissions were high, sometimes 25% or more of the day rate! I can't put in print some of the language workers used to describe agencies and agents, after all this is a business magazine.

Spinning forward more years that I care to mention and the industry has changed. Rates and commissions have been driven down, there's far more regulation and, vitally, far greater professionalism both from companies and individuals. But still, the general opinion of the workers has hardly changed at all. Some of the views expressed on various contractor forums and on social media are the same as they were 25 years ago when I first came into the industry.

Of course, changing a widely-held opinion, even if it is quite wrong, is difficult. But sometimes we don't help ourselves. Just spend five minutes on LinkedIn and you'll see dozens of posts relating stories of recruitment businesses ghosting applicants, poor information flows, incorrect calculations by umbrella companies, badly-worded contracts and calls from frontline recruiters about jobs which require skillsets not on the candidates CV.

It can be quite demoralising to read these complaints, but we do have to remember that the reality is that it's rare that anyone goes on LinkedIn or a contractor forum to give praise. There are many, many thousands of roles filled weekly in a way everyone in the chain is happy about, but we hardly ever hear about those. Similarly, in the umbrella company sphere it's only the very few exceptions to the hundreds of thousands of payments made to workers every week that get any airtime on social media.

## Simple symbiosis

The contingent labour industry is the very model of simple symbiosis – end hirers need employment businesses to get candidates who need work. Sure, there may be a few nuances on the actual operation, but at its base it's really very simple and mostly works well for everyone.

So, how do we, as an industry, help solve the perception problem? It's not simple, there is no quick fix. But I'm going to suggest just three words: integrity, honesty and transparency. Collectively, we can always do more to reassure candidates that they're being served well by a trustworthy partner – and it really is a partnership – and we can take the time to ensure they have all the information they need, that it's clearly laid out and, importantly, that it's understood by them.

Having gone through a cycle of being a contractor myself, then moving on to being at the helm of the UK's largest contractor representative body (IPSE) – during which time I engaged with agencies as an end hirer to provided contractors – and now ending up in the hot seat at the FCSA the one area I've not directly experienced is that of the employment business itself. Although I know, and respect, many recruitment agents. Nowadays, of course, I most closely involved with the umbrella company aspect of our profession, and in the rest of this piece I'm going to talk a little about how umbrella companies fit the symbiosis.

## A little bit of history

The UK umbrella market began in earnest circa 20 years ago as a result of legislative changes beginning with the introduction of intermediaries' legislation, commonly known as IR35. The sector has grown for a variety of reasons but most notably the Managed Service Company legislation introduced in 2007 and, more recently, off-payroll reforms in the public sector closely followed by application of the reforms to the private sector. In 2015 there were around 400,000 workers engaged through umbrella employment with circa 250 umbrella companies in

**Compliance is sometimes seen as an impediment to doing business, it shouldn't be – it's a way to ensure that we do good business.**

operation. This accounted for over £11 billion being collected in taxes on behalf of HM Treasury. By 2021 this had grown to nearly 700,000 umbrella employees operating through around 500 umbrella companies. The FCSA estimates that these employees contribute over £19 billion to HM Treasury.

This growth should be seen in the light of an ever-increasing corporate pattern to adopt outsourced skills to enable end hirers to remain flexible, competitive and to operate with decreasing fixed costs.

As a result, there is little doubt that there will be a growing demand from both UK businesses and individual workers to operate in an agile outsourced environment and the whole industry should be committed to promoting and encouraging compliance, transparency and integrity in the entire supply chain.

## Do we really need umbrella companies?

Naturally, I would say, "Of course we do!"

There are so many advantages in the umbrella company model that benefit all the parties involved in the supply chain, that it's surely difficult to see how they could be gained in any other way. What we need to ensure is that the umbrellas in the chain are fully compliant and to call out those which aren't. FCSA will shortly launch a reporting hotline open to the whole industry to report the scams and schemes which clearly damage us all.

So, what can we do to make things better for everyone? I'm going to return to the integrity, honesty and transparency theme I mentioned before. >



The supply chain faces more and more regulation, and this isn't a bad thing, but my belief is that we haven't been great about telling our candidates or workers about what we do to ensure they're getting the best, most compliant service. Sure, our websites are slick, our knowledge is deep, and our customer service is second-to-none. In most cases we're really good at what we do. Sometimes though we don't show that well to our candidates, arguably the most important group in the chain.

I sometimes feel that, as an industry, we often forget that last point. We do, of course, want to ensure that our clients get the best from us, but I wonder if we sometimes forget that we have at least two clients in every placement, and neither is valuable without the other. The onus is on us to make sure that the balance of attention between one client and the other is reasonable and sensible, but perhaps we sometimes forget that whilst we're well-versed in our business a first-time applicant will not be and may have sought advice from those who maybe aren't pre-disposed towards the industry.

As an example, in a worker's shoes, now that the chain is more complex than before, when I've interviewed for and accepted a role, I'd really appreciate a simple one-page check list of what I need to do next and to expect from my agency or umbrella company. I'd also want it in as plain English as possible, too much legalese is likely to obscure the meaning to some workers.

We should be proud of our service levels and adherence to best practice, but we should be prepared to regularly review that. We should be working with our recognised industry bodies such as the REC, APSCo and, yes, FCSA to not only ensure we're implementing their guidelines but also regularly making it obvious that we have implemented their up-to-date recommendations.

Compliance is sometimes seen as an impediment to doing business, it shouldn't be – it's a way to ensure that we do good business. ■

## THE UMBRELLA BENEFIT

### Benefits to workers

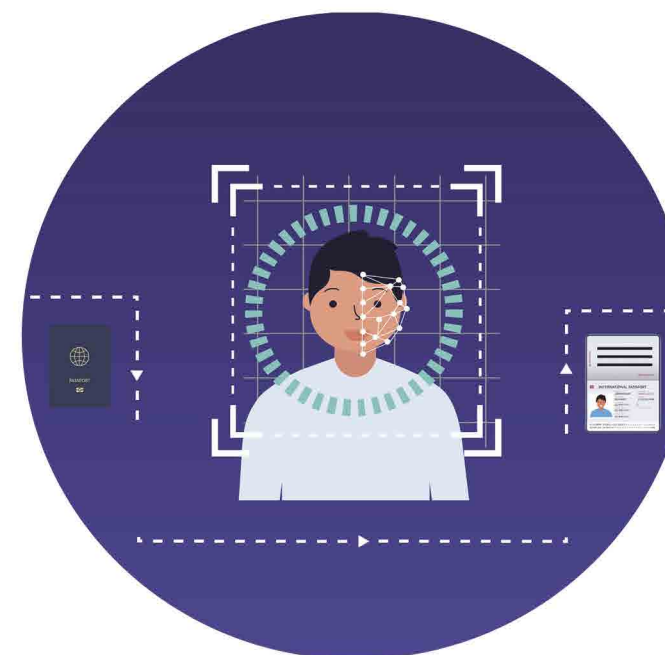
- Reduction of administrative burden
- Simple management of tax affairs
- Access to pensions
- Provision of holiday pay
- Transparency of pay (illustrations and payslip reconciliation)
- NMW guarantee even where an employment business does not pay
- Managing debt collection as necessary (usually from agencies)
- Continuous employment over number of assignments
- Accuracy of pay (reduced likelihood of errors due to expertise)
- Statutory protections
- Provision of necessary insurances
- Provision of optional benefits or employee benefit programmes

### Benefits to Recruitment/Employment Agencies

- Payroll expertise agencies are not payroll experts (umbrellas are),
- Core business activities (placing talent, not payroll)
- One invoice v multiple returns,
- Guidance and expertise on policy changes
  - i. Umbrellas are often the first to react to and advise on changes on the tax regime or employment law e.g. NMW, NI changes, apprenticeship levy, furlough, HSC Levy
- Help in preparation of KIDs
- Advice on payment models and best practice
- Quick response to regulatory changes
- And, coming soon, digital Right to Work verification

### Benefits to Government

- Collection of Income Tax and National Insurance
  - > FCSA members alone collect £7bn a year in employment taxes which are timeously remitted to HMRC
- Ease of enforcement
  - > Umbrellas have a large number of employees
    - FCSA members alone employ c180,000 workers
    - Providing RTI data to HMRC
  - > HMRC has over time carried out compliance audits on most FCSA Members to ensure there is no tax leakage
- Simpler classification of workers
- Efficiency of process for HMRC
  - > Umbrellas hold required information in easily accessible formats
- Specialist professional operation of payroll reduces likelihood of errors
- A compliant umbrella sector allows effective and rapid deployment of policy
  - > e.g. introduction of Travel & Subsistence rules in 2008, off-payroll rules in 2019 and 2021
- Compliant umbrellas ensure compliance with tax and employment legislation
  - > Easing enforcement burden and reducing costs



## STAYING ON TOP OF RIGHT TO WORK COMPLIANCE

From April 2022, the Home Office is introducing a permanent digital Scheme enabling recruiters to use certified Identity Service Providers (IDSPs) to conduct remote identity checks for UK Right to Work (RtW) checks.

