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WELCOME



SIMON KENT
EDITOR

Compliance in the recruitment industry operates on two levels. There's the broad brush stroke level – the Criminal Justice Act, IR35, Right to Work – but then there's a more detailed level beneath these challenges. It's the point where suggested solutions and models need to be subject to close scrutiny in order to be seen to be compliant. Where the everyday work of consultants and recruitment businesses must still be correct in order to deliver a safer, low risk service. Achieving compliance on both these levels is certainly not easy, but it is something recruiters do every day.

The act of recruitment itself could be seen to operate in a similar way. There's the broad brush strokes of understanding and addressing market conditions, opportunities in terms of skill shortages and demand for workers. And then at the same time there's the need to take a personal, almost granular approach – delivering a service which clients can't get elsewhere and which your recruitment business alone can deliver.

In this issue of The Global Recruiter we continue our Compliance First series, we also feature the story of a remarkable nursing recruiter who changed the game in order to bring much needed qualified staff to the health sector. All our stories point to a thriving industry, one which places clients first and seeks to offer a consistent and long term solution to talent needs. It's also an industry which progresses through sharing and discussing ideas. The Global Recruiter does this through the content of this e-magazine and through our ongoing series of Recruitment Live discussions. So if there's anything you'd like to discuss or get off your chest, please do get in touch. ■

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ACT NOW

Crawford Temple, CEO and founder of Professional Passport, calls on recruiters to take note of the Criminal Finances Act.





Recruiters play an important role in the job market, connecting employers with potential employees. However, with this important role comes a responsibility to ensure that their actions do not facilitate illegal activities.

The Criminal Finances Act was introduced in 2017 with the intention of increasing accountability and transparency and contains far-reaching provisions that impact recruiters. The most significant provision is the “failure to prevent the facilitation of tax evasion”. Essentially, this means that an organisation, recruitment agency or contractor will be guilty of a criminal offence if an employee or associate facilitates tax evasion for a client, even if senior management was unaware of this transaction.

Failure to comply with the legislation can result in severe financial penalties, reputational damage and even criminal charges. Therefore, recruiters must take proactive steps to identify potential risks, implement due diligence potential risks, implement due diligence processes and provide training and awareness to their staff members.

The off-payroll legislation has seen a rise in the number of disguised remuneration schemes masquerading as umbrella companies. It means that it has never been more important for recruiters to be alert to the antics of tax avoidance schemes and recruiters have a responsibility to operate ethically and legally. >



Red flags to be aware of:

- Are you seeing a significant increase in the number of contractors moving to one particular so-called “umbrella” firm? A plethora of workers moving around should raise alarm bells. Ask questions and carry out checks.
- Be alert to the two payment pay trick. With a rise in tax avoidance and disguised remuneration schemes, recruiters and contractors need to be on their guard and be aware and wary of any provider offering them two payments for each pay run. Generally, the first payment will be applied at National Minimum Wage and taxed through PAYE and the second will have no tax applied and could be called a variety of names such as an advance or a loan. These offerings lure the unsuspecting in with the promise of much higher-than-expected returns, often over 80 per cent but don't be fooled. When these anomalies are discovered by HMRC it could be the contractor, who has to pay the missing tax that is owed.

What can recruiters do?

- Choose an accredited provider – all recruitment firms should take action to ensure that their consultants only refer contractors to firms on a carefully vetted PSL.
- Put in place effective policies and procedures to deal with any incentives that their staff might be offered by intermediaries in exchange for referring contractors to them.
- This could include things like requiring all employees to sign a declaration that they will not engage in tax evasion and setting up a whistleblowing policy so that employees can report any suspected tax evasion. Moreover, if any recruiter is paid an incentive to introduce contractors to a tax avoidance scheme, they are also breaking GDPR rules by sharing confidential information.
- Report any suspected tax evasion to HMRC. This is important as it allows HMRC to investigate the matter and take action if necessary. >

If a recruitment agency is found guilty of an offence under the CFA, it could face a fine of up to £250,000. In addition, the directors of the agency could be disqualified from being directors of a company.

No firm can afford to turn a blind eye to tax evasion practices that might be taking place within their organisation. A business will only have a defence against prosecution if it can show it has demonstrable adequate prevention procedures in place.