### From 6th April 2022

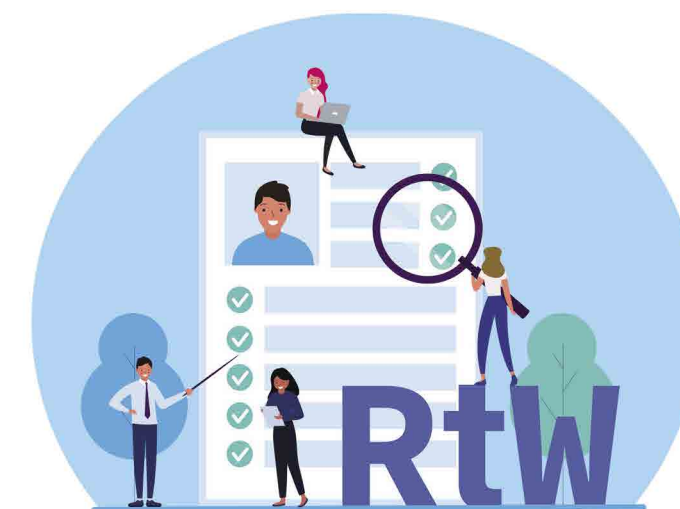
The new digital Right to Work check Scheme will cover holders of in-date British passports and valid Irish passports (including passport cards) and allow these applicants to be verified by an IDSP. The Home Office recommend that you choose an accredited IDSP.

Biometric Residence Permits (BRPs) and Biometric Residence Cards (BRCs) will be removed from the list of eligible Right to Work documents. Holders of these cards will have to demonstrate their eligibility using a share code on the Home Office online checking service instead.



### From 1st October 2022

The temporary Covid-adjusted checks to allow for RtW checks using copy documents and videocalls will end on 1st October 2022. Recruiters can use the period between 6th April and 30th September to put the necessary processes in place to carry out fully compliant Right to Work checks from 1st October. You can decide whether to introduce digital checks for eligible candidates, to return to checking physical documents or to combine the two checking methods.



### Want to find out more?



Join our free of charge webinar on 12th April – register using the QR code or this link:

[www.trustid.co.uk/events](https://www.trustid.co.uk/events)

Or visit our website –

<https://www.trustid.co.uk/right-to-work>



# CONTINGENT LABOUR MARKET COMPLIANCE – MORE IMPORTANT THAN EVER

Janet De-Havilland, Chief Executive of Pendragon Consultancy Ltd – Leaders in Contingent Labour Market Compliance, Intelligence & Employment.

## The situation

Does the introduction of legislation and the various spotlights produced by HMRC to dissuade and alter the behaviours of contractors, employment businesses, end clients, umbrella companies and contractor accountants work?

Well after 22 years of self-policing, the experiment has not worked. Since the introduction of intermediaries legislation known as IR35, MSC legislation in 2007, the removal of expenses in 2016, the introduction of the Off-Payroll rules 2017 (public sector) and 2021 Off-Payroll rules (private sector) have been pivotal moments. There is a direct correlation between these changes, the lack of application, understanding and lack of enforcement by HMRC that has created a perfect storm under which non-compliance and tax avoidance has been allowed to proliferate and flourish. Agencies and Umbrella companies have been pitted against each other and that is really bad news and is getting worse. So whether it's regulation of Umbrellas or stronger enforcement of the Agencies rules or both things need to change. Within the supply chain, we are co-dependent as the Agency relies on end clients to gain business and Umbrella companies to deliver that business by employing the workers they place into those clients. The problem is that this relationship has deteriorated in recent years and the cracks are now showing. The co-dependency is an unhealthy one – it's more of a necessary evil, than an equitable partnership and that is why non-compliance, deception, and criminality have been able to find safe harbour within the contracting sector.

## The impact of legislation

The legislative landscape has been a huge contributor and the tightening of rules in one area have caused a protrusion in another rather than providing a remedy for the source of the actual problem. To combat the problems Agencies face from their clients like margin constriction and non-compliant competitors, they have turned that pressure and pain onto the Umbrella companies they interact with by way of unreasonable demands for incentives. Incentives are the biggest drivers of non-compliance and agencies have become more aggressive in their requests, if you want to be included onto their PSL's. Compliant Umbrellas cannot compete and therefore the non-compliant providers have

seen this as an opportunity to grab market share. Move forward to today and the market is in total disarray, and other changes to legislation are starting to bite.

## Why embracing compliance honestly matters

Compliance is part of your obligation to stakeholders, suppliers, staff, clients, and the communities you support (contractors). Given that statement it's surprising that some organisations have given little thought to compliance. There is a nonchalance about regulating staff conduct and scrupulously adhering to the regulations and laws. The unstated assumption seems to be that profit by any means is "good" and compliance is "bad". That assumption is profoundly risky for any size organisation. Without an effective compliance function, you cannot reliably build or maintain trust with others. Trust is fostered through honest communication, following through on commitments and repeated interactions with others. The old adage, that it takes you 20 years to build a reputation but only 5 minutes to watch it go up in smoke is a reality because leaders consistently rank reputational risk as their number one worry, so why leave this to chance. Compliance within your business should be treated with the same vim and vigour given to optimising sales, your value proposition, and client service; because internal threats are far more damaging than those coming at you externally. Hold staff accountable for compliance values and ethics and communicate which behaviours will and won't be tolerated. Compliance done well provides the ultimate protection of your reputation and brand. Lack of understanding of the importance of compliance is usually because the business sees it as an exercise in saying no also see those in charge of enforcing the rules responsible for prohibiting behaviours for making money. This is a huge misconception because compliance reduces errors, drives change and innovation and increases efficiency and effectiveness. Compliance done correctly is designed to provide a resounding "yes" and should not be consistently generating a no.

Pendragon Comply supports clients to create robust compliance strategies and policy's through its, advisory and outsourced compliance & auditing services – From corporates to SME's, we can help. For further information or to book a complimentary consultation in confidence please get in touch. ■



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# PLANNING TO HIRE INTERNATIONALLY?

Jeff Smits, Vice President, Marketing – EMEA, People2.0 discusses labour leasing as a compliant alternative to independent contracting.

As more and more companies look to take their operations overseas, employing workers in a cost-effective and compliant manner remains a key concern. As a result, companies may prefer to use independent contractors (IC) for ease of operation and flexibility. This may well work, but the risks (and penalties) with misclassification of workers due to false self-employment can be enormous. Therefore, hiring an independent contractor may not be the right choice.

## What is misclassification?

IC misclassification occurs when an employer categorises a worker as an independent contractor instead of an employee. The rules vary wildly from country to country, so before an organisation decides to hire an IC, it's always best to seek professional advice to make sure you remain completely compliant.

Vetting tools and tests used in misclassification cases exist all over the world and there are many factors used in determining misclassification which can include:

- Does the worker take directions from a supervisor?
- How much control does the worker have? Does the worker perform the same tasks as employees in permanent employment?
- Does the worker use company's materials/equipment?
- Does the worker have additional benefits such as holiday and sick pay?
- Where is the worker's workplace?
- Does the worker take direction from a supervisor?
- How much control does the worker have?

## Misclassification can result in fines, penalties and prison

Once an IC has been misclassified, the employer is subject to a series of retroactive misclassification costs such as taxes, social security contributions, statutory entitlements and penalties for not operating compliantly plus interests. In addition, the company's reputation can suffer greatly, in extreme cases destroying the basis for future business development.

## Labour leasing as a compliant solution

A safe way to avoid risks and penalties while still maintaining flexibility, is to hire the worker via labour leasing.

All employer rights and obligations, including work contracts, notices

and deduction of taxes and social contributions lie with the hiring company. The end client can then fully concentrate on his project and does not become the official employer, though the end client has all rights like an official employer when it comes to supervision. Labour leasing is the safest and most compliant way to benefit from a workforce on demand.

## Labour leasing license in Germany

While labour leasing is a great opportunity for staffing agencies to expand their business to the German market, Germany requires a labour leasing license ("AUG license") to hire out staff to a client.

This means you require a legal entity in Germany where the worker is based since you need to deduct taxes and social security contributions locally for the worker. Moreover, being an employer requires extensive knowledge of local labour legislations and regulations. Failing to comply with the regulations is not only subject to fines and may lead to losing your license. It also means that the worker automatically becomes the client's permanent internal employee. The client becomes employer with all obligations, and you lose the legal basis for the entitlement of your own fees and margins.

## How can People2.0 help?

People2.0 has locations all over the world and holds labour leasing licenses among others in Germany.

Our local teams know all the current rules and regulations and what to consider when it comes to payrolling. They are experts in visa applications in case you would like to relocate a non-EU national to Germany to start a project with the end client.

People2.0 ensures full compliance, a correct payroll, legally valid contracts, transparent invoices and that the workers receive salary and all entitlements and compensations always on time.

Unlike other staffing service companies, we don't recruit ourselves, but leave it to the experts. We cooperate with a large international network of recruiters and talent providers and are constantly expanding our reach.

You provide the perfect candidate; we take care of everything else and pay you a monthly margin for your recruitment effort as long as the worker is assigned to the client.

If you would like to find out more, get in touch with us via [mobilizetalent@people20.com](mailto:mobilizetalent@people20.com) or visit [www.people20.com](http://www.people20.com). ■

# COMPLIANT PRACTICE

The Global Recruiter asked recruiters for their experience about compliance challenges over the last year and going forward into the future.

## Acorn Recruitment – Tania Cummins, Group SHE-Q Manager

The last two years have certainly been challenging when it comes to compliance, and the rapidly rising trend for recruitment through digital means has meant added pressure in an already pressurised recruitment market. When it comes to responding and reacting to these changes internally, however, they have not been challenges that we have been unable to overcome. The temporary process for digital Right to Work checks introduced during the pandemic helped us considerably, for example, and the government has now further recognised improvements were needed by making the process permanent from April. We are now in a great position for 2022 when it comes to maintaining our focus on compliance through the introduction of new technologies as a result.

## Hays – Adrian Basu, Compliance and Customer Services Director

With hiring levels at a high across the UK employers can't hire talent quick enough, so there's a real urgency to ensure candidates are placed at speed who are of course fully compliant. High recruitment volumes go hand in hand with increased compliance work as we pride ourselves on providing our customers with the right talent without cutting any corners.

In areas such as education, social care, healthcare, and the public sector – this has been even more vital to provide customers with compliant temporary staff who can support with staff absences and skills gaps. Going forward, with the introduction of mandatory Covid-19 vaccinations across social care and the NHS, there's a whole new process and series of checks to be done to ensure we support the needs of our clients in meeting the requirements of the new legislation.

There's a real sense of responsibility for recruitment professionals to ensure that despite a busy and fast paced market, central to placing good talent is ensuring everything from references to full DBS checks are completed and that employers understand the importance of this. Looking ahead, we welcome the introduction of digital channels for Right to Work checks and DBS applications, as this is a much needed shift. However, there's relatively little time for all affected organisations to understand exactly what the legislation means in terms of how the process will work and the cost implications. Service providers will need to gain the necessary certifications, and service users will need time to put new commercial arrangements in place so that they can start to take advantage of opportunities presented by the new rules.

By nature, compliance activities involve the processing of peoples' personal information, so GDPR also remains an additional factor for teams when considering the implementation of new processes or systems to ensure that we continue to safeguard and process data in a GDPR-compliant way.

## New Directions – Gary Williams, Sales & Business Development Director

For over 20 years, New Directions has provided specialist recruitment and training support within the education, social care and pharmacy sectors, and as a result our compliance procedures have always had to be at the highest possible standard. It's our responsibility to place the right people in order to protect communities throughout the UK and the quality of our compliance procedures has always remained a non-negotiable priority; something we've been recognised for by our customers and leading awarding bodies. >





As a result of our robust compliance processes and exceptional team of compliance professionals, we're confidently able to plan ahead and mitigate most risks when faced with sector changes or challenges, however of course the pandemic brought unique circumstances.

When the first lockdown restrictions began in March 2020, we had to quickly overcome logistical issues to check people's ID face-to-face. We took steps to ensure we could safely do this in-person for our education recruitment activities, but the introduction of Digital Right to Work Checks as a temporary measure was hugely helpful particularly for our social care recruitment activities at a time when the sector was under significant pressure.

The Home Office's decision to allow Digital Right to Work Checks to continue on a permanent basis from April 2022 is a real boost in checking British and Irish citizen's right to work in the UK. It has been welcomed by us and the entire sector, and we will use them for the first time for education candidates from April 2022. Making time-critical and informed decisions are challenges firmly at the forefront of our short and long-term responsibilities, and this solution is a key step in ensuring safety for the people we place and organisations we work with.

If the pandemic has taught the recruitment sector one thing, is that it's more important than ever to adapt our ways of working in line with the technology solutions available and Digital Right to Work Checks are solid steps forward. I'm extremely proud of how we've

embraced the challenges of the pandemic and that we've continued to maintain our high standards over the last two years during such unprecedented times.

### Petroplan – Christopher Honeyman Brown, CEO

As a global energy talent acquisition group, it is essential that we comply with the individual rules and regulations of the regions in which we operate. A 'one size fits all' approach is simply not adequate to account for the ever-changing compliance landscape. In Oman, the government has recently intensified its Omanisation policies, aimed at creating employment opportunities for its citizens to bolster the level of gainful employment. Most expatriates in Oman work in the private sector, whereas the government and public sector has historically been the main source of employment for Omani nationals. The challenge here is to encourage Omanis to work for smaller private companies, as most are still more interested in public sector positions. We constantly monitor government policy to ensure our efforts are focused and aligned with policy changes and compliance laws.

### Canada

Meanwhile, the main challenge we face in Canada is to keep track of the continual changes to provincial legislation around employment standards. This can be anything from sick pay to Covid-19

standards. Workers' compensation standards differ in each province, so it is essential we remain alert to these compliance changes for workers and incorporated contractors.

### USA

When considering compliance challenges in the USA, a key requirement is to ensure that employees are compliant to FLSA rules and classified correctly in their roles. This includes an assessment of whether an employee is exempt or non-exempt from overtime rules; if the contractual relationship is not compliant, it won't be long before one of the specialist law firms experienced in class actions will challenge pay policy. Another consideration is the navigation of Covid-19 and health and safety requirements. Occupational Safety and Health Administration (OSHA) has developed, issued, and implemented various policies and procedures to ensure a safe work environment. Regulations are constantly changing across client, state, and federal levels, and it is crucial to be constantly reviewing the latest changes to regulations.

We must also make sure that the employer of record is clarified so that any workplace conflict, especially emergency issues such as ill-health, accident, armed conflict or terrorist attack can be dealt with properly. This does present challenges which we have mitigated by implementing a fully compliant emergency response protocol which satisfies all the necessary but differing insurance requirements of clients around the world.

At Petroplan, we manage client and contractor expectations by closely following changes to compliance regulations, ensuring a consistent approach is taken across all operating regions. This means that we can respond efficiently should any issues arise and can effectively manage the problem and its associated risks.

### Remit Resources – Richard Morgan, Managing Director

One of the biggest issues we face with compliance at the moment as a tech recruiter is speed. Competition for tech talent is at an all time high, we are feeling the full effects of the war for talent and the great resignation, which means that we've had to streamline our compliance processes to make sure they are as efficient as possible. It's a balancing act between reducing the time to hire wherever possible whilst protecting our clients by being fully compliant.

### The Access Group – James Waby, Pre-Employment Screening Advisor

New legislation regarding Right to Work (RTW) checks is due to take effect from 6 April 2022. Early signs suggest that companies will be able to continue to carry out online document checks but only through a certified IDVT provider. Providers of automated compliance software, such as Access Screening, look set to begin the certification process in Jan 2022 with further details on the certification process still to be released.

The recent announcement by the Home Office to move to digital RTW checks cements the notion that the world has moved on and will not return to pre-pandemic times. Hybrid working is here to stay, and given ongoing work from home mandates, the ability to continue conducting digital RTW checks will ensure recruiters and employers can onboard candidates more quickly to avoid missing out on critical hires.