Although it is yet more red tape for compliant businesses to contend with, the Criminal Finances Act exists to stamp out dubious Finances Act exists to stamp out dubious and unethical practices and goes some way towards levelling the playing field for everyone.

Exemplary employment practice is essential throughout the whole recruitment supply chain and compliance should be at the heart of every recruitment agency and embedded in its company culture as a priority. Compliance should not be a back-office function and clear policies, processes and qualified staff on board are critical to operating compliantly. ■

“Although it is yet more red tape for compliant businesses to contend with, the Criminal Finances Act exists to stamp out dubious and unethical practices and goes some way towards levelling the playing field for everyone.”



COMPLIANCE RIGHT NOW

Supply Side: Is my agency at risk
from the activities of my umbrella
PSL and how do I check?





Let's begin with a simple question:

“How do I conduct due diligence on the umbrella companies that my agency uses?”

In what should be a straightforward answer, from speaking to, and working with, agencies over many years, the answer isn't always common.

For example, how frequently should you audit; how can an audit on day one secure the supply chain on day two; how do I know the umbrella is being honest with their answers? The list continues.

One question does however drive to the heart of the issue;

“Where does the liability for my agency originate when using outsourced payroll providers and Umbrella Companies?”

The answer: Most frequently, it originates from how payroll is processed. >



The answer to our question will be published Monday the 10th of July at 10 AM on our LinkedIn Account

<https://www.linkedin.com/company/saferec>

By understanding, assessing and auditing payroll processing you are able to account for risks such as POTAS, The Criminal Finances Act as well as the potential future implementation of third-party debt transfer alerted to in the recent (see link at end). In essence, the only way to ensure that your agency and your clients minimise liability is to audit your Umbrella's Payroll in real-time.

Regrettably, whilst reviewing your PSL's processes and policies is extremely vital and plays an important part, it is not sufficient to establishing complete assurance of the payroll processes. In the modern world, with AI tools that can instantly write contracts and policies, it has become easier to pass these standalone checks thereby giving you a false impression of compliance. As always, when technology advances to outpace your

compliance framework, it is time to use technology to protect yourself.

How is this done?

Consider SafeRec Certified Umbrella Companies – The future of Payroll Compliance

SafeRec is a UK-based compliance and technology company that has developed an ecosystem for businesses operating in the temporary worker industry.

Building on this ecosystem, on 12th June, SafeRec launched the First Real-Time Umbrella Company Certification designed with Recruitment Agencies in mind.

SafeRec achieves this by mandating certain procedures which all umbrellas that seek the SafeRec Certification must adhere to. By engaging with these certified Umbrella Companies, your agency is offered transparency, certainty, tax mitigation – at no cost. >

“The work that SafeRec is doing for the industry is ground-breaking. Manual verification will always play a part in securing compliance and protection for agencies and hirers, but the introduction of a future-proof tech platform revolutionises the speed, accuracy and scalability of compliance.” Rhys Thomas, MD of WTT Legal

How is this achieved?

SafeRec has developed a proprietary technology platform to forensically audit Umbrella Companies by constantly verifying each and every payroll processed, all designed with agencies and their clients in mind.

To be Certified, each Umbrella Company needs to embrace transparency and forensic auditing at five different levels that allows no room for anything other than compliant and ethical practices for your supply chain:

- All payslips and statements processed by a certified umbrella company must be audited by SafeRec (Umbrella PAYE; CIS; PEO... no exceptions)
- SafeRec must obtain all payslips and RTIs at source so they can't be altered. (e.g payslips and reconciliation statement are received directly from the Payroll software via API),
- All audited documents are cross referenced with RTI Reports sent to HMRC each month.
- The umbrella must undergo an extensive compliance review by SafeRec's partners, WTT Legal, a regulated Law Firm, specialising in the temporary worker industry. Here all policies, contracts, background company data and control systems are audited up front and again at periodic intervals over time.
- All of the umbrella company's agency clients (including you!) receive a monthly report where they can transparently review what has been audited.

By following this process, SafeRec ensures that there is no room for Tax Avoidance or unethical practices. Your agency will receive a report confirming the same.

Why is the solution designed for Agencies?

Sebastien Sauca, the Co-founder and CEO of SafeRec and former Sales Director of a temp recruitment agency, decided to design a solution after noticing that organisations conducting compliance checks could not overcome 2 fundamental hurdles for agencies to fully trust them:

- All existing compliance checking processes are between the auditor/ assessor and the Umbrella Company; Results are never reviewable by recruitment agencies or workers.
- Tax liability for agencies and workers originate from how payroll is operated.
- Therefore, what is currently being reviewed/assessed/audited does not include areas where the potential tax liability originates.

The natural step was to design a solution that was fully automated and where agencies could check at anytime, what has been audited, how and have access to the result details.

WTT continues to play an integral part in the development of the certification process, with their own experience of what the agencies they work with want to see. Rhys Thomas, MD of WTT Legal commented “The work that SafeRec is doing for the industry is ground-breaking. Manual verification will always play a part in securing compliance and protection for agencies and hirers, but the introduction of a future-proof tech platform revolutionises the speed, accuracy and scalability of compliance. SafeRec, like us, are motivated to see real and sustainable change in the industry and the developments that are planned for the certification are profound”. >



For more information about
SafeRec: <https://saferec.co.uk/>

For more information about WTT
Legal: <https://wttgroup.co.uk/>

List of SafeRec Certified Umbrella
Companies: [https://saferec.co.uk/
certified-umbrellas](https://saferec.co.uk/certified-umbrellas)

Link to the government
consultation: “Tackling non
compliance in the Umbrella
Company Market”

A certification that ensures compliance rather than just promising it

Imagine a world where...

When you use a certified umbrella company, the certification body sends you a breakdown of all audits conducted on payslips and reconciliation statements for the candidates they paid.

Imagine if all audits were cross-referenced with RTIs sent to HMRC before you received the report.

Imagine if the report was sent automatically to the email address of your choice, without any need for action on your part.

More importantly, imagine if, as for all certifications, the cost was borne by the organisation being certified (the umbrella) and not its client (you!)

This is exactly what happens when you work with SafeRec Certified Umbrella Companies. ■

THE UMBRELLA FACTOR

Tania Bowers, Global Public Policy Director, APSCo discusses how non-compliance in the umbrella market is being addressed.



Non-compliance across the umbrella market is a growing concern for the recruitment sector. Whilst umbrella companies perform a valuable role in the supply chain, unfortunately, not all operate compliantly. For that reason, APSCo has long called for regulation of the umbrella sector. We therefore welcome the HM Treasury (HMT), HM Revenue & Customs (HMRC) and the Department for Business & Trade (DBT) consultation on how to better regulate, and ultimately prevent, umbrella non-compliance.

But what does this mean for recruitment businesses?

The consultation

While it is a complex issue, as a summary, the consultation proposes regulation as a two-stage process:

- Defining what an umbrella company is
- Determining the minimum legislative requirements of umbrella companies

The initial stage will be fundamental to driving any changes. There is no current statutory definition of these businesses; HMRC describe them as a company that employs temporary workers to work for different end clients. >

There are advantages and disadvantages to both definitions and, at time of writing, insight from those across the supply chain is being sought to ensure an informed decision is made. However, it is clear that the definition must be sufficiently broad to capture the nuanced roles the umbrella companies play in the supply chain.

We welcome the government's proposal to regulate umbrella companies through expanding the remit of the EAS, which already regulates recruitment companies, provided that the EAS have sufficient resources for this additional remit. We believe that the EAS should adopt a reactive and proactive approach to enforcement in the umbrella sector.

While the definition of umbrella companies will dictate how regulation is introduced, the consultation has outlined how the government plans to tackle non-compliance – and unfortunately, there are some recommendations that will be of concern for recruiters.

Regulation and recruitment firms

Looking at the detail that is currently available, the focus on defining an umbrella company into law is something that needs further clarity. There are a range of nuances that impact the role these firms play in the supply chain. Although the consultation does highlight plans to define in legislation how recruitment businesses can engage with a worker, the information shared suggests that this is largely the existing models of supply being written into legislation. We are however pleased to see that the Government is looking to set statutory compliance standards which are in line with our initial recommendations last year. >



There are also three strategic options proposed for preventing tax non-compliance within the umbrella company market aimed at changing the incentives and behaviours in the temporary labour market.

Option one mandating due diligence; due diligence is already a part of most staffing firms' processes, often requiring an umbrella to be audited by an accrediting body. In order to be effective, the mandated process would need to be prescriptive as to exactly what a thorough due diligence process would look like.