Our economy is in flux and the skills shortage continues to affect every industry. By digitising right to work checks, recruitment can be expedited with greater efficiency.

With ever-changing legislation, reducing the risk of non-compliance is essential. Automating background checks gives peace of mind, provides data security and removes onerous manual data tracking. In addition to RTW checks, there are many other pre-employment checks required across all industries and roles. For all checks the need to manage the expiry dates throughout the employment contract is also key. Many organisations are now taking an automated approach to screening to avoid resource-heavy manual processes and risk of error resulting in non-compliance and potent.

### Skillcast – Vivek Dodd, Co-Founder

We are at a crucial GDPR compliance check point for recruiters: What safeguards does your firm have in place to ensure GDPR compliance? Do your employees realise that your firm is a data controller for the personal data you hold on candidates? Have you secured the necessary consent for transferring their data? Do you have systems and procedures to ensure the candidates' rights, e.g subject access requests, the right to update/correct and the right to be forgotten? ■



# NEW ENFORCEMENT

Patrick Milnes, Campaigns Advisor, REC considers the impact of the new Director of Labour Market Enforcement.

Margaret Beels was appointed to the role of Director of Labour Market Enforcement (DLME) in November last year, and she is due to publish her first enforcement strategy this month. As the new DLME has only been in the role for a short while, we expect this strategy to be a high-level overview of ongoing and upcoming compliance and enforcement issues. It will act as an interim document ahead of a comprehensive consultation which will feed into her first full strategy due to be published later this year. However, this interim strategy will still need to address a number of key points that have sat untouched while the DLME position was vacant. These could have significant consequences for the recruitment industry.

One of the most important issues facing the sector at the moment is the need for regulation of umbrella companies. The number of umbrella companies offering questionable tax alternatives has grown substantially following the extension of IR35 into the private sector last year. Legislative reform to deal with this was expected to appear as part of an Employment Bill in the Queen's Speech 2021 but did not materialise. The government has now started to take steps to address the issue and is consulting with key stakeholders on how umbrella companies should be regulated. The REC will be submitting a response to this and has facilitated discussions with members and the relevant government officials to try to find the best route to regulating umbrellas.

In connection with this, it is important that government and other parties remain alive to alternative types of staffing solutions that could fall outside the scope of any regulation that is introduced, or that deem themselves outside the scope of the regulation. Certain online services have sprung up in the past few years which believe they are neither an employment business nor employment agency, despite seeming to fall within the legal definition. There has also been a rise in 'joint employment', which often sees umbrella companies forming arrangements with employment businesses in order to split up the employment responsibilities between them – with little clarity for the worker.

## Stepping up action

With concerns over taxation and possible tax evasion, it is important that the DLME steps up enforcement action as a deterrent. However, it's often difficult to see what action HMRC has taken to clamp down. Currently, HMRC's responses to 'tax solutions' which clearly take advantage of loopholes are not publicly reported. This allows schemes to be openly marketed as 'HMRC compliant' and to spread further.

It's good that HMRC is now cracking down on loan schemes (where payments are made to a worker through interest-free loans which are then written off without repayment) through the loan charge. But this only started after thousands of individuals were persuaded to use such schemes over long periods of time. Had guidance on the problems with loan schemes been readily available in advance then this situation could have been avoided. In the strategy expected in March, we would like to see plans for an increase in HMRC communications and guidance around tax schemes and their risks. This would help agencies make informed decisions when they are approached by companies purporting to offer tax solution schemes.

## Holiday pay

There are also a number of outdated pieces of legislation that we would like to see addressed in the interim strategy, which were not drafted with modern working practices in mind. For example, the legislation around holiday pay remains a challenge for all who employ temporary workers. Confusion in the application of the Working Time Regulations 1998 can lead to accidental non-compliance, because the regulations were not designed with agency workers' working patterns in mind. Calculating holiday entitlement and holiday pay in these cases can be exceptionally complex and even government guidance has been overruled by subsequent legal cases. Employers need clarity in this area to ensure workers get their full entitlements. Holiday pay is one key example where the legislation is no longer reflective of modern working patterns, but there is a raft of other employment laws which similarly are out of date. Since these laws were drafted there has been a significant increase in the number of people doing temporary work, gig work, contracting or freelancing. They are a significant minority of the UK workforce – two in five people in Britain have done temporary, contract or freelance work during their life, according to REC research. But out of date legislation can lead to a serious lack of clarity for these workers, and for businesses who are trying to abide by the rules. This group need to be properly accounted for in legislation, including on the right to automatic pension enrolment and laws around health and safety in the workplace.

As mentioned, much of the concern around non-compliance in the workforce is unintentional in nature, and comes from a lack of clarity around the existing rules. In the upcoming strategy it would be good to see the DLME focus on education instead of enforcement for non-intentional compliance breaches. This could include publishing further guidance for employers, offering clarity and support around the more confusing areas of labour market compliance. Where employers do unintentionally breach the law whilst acting in good faith, then the penalties should be less severe. Employers should also be given ample opportunity to correct any errors before being penalised. The government could offer workshops or seminars to help address unintentional non-compliance, providing employers with the opportunity to educate themselves on contentious areas before they become a problem.

## Single enforcement body

One final area that has been on the horizon for some time is the development of a single enforcement body (SEB) combining the enforcement roles of the Gangmasters and Labour Abuse Authority, the Employment Agency Standards Inspectorate and HMRC's National Minimum Wage Enforcement team. The DLME still intends to introduce the SEB but given the scale and scope of this project it is too soon for it to feature in the March strategy. The full strategy due to be published in the Autumn is intended to cover the SEB in more detail, and the government will consult on this more comprehensively later in 2022.

In the meantime, the REC will continue to engage with the new DLME on all these issues, responding to consultations as well as meeting with officials. There are a number of ongoing problems that will only be solved effectively through collaboration between all parties, and we will represent the recruitment sector's interests in those discussions. The REC will also be providing regular updates to members on important developments as they appear. ■



# COMPLIANCE CULTURE CHANGE

**Graham Palfery-Smith, Board Adviser, 6CATS Group says the criminal facilitation of tax evasion will become as acceptable as drink-driving.**

Some of us are old enough to remember when the legal requirement of having to wear crash helmets and seat belts (introduced in 1973 and 1983 respectively) was considered to be an imposition on our rights. When the decision was taken away from us as individuals, it was seen by some to be in conflict with our freedom of choice.

Similarly, the introduction of the laws designed to make drink-driving illegal, not to mention socially unacceptable in 1960 and 1967 – which have, by any measure, been very successful – was viewed by some as another example of ‘nanny-statism’. I’m surely not alone in remembering certain people saying, straight-faced, ‘I drive better when I’ve had a few’ or something similar. These attempts to force culture change are (rightly and obviously) now seen as societally beneficial. Indeed, few would consider it to be morally ok to get behind the wheel after a few drinks these days.

You may be wondering what this has to do with compliance, but the truth is, the concept of forcing cultural change is being sought in areas beyond drink driving and seat belt wearing. More specifically, it’s becoming more of a focus in addressing the criminal facilitation of tax evasion.

## Bad apples & fly-tippers

I want to focus on the recruitment sector although, as with the (very similar) Anti-money Laundering and Anti-bribery & Corruption legislation, the law was not specifically designed for us. However, due to the nature of the workers we supply as an industry, it does have a significant impact and importance for every recruiter.

Evading tax has been a long-standing problem and a very expensive one, for every government across the globe. Estimates of it costing the UK over £30 billion a year and globally in excess of \$420 billion, while significant, are widely regarded as inadequate. The simple fact is, there is no government anywhere that does not want to receive all the tax it is entitled to, and reducing these numbers is understandably a priority. Equally, evading tax is seen as a particular issue in the recruitment sector simply because the vast majority of global staffing company revenues are made up of temporary contract work, or ‘labour provision’ to use HMRC parlance. Unfortunately, this segment of the workforce is open to abuse, either deliberately or through ignorance, across the supply chain. The Criminal Finances Act (2017) was designed to change this. As 6CATS International has covered this topic in detail for some

time now, I don’t intend to go through this again here. What I do want to focus on, though, is the idea of (facilitating) tax evasion being as socially unacceptable as, say, fly-tipping, smoking in the office or getting behind the wheel drunk.