We are concerned with option two, the potential for the transfer of debt to the recruitment business (where the umbrella company is unable to discharge the tax liability) and the possibility of the staffing firm being deemed the employer for tax purposes akin to the IR35 regulation which would certainly be a concern for recruitment businesses.

Just as we highlighted previously with off-payroll working rules where unpaid duties are passed on to recruitment businesses, this option would be unjust for the staffing sector and would put an unfair amount of financial burden on firms. In many instances, recruiters would be facing financial penalties for actions or decisions that they have had little to no control over.

Aside from this, we believe that this approach would in fact embolden non-compliant umbrella companies, rather than discourage them. If the risk and burden are passed on to others in the supply chain, there is no reason for these firms to change tact. While we are working with our members to inform policymakers of this oversight in the plans, should this option be pursued, we may see recruitment businesses choosing not to engage umbrella companies in their supply chains in view of the risk of a tax debt transfer.

Option three may be a practical solution to address the risk to the recruitment business of a non-compliant umbrella company and the transfer of the tax liability to the recruitment business. However, it somewhat defeats the object of why most recruitment businesses engage with an umbrella company, which is to perform the payroll function. It may also cause confusion where the worker has a deemed employer for tax purposes and a different employer for employment rights. Further, where the recruitment business is responsible for tax purposes there may be limited benefits for engaging an umbrella company in the supply chain. >





Recruitment company risk

Note that in all of the above, the onus, risk and responsibility lies with the recruitment firm, not the umbrella company, an issue which we believe needs to be addressed. If the non-compliance lies with umbrellas, then action should be taken against these businesses, not recruiters.

The consultation also addresses the employment allowance and flat rate scheme which are simple to use and rely on self-assessment making them more easily subject to abuse by mini umbrella companies: making it mandatory for a UK director to be in place to be eligible for the employment allowance. These proposed measures, in particular the requirement for a UK director to be in place, are a step in the right direction towards transparency and accountability.

The actions of a few unscrupulous umbrella firms have already impacted the reputation of the sector. We don't want to see this extend into the financial, reputational and operational risks for recruitment businesses where they have no control over the actions of the umbrella company.

A compliant future?

Whatever the final outcome of the consultation, it is a promising sign that HMRC is taking a carefully considered approach to an issue which – given the significant number of initial responses to the consultation last year – is a prime concern for the recruitment supply chain. It's clear that the Government is being ambitious in its plans to tackle the unscrupulous behaviour of a few rogue umbrella companies, but any such changes should not be to the detriment of recruitment businesses. ■

PROTECT & SURVIVE

Compliance First: Sebastien Sauca, CEO & Co-Founder of SafeRec.co.uk views the Criminal Finances Act and Third-Party Debt Transfer for recruitment agencies.



Five years have passed since the implementation of the Criminal Finances Act, yet it remains challenging for many agencies to understand the true impact of its provisions. More and more agencies are seeking to grapple with their own compliance policies to account for the act, but the prospect of a third-party debt transfer, as outlined in the government's recent consultation, makes it essential for business owners, senior managers, and shareholders to truly comprehend the reality behind commonly heard terms such as "Unlimited Fines," "Reputational Damage," and "Strict Liabilities."

Risks for your agency

There is no doubt that the introduction of the off-payroll working rules in 2021 significantly changed the landscape for both the temporary recruitment and umbrella industries. Reactive blanket banning of PSCs by hirers, pushed an entire market towards alternative models, including the unintended consequences- avoidance vehicles.

Recruitment agencies had to make adjustments and consider either processing payroll internally – a cumbersome task – or engaging with third-party payroll software. Options such as Umbrella PAYE, PEO, Payroll Bureau, and Joint Ventures all come with their own advantages and disadvantages, particularly as each adds a new layer to the supply chain that must be vetted and audited on an ongoing basis.

1. Your current legislative risks

As a recruitment business or an end client, supply chain transparency must take into consideration;

- The intermediary's legislation (Off-Payroll working)
- POTAS (Promoters of Tax Avoidance Schemes)
- The Criminal Finances Act 2017

These legislative provisions were implemented, in part, to ensure that companies such as recruitment agencies take a more active role in preventing tax evasion and the promotion of mass marketed tax avoidance schemes. No longer is turning a blind eye an acceptable practice and it is incumbent on agencies to play an active role in mitigating these practices from their supply chain. Understanding the operations of your suppliers is therefore crucial to avoiding unlimited penalties. >

The requirements here are more extensive than the space available in this short article. Therefore, over the coming weeks, we will be publishing more focussed summaries on the provisions above and the practical steps you can take to mitigate risk for your business.

2. Your potential risks in the future

You may have noticed that the government has released a new consultation on how they intend to regulate umbrella companies. Within this, they make it clear that they are exploring third-party debt transfer as a solution.

Third-party debt transfer means that your agency could be responsible for the debts of a non-compliant umbrella company if the money cannot be recovered from the umbrella itself. In short, your agency can become liable for the actions of the umbrellas on your PSL, if they are found to be non-compliant, thereby extending the provisions already in place under the Criminal Finances Act.

It goes without saying that in the coming months (not years), recruitment agencies will face greater pressure to take action. As this becomes more reaching, we will continue to see M&A activity focus on these issues. Therefore, if you want to protect the valuation of your company, compliance and risk mitigation in your supply chain is imperative. The level of risk will soon reach a critical threshold. Risk management must now be an essential part of every good entrepreneur's manual and BAU for agencies and end-hirers operating in this space.

3. Sustainable options for resolving Tax liability

It sounds like only bad news, but don't worry, there is light at the end of the tunnel. Technological advancements offer viable options, as recognised by the government in their most recent consultation: >



“The government is aware of innovative tools available to help workers and employment businesses to assess the compliance of the umbrella companies with which they contract and recognises the value that they can provide.” (Tackling non-compliance in the umbrella company market Consultation, June 2023).

The development of new technologies offering agencies the possibility to work with Umbrella Companies that are audited in real-time on each payroll, while providing an automatic audit report to recruitment businesses is without a doubt the future and the way forward. The world where Umbrella Companies will prove in real time that they are compliant is the only way for an agency to trust their supply chain and will allow them to refocus 100% of their resources on growing their business.

The most recent and popular example is the launch of a Certification for Umbrella Companies where Certified Umbrellas are audited in real-time by SafeRec. The important ways in which the process mitigates risk for agencies are as follows.

For the purposes of the list below, assume Umbrella A is on your PSL;

- All Umbrella A's worker's payslips and statements are audited in real-time, on every pay run. Whether that be weekly or monthly, every payslip for every worker is audited at source directly from the Umbrella's payroll software.
- A compliance report is then shared with both you and the worker, without the intervention of the Umbrella, to ensure you have a truly independent

analysis of the workers being supplied to you by Umbrella A.

- Each month, Umbrella A's RTI data is cross-referenced with each payroll to ensure that they have paid the full amount of PAYE.
- As part of the reporting you are able to independently verify that all workers supplied to you via the umbrella are included in the audit, meaning avoidance and mini-umbrella activity cannot exist in the supply chain.
- Umbrella A's processes, policies and contracts are reviewed by WTT Legal, on an ongoing basis, to seek indicators of avoidance and flags of non-compliance.

4. What should you do now?

Explore your options and review your strategy to audit Umbrella Companies. However, proceed with caution. Compliance has become a buzzword in 2023, and many organisations have emerged offering to audit, review, and assess your umbrella audit, review, and assess your umbrella providers. In some instances their processes can be vague and lacking in transparency. Whatever solution you decide to engage with, make sure you understand the processes, what has been done, and that the results of the conducted activities are transparently communicated to you. The only way to truly trust that the supply chain has been reviewed fully is to be able to verify what has been done!

In the upcoming issue of Global Recruiter Magazine, we will provide you with concrete figures regarding the potential liability you may face due to non-compliance and the number of workers involved. ■

“The only way to truly trust that the supply chain has been reviewed fully is to be able to verify what has been done!”

THE IR35 EFFECT

Crawford Temple, CEO and founder of Professional Passport, on how IR35 has fuelled non-compliance in the supply chain.



On 9th March 1999, the Inland Revenue issued a press release (IR35) outlining the Government's plans to clamp down on the increasing use of one-man-band limited companies to provide professional services to clients, where the individual was still working in a manner akin to a traditional 'employee' while enjoying the tax benefits afforded them by a corporate structure. The Intermediaries Legislation became law in 2000 and remains in place today. >

IR35

Fast forward 17 years to 2017 and IR35's newer version, the off-payroll legislation, was rolled out into the public sector and subsequently four years later in 2021 to the private sector. The new legislation would now see hirers responsible for assessing the status of its freelance workers.