This is what the government is keen to do. As Ben Wallace, the then Security Minister who tabled the legislation made clear at the time and Stacey Mills-Kelly (of the HMRC Fraud Investigation Service) reiterated in a recent webinar, it is not about the number of prosecutions that are made. The aim is, instead, to drive a corporate culture shift and bring about behavioural change. The idea is simple; authorities want to make the concept of facilitating tax evasion culturally unacceptable both for companies and individuals.

The fact it is now a criminal offence is there to reinforce that point, rather than drive it. Of course, there will always be those bad apples who wilfully ignore the rules and try to game the system to gain an advantage, just as there will always be fly-tippers out there. We can expect that these will be the focus of future HMRC investigations. My point is, that companies seeking to facilitate tax evasion should be frowned upon – and, rightfully, they will be.

## What has this to do with the pandemic?

COVID-19 has, obviously, impacted all aspects of society in many different ways, not least the recruitment sector, and HMRC and its development of Corporate Criminal Offence (CCO) investigations is no exception. Regardless, HMRC continues to progress 14 CCO investigations and a further 14 potential investigations. While they are not specifying which businesses (size or sector) are being investigated, for obvious tax-payer confidentiality reasons, they have confirmed that at least one business in the field of ‘labour provision’ is under investigation. It is also clear that HMRC views the staffing sector as high-risk for the simple reason that we have a history of, to be accurate if impolite, ‘ignoring the detail’, concentrating on profit and denying the implicit tax risks, whether through deliberate actions or simple misunderstanding.

However, the emphasis we need to focus on is the reasoning behind the relatively few investigations and, thus far, zero prosecutions. This is where the issue comes back to the idea of culture change within our sector.

There are approximately 7 million businesses in the UK. While estimates vary around the number of recruitment companies, it is probably more than 35,000 now – and growing.



It is therefore painfully apparent that to change the expensive culture of tax evasion by trying to prosecute every recruitment company that facilitates it, knowingly or otherwise, is not a realistic option. But, by making the only defence, of failing to prevent the criminal facilitation of tax evasion, as having ‘reasonable prevention procedures’ in place, HMRC arguably expects that the required corporate culture shift will happen over time. For what it is worth I think it will work and, just to be clear, ignorance of what is happening is not a defence for a recruitment firm.

## A changing compliance landscape

More and more staffing companies are now aware of compliance and are building it into the fabric of their businesses. International contractors are generally accepting that they have to be compliant and agencies that facilitate those who don’t want to be are in danger of two things.

Firstly, they will not attract the same valuations as compliant agencies because there will always be the threat of the tax authorities catching up with them and the potential for a CCO investigation will not endear such businesses to purchasers or investors. Expect any NFI generated from doubtful contracts to be discounted or ignored altogether. Secondly, in the same way that the vast majority of us accept we have to pay our fair share of taxes as individuals and we do not look kindly on those who don’t, I believe the same will be true of recruitment businesses and, more importantly, the clients who use them. ■





# Making Your Next Move

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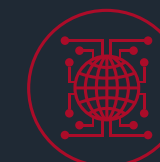
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# THE CHANGING LANDSCAPE

**Tania Bowers, Global Public Policy Director at the Association of Professional Staffing Companies (APSCo) on sector specific compliance.**

No matter what sector your recruitment firm specialises in, compliance should be a key component of everything you do. Elements such as right to work (RTW) checks, employment screening and criminal background checks are requirements for a range of roles – but with employment legislation constantly evolving and nuances across sectors, navigating what is needed is challenging.

## Compliance changes

When we look at how compliance in recruitment is changing, digital RTW is, of course, one of the most important developments to reference. The move to digital identity checks is something APSCo has called for previously and welcomed when it was first announced. However, there are concerns around the details in the planned roll out which we have raised with the Minister for Justice and Tackling Illegal Migration and the Home Office. While we have asked for an extension to the roll out date, recruiters need to be aware of the potential pitfalls in the current plans, specifically the financial impact. We are concerned that SME staffing firms will be exposed to high fees given that the decision around certified provider usages is often driven by the end-user's outsourcing provider. This is an additional cost of supply, leading to higher costs for end-users or lower rates for workers, disincentivising the best talent to apply for positions. We have asked that the Home Office introduces low standard rates or caps on fees and other suitable limitations on the

IDVT (Identity Document validation technology) certified providers to prevent staffing firms being unnecessarily financially impacted. Given that applications for certification only opened on 17th January we also anticipate time will be short to run an appropriate preferred supplier selection process to establish new relationships with IDVT certified providers ahead of the new rules coming into force. While we will continue to put pressure on authorities to provide an extension to the temporary Covid-19 RTW checks, which would allow an overlap with the digitalised process, staffing firms could face a problematic period where they can no longer use the Covid checking processes, but won't be ready to use a digital solution. This will increase time to hire at a time when skills are already in short supply and has the potential to exclude candidates who aren't able to complete a face-to-face RTW check.

## Risk of no job no job policy?

The Coronavirus has also created an issue for a number of sectors when it comes to vaccine requirements. While the government has backtracked on its vaccine mandate for health and social care, recruiters need to be wary of the compliance issues that 'no job, no job' policies present. There is no legal requirement for individuals to be vaccinated against Covid-19 and asking staff or candidates to disclose this information has the potential to raise challenges of discrimination. While much

of the demand for details around vaccine requirements will be driven by end clients, the risk lies with recruiters should they ask for this information – and that's not just limited to discrimination claims, either. Data protection issues regarding the processing of special category data – specifically employee vaccination records – will also come to the fore where this information is being requested. No matter what sector you work in or are expanding into, it's important to seek expert legal guidance should a client ask for a candidate's vaccine status to ensure you aren't exposed to discrimination claims.

## Education compliance

When we take a look at specific sectors, those where staff have direct interaction with, or responsibilities for, vulnerable individuals such as children will understandably be subject to stringent compliance requirements. Seasoned education recruiters will already know the hoops that teaching professionals including supply teachers need to go through to ensure safeguarding expectations are met. But for those looking at expanding their remit into education recruitment, it's important to be aware that education staffing firms have a duty of care as part of their role. The Department for Education (DfE) and Ofsted have published statutory guidance that must be adhered to, which includes the details required in application forms, how roles should be advertised and what references are acceptable.

While these are a necessity, schools and education institutes are looking for more in order to ensure they are upholding their own safeguarding standards. In fact, APSCo developed a dedicated Compliance+ best practice standard for education recruiters that is driven by what employers in the sector want from recruitment firms.

This includes ensuring staffing firms:

- Have clear policies and processes in place that ensure candidates are recruited and selected in the most appropriate way
- Demonstrate best practice in all recruitment activity
- Ensure all recruiters receive appropriate training in statutory safeguarding obligations
- Have a policy for handling allegations, complaints and claims of misconducts

The full comprehensive list outlines expectations of education recruiters in line with the continuously changing demands of the sector.

## Social Worker compliance concerns

Qualified Social Worker recruitment is similarly stringent when it comes to recruitment compliance. As with education, APSCo has a dedicated Compliance+ standard for its social work sector that is constantly being updated. However, for any staffing firm looking to expand into the sector, the compliance requirements are significant.

For example, when a candidate registers with a recruiter, the recruitment business needs to obtain a completed application form which covers the individual's employment history for the last ten years or back to the end of their compulsory education, whichever is more recent. Where there are gaps of more than four weeks in the candidate's employment history, staffing firms need to verify the reason either by personal references or documentation.

The individual's right to work in the UK also needs to be verified, along with proof of identity and address. Staffing firms will also need to conduct an online check of an applicant with one of the below authorities depending on where the candidate will be working:

- Social Work England
- Social Care Wales
- The Scottish Social Services Council
- The Northern Ireland Social Care Council

Aside from a DBS check, any candidate that has worked or lived overseas in the last five years for more than six months will also need to an overseas police check.

This is just a snippet of the compliance requirements needed in social work. The full list is extensive and any staffing firm looking to expand into this remit or any other sector should seek expert guidance on their circumstances to ensure they are taking the appropriate action.

## Growing complexities

Recruitment compliance is complex and subject to frequent legal and regulatory change. Now, more than ever, recruiters need in house specialists to own their contracts and compliance function and manage cross departmental communication, rather than leaving it in the hands of sales managers and consultants. Navigating what's needed across roles and sectors is challenging. Staffing companies need to ensure they are following legislative requirements, client contractual obligations and best practice to ensure they are compliant and mitigating risks to their business, their candidates and their supply chain. ■



# GLOBAL CHALLENGE

**Michelle Reilly, CEO of 6CATS International view international compliance, post-Covid.**

Talks of how the global pandemic has altered the recruitment landscape have very much been focused on the changes in remote recruitment and hybrid working. But there's much more that has evolved, including international compliance demands and challenges. Before the pandemic struck cross-border contractor recruitment was wrought with legislative complexities. While these haven't been removed, the potential risks for recruitment firms have grown. So, what's changed in the world of international compliance and what do recruiters need to do?

## The challenge of borderless recruitment

The ability to conduct an element of 'business as normal' in a remote landscape has broadened the international remit for many staffing companies. Those who pre-pandemic may have felt their firm didn't have the 'on-the-ground' resources to expand overseas soon realised that recruitment solutions and contractor placements can be borderless. As a case in point, we have seen a notable increase in the number of agencies making enquiries about expanding their current operations overseas throughout the last year. While this is promising for firms, the questions we were being asked highlighted that too many firms believed they could simply take their current set up and replicate it in another country. The differences in international compliance requirements are simply too nuanced to allow for this.

Perhaps the most common misconception to flag is the belief that a contractor can be deployed internationally through a 'global umbrella' solution. These simply do not exist. The requirements of an umbrella and how they can compliantly be engaged varies from one country to the next. This means that an umbrella solution in the UK, isn't going to be viable or compliant for contractors operating in Germany, Spain, France or another country. While there may be in-country umbrella solutions that you can tap into on an international scale, it will require the management of multiple vendors (and likely a rather lengthy PSL that needs careful management and monitoring). When we also consider that the risk of engaging a contractor in a non-compliant manner can be passed down the supply chain to the recruitment agency, ensuring that your firm has the right in-country solutions in every location you're operating in or planning to expand into, is crucial.

## Permanent establishments

The ability to deliver work remotely has also created a compliance issue where contractors may be delivering work for one location, while based in another geography. When lockdowns were first introduced, recruiters involved in placing contractors overseas faced project freezes where individuals were unable to travel. But we also witnessed a shift in end-clients views on how contractors can deliver their work. Where it was entirely possible to complete the agreed project remotely, contractors were able to complete placements without

ever leaving their home country. As everyone in the contractor management supply chain soon realised the benefits that this remote working option can have on quickly engaging temporary resources, businesses began considering engaging contractors in this way on a more permanent basis. However, this adds an additional layer of compliance risk for both recruiters and the contractors they place.

Where a contractor is working from home for a project that has been commissioned in another jurisdiction, they face the potential for dual taxes, depending on whether or not a permanent establishment (PE) has been created. By means of explanation, a PE under UK law is a fixed place of business (FPOB) where commercial activity is carried out either in part or wholly in the UK, or where an agent has the authority to act on behalf of the company in the UK. This is in line with current OECD guidelines, which most countries follow and which stipulate that for a PE to be considered such, it must be in existence for at least six months. Although there are many bilateral double tax treaties (DTTs) between countries to prevent double taxation, problems might arise if local law and DTT definitions are different, which could trigger a liability for local tax. For recruiters, there are risks that could filter down to them should a contractor be operating from a different country without paying the relevant taxes in the jurisdictions they are connected with or they are deemed to have a permanent establishment in one location while working for another.

## Covid compliance concerns

There is, of course, the added challenge of ensuring those travelling for assignments are following the latest in-country Covid requirements, whether that's providing proof of vaccination, isolating on arrival or taking a PCR test in the required timeframe before travelling.

Authorities across the globe are taking a stringent stance when it comes to limiting the spread of the virus, so any individual staffing firms put forward for international opportunities need to follow the guidelines or risk being refused entry at the border. While this poses less of a legal risk for recruitment firms, it does have the potential to negatively impact relationships with end clients and contractors if an individual is unable to begin a placement on time due to failure to follow Covid travel requirements.

With these restrictions constantly changing, agencies do need to ensure they are on top of the latest developments – if there's one thing we've learnt during the pandemic it's that circumstances can change overnight. Failure to stay on top of evolving Covid restrictions will prove detrimental to those with contractors on international assignments.

It would be impossible to mention the pandemic without also raising the potential healthcare issues this brings to the fore. The virus itself puts individuals at risk of requiring medical treatment while located in another country. As such, ensuring your contractors have the appropriate healthcare insurance in place when moving from one country to the next is crucial. It's important to add, though, that this isn't something that is simply advisable to have – in some instances it is a necessity for a placement. We've seen more end-clients build health insurance requirements into contracts since the pandemic started and we don't see this need dissipating any time soon.

This again presents a challenge, even for staffing firms with seasoned international contractors. What is deemed appropriate healthcare insurance varies across countries and requirements have, in some instances, changed as a result of Covid-19. At 6CATS International we have a specialist partner, William Russell, with experience in international insurance and protection for expats, families, remote workers and frequent travellers. This focus on the nuances of expat insurance is something that is of critical importance in today's contractor compliance landscape.

## A complex landscape

There's no doubt that international compliance is highly complex and wrought with potential risks for recruitment firms. However, the pandemic has broadened the scope for potential global growth for businesses of all shapes and sizes. This opportunity shouldn't be missed. Rather than take an approach of avoiding the potential risks your agency could be exposed to, recruiters need to be getting to grips with compliance requirements to ensure they are capitalising on the potential that the international market can bring to their firm. ■





# Demonstrate your commitment to compliant and ethical recruitment

With numerous laws governing the sector and in the absence of regulation, fit-for-purpose policing or an ombudsman in situ, compliance must be high on any recruitment agencies list of priorities. It not only improves internal efficiencies, but helps to mitigate financial and legal risk in the supply chain, not to mention the potential harm to business reputation.

With the Government failing to adequately drive compliance standards in the sector, twelve years ago, a group of leading professional employment service providers took the unprecedented step to come together to create a compliant playing field. Standards were developed for umbrella employers, limited company advisors, and self-employed/CIS contractor providers for the protection of the supply chain. The Freelancer and Contractor Services Association (FCSA) was founded.

The FCSA awards accreditation to professional employment services providers that can demonstrate the highest ethical and industry compliance standards. It exists to protect everyone in the supply chain – recruiters, end hirers and the contractor workforce.

Through our independence, stringent Codes of Compliance, and rigorous audit process, FCSA Accreditation provides a level of scrutiny and compliance testing beyond anything else available in the sector.

**In an industry where compliance is now more important than ever, can you afford not to partner with FCSA Accredited Members?**

## FCSA Accreditation – the compliance gold standard

For an umbrella employer, limited company advisor or self-employed/CIS contractor provider to become FCSA Accredited and remain accredited is very, very difficult and it is so for good reason.

It's not uncommon for unlawful operators to enter into the market, notably umbrella companies, with their slick websites and attractive take-home pay offers, only for them to phoenix within two years thus avoiding the need to submit their first set of accounts to Companies House. It is for reasons such as this that FCSA has raised the bar in terms of pre-assessment of applicants before even considering them for accreditation.

## Pre-requisites for potential applicants

In order to be eligible to enter the FCSA accreditation process, applicants must meet all of the following criteria:

- Demonstrate 2 years successful business operation for the service seeking accreditation
- Provide 1 year's full set of accounts for the service seeking accreditation
- A minimum of 75 contractors supported by the service seeking accreditation
- Minimum financial liquidity requirement of at least 2.5% of the margin
- Undergo a thorough Fit and Proper Persons check on all company directors, associated directors, and associated companies

If the applicant company is not a properly established firm, we will know about it. If the applicant company does not have sound liquidity to pay its contractor workforce, we will know about it. If the applicant company directors, associated directors/companies are not reputable, we will know about it. No stone is left unturned and that is even before we allow an applicant to proceed to our assessment process.

***"Only if the applicant is successful at the pre-assessment stage, will they be allowed to progress for FCSA Accreditation."***

Recognised as the industry's compliance gold standard, accredited membership is awarded to those service providers that have been independently audited by industry experts to confirm that they adhere to the FCSA's stringent Codes of Compliance.

## What makes FCSA accreditation unique?

- Members adhere to rigorous ethical standards
- Assessed against published Codes of Compliance
- Independently tested by regulated accountants and solicitors with expertise in the sector
- Members are required to demonstrate compliance annually
- Commit to the FCSA Charter
- Non-compliance by FCSA members will result in suspension or termination

***"The assessment process is not a tick box exercise. EVERY aspect of the accreditation process is evidenced and sample tested."***

What's more, we continuously review and update our Codes to reflect current legislation and changes in market conditions.