But let's not forget that both the original and newer legislation around IR35 were devised to counter tax avoidance as the Treasury believed and still believes it is missing out on some millions of pounds into the coffers. It is somewhat ironic then that the very legislation that was introduced to clamp down on tax avoidance has given rise to a proliferation of tax avoidance schemes that have seen the government miss out on billions of pounds that they will not get back.

The introduction of the off-payroll legislation saw many firms blanket banning the use of limited company contractors. This, in turn, saw many contractors turning to umbrella working. And, along with the prominence of the contingent workforce has come a proliferation of regulation and legislation as policymakers seek to catch up with an ever-evolving 21st-century working landscape.

Sticking plaster

Over the years, a raft of legislation has been applied 'sticking plaster' fashion which has failed to address the inherent issues and challenges that the flexible working market faces. Non-compliance and enforcement have not been addressed rigorously enough so that in a commercially competitive environment non-compliance has won out.

Off-payroll working has resulted in many workers operating through a new structure to them, the umbrella company. There are many examples where workers clearly do not understand the arrangements and they have been hoodwinked

into signing up for schemes that are not compliant and are disguised remuneration schemes purporting to be umbrellas.

And HMRC is not taking swift enough action to shut down these schemes which are allowed to thrive. Current enforcement strategies are not working and simply serve to incentivise non-compliant offerings. HMRC holds all the data it needs to find the perpetrators of such schemes and take action.

But thankfully, today, the industry seems to be accepting that the importance of a compliant supply chain is critical to ensuring that the highest standards are being met. However, pressure continues to mount as recruiters grapple with their short-term business needs which means that some are being lured into business opportunities that are simply illegal.

Do you smell a rat?

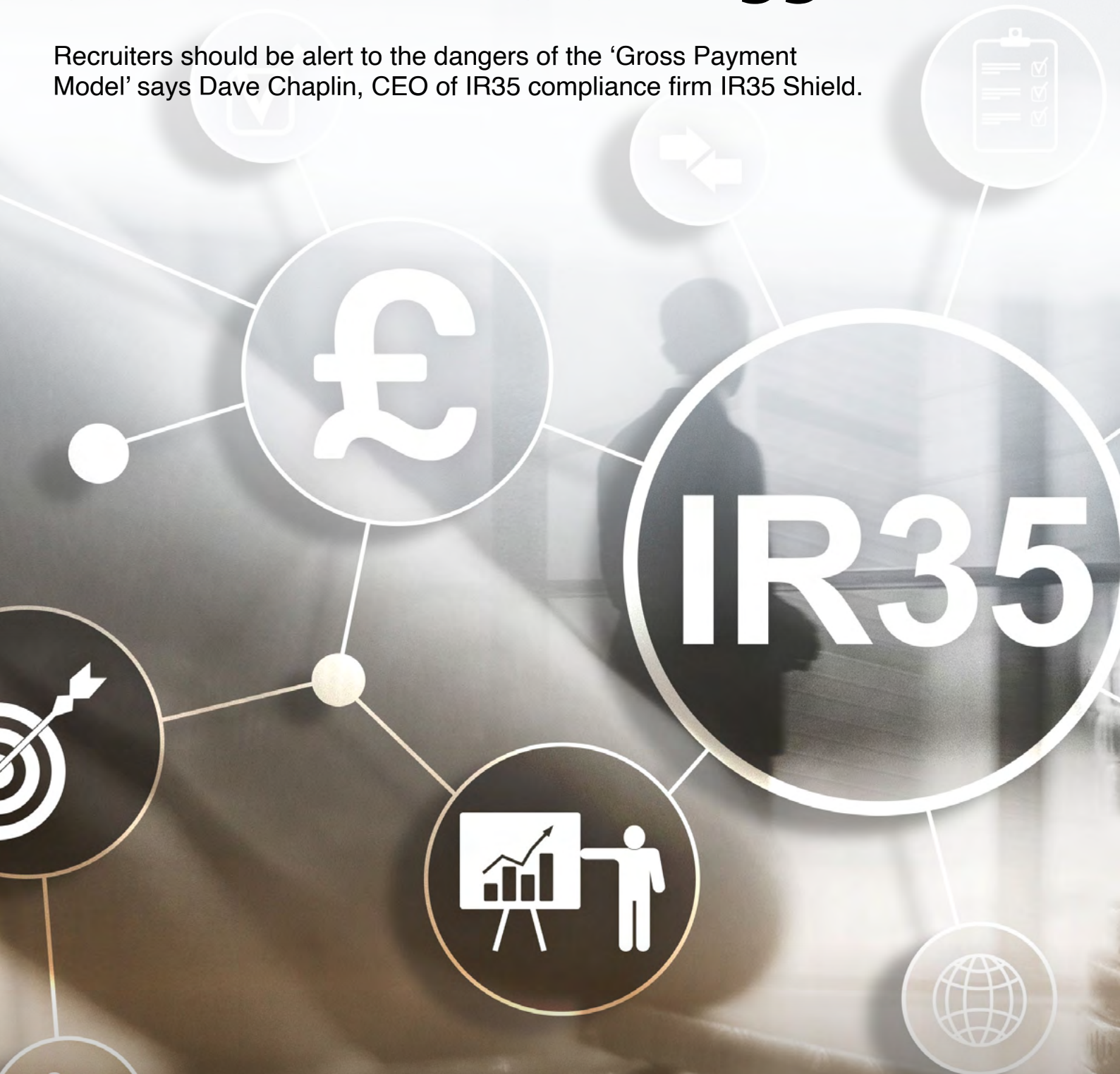
If recruitment companies see a sudden increase in workers operating through a specific provider, that could signal that something might be awry and should prompt recruiters to take steps to conduct detailed checks to establish that the provider is compliant, accredited and operating to the highest standards. Professional Passport is happy to assist recruiters with these checks.