FCSA is a firmly established not-for-profit accreditation body. Our chief executive is appointed by the members and is independent, with no commercial conflict of interest.

## We've done the compliance checks for you!

For agencies, FCSA Accreditation removes the complexity, time and cost required to implement a compliant preferred supplier list (PSL). Every FCSA Accredited Member has already undergone the toughest testing in the industry by independent, regulated assessors covering more than 540 different technical areas.

Choosing to partner exclusively with FCSA Accredited Members will provide you with the assurance that your supply chain is as robustly compliant as it can be. Now that the latest laws allow liability for non-payment of National Insurance and tax contributions to pass throughout the supply chain, this is now more important than ever.

If you would like to find out more about FCSA Accreditation or are reviewing your PSL and looking for an Accredited Member, visit our website [www.fcsa.org.uk](http://www.fcsa.org.uk).





# WORKWELL™ – THE NEW NAME FOR JSA

**JSA Group, one of the largest and fastest-growing contractor accountancy and payroll solutions companies in the UK, has rebranded to Workwell™.**

Del Williams, Sales Director, explains how the move is more than a change of name for a business which has been at the forefront of the industry for more than 30 years, "Changing the name of JSA to Workwell™ was not a decision we've taken lightly."

## Why a change of name?

In recent years, our business has grown exponentially, attracting new clients with all-encompassing accountancy and payroll solutions for temporary workers and supply chains. Acquisitions have also played a key role in our growth. Our services now extend beyond accountancy and payroll services and include back-office and PEO outsourcing services for recruitment businesses, as well as overseas contracting solutions and compliance consultancy and technology services for the supply chain.

Furthermore, we serve clients in a range of sectors from construction to education, energy, healthcare and IT. And we've innovated solutions such as IR35 Complete™ in response to regulatory change. We continue to champion compliance and set the standard for how things should be done. Experts within our business have such breadth and depth of compliance knowledge that we now help our clients navigate all aspects of flexible labour supply, getting the best solutions for end hirers and workers alike.

We now support c.30,000+ freelance workers and over 1,000 recruitment businesses, as well as large organisations with temporary workforce needs.

We are determined to continue to build on our success, growing and

adapting our solutions to meet the continually evolving needs of our customers. The rebrand from JSA to Workwell™ underpins our market-leading position.

## Why Workwell™?

Workwell™ is a straight-forward name for a straight-forward company. Though we operate in an increasingly complex marketplace, we seek to simplify and de-risk that for our customers, and Workwell™ describes exactly what we're here to do – to work well so that our clients can work well.

Plus, the name Workwell™ reflects our company's mission – to help more people enjoy flexible working and more organisations to compliantly and easily tap into the power of flexible talent. Our new name is accompanied by a refreshed brand identity featuring an elegant curve. This represents the ebb and flow of the world of flexible working; the need for Workwell™ to be always flexible to meet customer needs; and the drive to ensure Workwell™ is always ahead of the curve in solutions, service and compliance.

***"Workwell™ is a name that people immediately understand, it's got the right connotations for what we're here to do. We know it will take time for the name Workwell™ to become established. But the feedback we've had so far has been overwhelmingly positive, and we're excited to continue our evolution as a business and our track record of growth."***  
**Del Williams, Sales Director ■**

# SAFETY FIRST

**Deborah Scales, Associate at Clarkslegal discusses health and safety compliance in today's world of hybrid work.**

Times have radically changed since the mid-seventies when the Health & Safety at Work Act 1974 imposed a legal duty on employers to ensure 'as far as reasonably practicable' the health, safety and welfare at work of all its workers. What should employers be doing now to comply with these duties when being "at work" now means work at home for so many? And how has the concept of 'welfare' moved on with today's emphasis on well-being, work/life balance and mental health support? As employers compete to attract and retain the best talent, many businesses have now made hybrid working a standard part of their offering (where the role allows it). Some employers are also offering unlimited annual leave as a perk they believe will give them an edge over their competitors.

Managed well hybrid or home working certainly brings a host of benefits to all parties. But there can be risks employers must be alert to. For example, the inability of hybrid or home workers to 'switch off' and separate home and work life, to feel they must be constantly available (even if that feeling is misplaced) and to feel isolated and demotivated. In September 2021, the World Health Organisation (WHO) announced that it had included 'burn out' in the International Classification of Diseases: not as a medical condition as such but 'an occupational phenomenon' which impacts on a worker's health. Burn out, according to the WHO, occurs as a result of chronic workplace stress that has not been satisfactorily managed and which results in the following:

- feelings of exhaustion;
- negativity and cynicism about the job;
- reduced professional efficacy.

Employers can find helpful guidance on the Health & Safety Executive (HSE) website about how to manage and recognise work related stress. The HSE Management Standards covers six key areas of the ways in which work is designed (demands, control, support, relationships, role and change). Further details are in HSE workbook call 'Tackling work related stress using the management standard approach'. Employers should also seek legal advice on employment law as in some cases stress and anxiety disorders can amount to a disability under the Equality Act 2010 if the condition has a long-term, adverse effect on the individual's ability to carry out day to day to activities.

## Some Issues for employers to look out for this year:

- Take care offering unlimited annual leave. It may work for some businesses, but initial studies suggest that those who were offered it took less leave than they would have done under the traditional system. If unlimited leave comes with the obligation to have fulfilled all outstanding work commitments, instead of handing them over to a colleague while you take a break, employers could be faced with some unattractive outcomes: the uncommitted workers exploit the system to the detriment of their colleagues; the conscientious employees don't take the leave they should putting themselves at risk of burn out; and, if working relationships sour, this employee then brings a claim under the Working Time Regulations accusing the employer of pressuring them into not taking their statutory annual leave entitlement.
- Menopause at work is likely to stay high on the agenda this year as we await guidance from the House of Commons Women's and Equality Committee on whether legalisation is needed to protect menopausal women at work. According to the Office for National Statistics there are 4.4 million women aged 50 to 64 in the UK workplace so it is an issue all employers should be mindful of, irrespective of government legalisation.
- There is also government consultation underway on voluntary and mandatory reporting on disability in the workplace. This could include reporting on the proportion of employees identifying as disabled. The definition of disability under the Equality Act – which imposes duties on the employer in relation to the disabled person – is rarely straight forward, especially in mental health cases. Employees should take legal advice when needed and also take extra care over confidentiality and data protections issues. Information about a person health constitutes special category data under the UK GDPR and so particular obligations apply to the processing of such data. ■



# DIGITAL CERTAINTY

**Steve Smith, Managing Director EMEA of Sterling discusses the impact of Digital Identity.**

Over the course of the pandemic there have been some major developments in the world of background screening, with the move to digital verification just one of the positive steps we've witnessed. As many of you will know, the Home Office has recently confirmed that they will be switching to digital identity for Right to Work checks, resulting in a permanent move away from in-person checks from April 2022.

This is a significant moment for employers in the UK when it comes to background checks as it confirms the emerging importance of digital identity and reflects exactly what is needed to support the modern workforce and remote hiring. While the pandemic has caused massive disruption, it has also driven positive changes in some areas. The work that was put into delivering digital identity solutions proved hugely valuable and we're pleased to see that this has resulted in a more permanent change that represents an advancement in background screening and identity verification. The latest Home Office announcement follows a previous commitment from the Disclosure and Barring Service (DBS) in relation to digital identity for criminal record checks, and highlights how the primary components of a trusted and safe background check are now neatly embedded with identity services leading to safer, low friction, faster screening experiences in the UK. But what does this move mean for recruiters and recruitment teams?

## The benefits of digital

Removing the need for in-person checks has a wealth of benefits for recruiters. First and foremost, it does make it easier to identify

potential fraud, eliminating the pressure on individuals to spot what have become increasingly sophisticated fraudulent documents. In fact, in a recent webinar we hosted with the DBS, 41 per cent of the employers and hiring professionals that joined us stated that the most significant benefit of digital identity is safer and more accurate checks.

Perhaps more importantly in today's skill-short market though is that this move not only broadens potential talent pools but also speeds up the processes. By eliminating a need to physically verify documents face to face, geographical barriers are broken, enabling recruitment teams to look further afield for potential applicants. It also makes screening much faster for all involved, with applicants able to instantly upload their documents which are then made available to the employer immediately.

While the benefits are certainly clear, there will be a change in how recruitment teams handle background checks, and applicants will, naturally, have some queries as to what to expect if they have no prior experience of a digital identity check. Here's what to expect from the process.

## Out with the old, in with the new

The traditional method of checking criminal records and verifying identification requires a lot of documentation and presentation of evidence – mostly delivered in person. Those with prior experience in screening will know how labour intensive the traditional method can be, but for those who don't, the process is usually as follows: An individual will be required to present original copies of specified

documents to an ID checker, usually face-to-face. The checker confirms the identity of the individuals and validates the original documents before the application is sent to the DBS. During this process, the employer is also sent the information which they then have to verify as well, before the application can be processed further. With so many different touch points, the process can easily be delayed and can be lengthy; and of course, for the individual involved, it can require travelling a significant distance in order to meet in person with the named ID checker. When we lay the process out on paper, it's perhaps easy to see why so many applicants find the traditional criminal record check requirements laborious and so many people can get lost in the process. The new process, however, is much more intuitive.

## A streamlined approach

The aim of Digital Identity screening is to make everything much easier, but also more secure. An identity service provider will act as the go-between for the individual and the registered body. That means that applicants have one main touch point throughout the process. It also removes the need for the documentation to also be verified by the employer, saving time. Of course, as these checks are digital, technology is needed. Applicants are able to submit photographs of documents via an app on their phone. The tech incorporates sophisticated cryptographic security features which help to enable accurate verification of documents.

Software is also used to verify if the individual taking a selfie is really a person, not just a photo of another photo. It's highly complex, but essentially, the facial recognition technology is used to take a series of images that confirm if the person is real; are they moving, breathing, blinking in between photos, for example. Once an applicant submits the required photos, the address and name of the individual can be verified by an appropriate body within minutes. This technology can be used by anyone, anywhere in the world, so non-UK nationals being recruited can be screened quickly and efficiently.

## Positive change

Removing the need for in-person verification really is a positive step for the recruitment sector – and encouragingly, it won't have too much impact on recruiters themselves. It was a great announcement to start off the New Year. ■





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# FRIEND OR FOE?

**Jim Tiller, Global CISO and Ben Shepherd, Data Protection Director, Harvey Nash Group discuss the impact of technology on compliance.**

It was a trend already in motion, but one the pandemic has hugely accelerated: technology is in use everywhere within the recruitment industry. Discussions, interviews and profiling with clients and candidates; internal communication and collaboration; the storage and processing of huge amounts of data – all of these are increasingly conducted through technology platforms and hosted in the cloud. Without doubt, this unlocks significant efficiencies and enables recruiters to become more agile, responsive and fleet of foot. But what of the security and data privacy implications and risks, and how should these be managed?

## Security in a cyber world

Firstly, security. No one really needs reminding that cyber attacks are almost endemic. In the 2021 Harvey Nash Group Digital Leadership Report, a quarter of tech leaders said their organisation had suffered a major IT security incident or cyber attack in the previous two years. This has edged down slightly – a sign perhaps of the rising investments being made. But attacks remain almost a fact of life. It has become increasingly easy for cyber criminals, hackers and others to deploy sophisticated tools to infiltrate systems, deny service or embed ransomware. The goalposts have shifted: whereas in the past, the main targets were financial organisations and others whose business was money, now data has become the new oil. In the digital age, all businesses hold data.

As a result, no organisation can be complacent about cyber security. With so much confidential information circulating in their systems, recruitment firms must be continually vigilant. This need has been heightened by the growing shift to digitisation. Things that may previously have been discussed verbally in the office are now more likely to be communicated in an electronic message. Face to face interviews are likely to take place over Teams/Zoom or via a virtual interviewing platform instead. Massively more data is held in the cloud.

In many respects, it's simply a case of getting the basics right. Simplify and standardise your systems where possible: complexity is security's nemesis. Test your systems, check your firewalls, make sure updates and patches are promptly applied. Ensure communications are encrypted. Make sure your identity and access/authorisation controls are rigorous and up to date.

In some senses, the task is becoming easier because with the migration to the cloud, most of us now have access to the security capabilities and provisions of the tech giants like Amazon, Microsoft and Google – and their controls will at times exceed what some organisations currently

have in place. Of course, the critically important aspect is knowing how to take advantage of those security features. Over time, optionality and user choices may become more limited – but the specification and security of solutions will be continually enhanced too.

Nevertheless, no one can afford to rest on their laurels. The risks and the potential damage to reputation are simply too high. You need to work tirelessly at maintaining and enhancing the cyber resilience of everything you do.

## Data privacy a pre-requisite

Then there is data privacy. It's another hot topic that's become especially prevalent in the digital age. We are all, as business users and consumers, more aware of how our data is used and shared. Again, with so many more communications and discussions taking place electronically and remotely now rather than face-to-face, the risk rises with it of inappropriate data sharing or unwitting breaches of confidentiality.

That's why you need very clear protocols that are understood by all. Obviously, we can't go far here without mentioning the GDPR. As an organisation, you need to be clear in all cases what your lawful basis is for data collection and processing – whether that's consent or another basis under GDPR such as legitimate interests. Whether it's data retention, fair processing, privacy notices, subject access requests or maintaining records, it's simply a pre-requisite to ensure that everything is compliant with your regulatory obligations.

## Embedding security and privacy in the culture

But of course, having the right policies and data architecture in place is one thing – making sure that staff on the ground (and, increasingly, on their own at home these days) understand the rules and follow them is another.

That's why a programme of training, support and guidance is essential, across both privacy and security. At Harvey Nash Group, we have mandatory annual training that applies to all staff, right up to the CEO. We have a set of company rules on security and privacy that is communicated to everyone as well as a foundational set of privacy principles for staff to follow.

It's often said that 'culture eats strategy for breakfast' – that's especially true in this area. The best and most effective way to ensure that people are mindful of security and follow data sharing rules is to embed it into the prevailing culture of the business. Encourage team leaders and

line managers to include it regularly in conversations with their teams, formal and informal. Those 'water cooler' moments can be especially impactful. For example, a simple reminder: Don't put anything in an email that you wouldn't want to see in the press tomorrow.

## Emerging issues of the future

The growing digitisation of recruitment is also raising new issues that businesses need to tackle. One of these is that the hybrid and remote working era means candidates from a much wider geographical area may apply for a role. Clients are aware of this too and some are expanding the perimeters of their search. In our Digital Leadership Report, over a third of digital leaders said they have widened the geographical net. This means that recruitment firms are increasingly likely to be interacting with individuals based in potentially less familiar overseas jurisdictions – so following the right data protection rules is essential. If you use the GDPR as the 'gold standard' and base policy on that, you are unlikely to go far wrong. Nevertheless, some changes may need to be made. For example, in the US, California has specific rules around individuals' data rights. We have an office there, and so needed to update the web pages of our US site with required disclaimers.

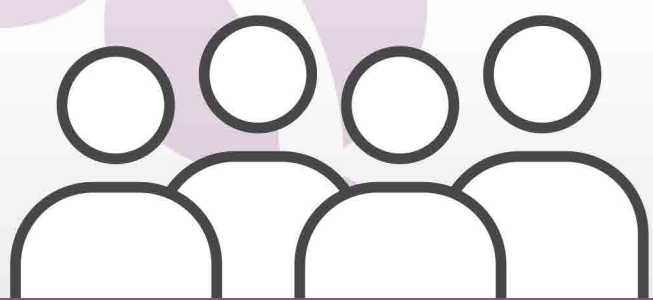
Other issues are more conceptual – and may need collective discussion and debate as an industry to chart the way forward. Primarily, these revolve around the growing automation of profiling, screening and even job-offering to candidates. With increasingly sophisticated algorithms available, it may become possible to conduct almost a complete recruitment process through machine intelligence. This type of advance in technology may clash with data subject rights under the GDPR. Clearly, good recruiters will always ensure that their talented people make the ultimate decisions and recommendations to clients. But, as the technology develops, where will the line be drawn over what degree of autonomous AI decision-making is acceptable? It's certainly one to watch.

## A dynamic balance

Recruitment has always been a dynamic industry and the sector is living up to its reputation through its rapid and successful embracing of technology. Nevertheless, this brings some challenges that have to be carefully managed. At Harvey Nash Group, we're huge advocates for the benefits of digitisation – but equally, we continually monitor, measure and test it to ensure it's generating the outcomes desired. ■



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