Avoid third-party sellers and sales lead generation companies

Many of these firms appear to look like compliant businesses by fronting their offering with an accreditation seal of approval. They tend to offer significant financial incentives to recruitment consultants for introductions, regularly offering around £400 each. With umbrella charges typically equating to around £20 per week, it is difficult to understand how these large financial incentives can be offered through standard compliant offerings. >

DON'T SAY 'INSIDE IR35'

Recruiters should be alert to the dangers of the 'Gross Payment Model' says Dave Chaplin, CEO of IR35 compliance firm IR35 Shield.



The off-payroll working legislation ("OPW"), or 'IR35 reforms', rolled out to the private sector in April 2021, having already been embedded into the public sector since April 2017. We all know the common phrase: If a limited company contractor is 'Inside IR35', then payments made to their limited company must be treated as employment income, just like a salary.

But, wrongly used, the words 'Inside IR35' can open the door to a legislative loophole leading to huge agency balance sheet exposure and risk of criminal sanctions. The vulnerability occurs when rogue umbrellas seek to adopt what is euphemistically called the 'Gross Payment Model'. >



Misplaced words

Since April 2017, recruiters have used two words, 'Inside IR35', as a shortcut phrase instead of saying, "Sorry, the client has banned limited company contractors and will only use contractors if they are on PAYE." The practical reality is that the parties negotiate 'Inside IR35' engagements on that basis, and the contractor either ends up on an agency payroll or works via an umbrella.

Let's assume the contractor has been told 'Inside IR35' via email or in a recruiter advert, and the monies for the contractor pass to an umbrella company for processing. All appears fine. But, is it?

Beware of the opportunistic umbrella

If the umbrella company does put the contractor on an employment contract and correctly pays all taxes, there are no issues. But what if the umbrella decides to pay the contractor gross monies to the contractor's limited company, sometimes referred to as a personal service company or PSC?

In the latter scenario, the off-payroll legislation ("OPW") comes into play, and the umbrella company becomes what's referred to as the 'fee-payer', essentially the entity above the PSC. The party responsible for deducting and paying the taxes to HMRC is the 'deemed employer'. But, the umbrella isn't the deemed employer because the client has not given a Status Determination Statement to the worker, thereby failing to trigger the tax liability transition mechanism in section 61N(5).

In non-technical terms, the tax liability now sits with the client, who, if investigated by HMRC and hit with a tax bill, will likely exercise the tax indemnity clauses the recruitment agency

typically signs. The client may even sue the agency for gross negligence.

If HMRC speaks to the umbrella company, the umbrella will state they were told the engagement was 'Inside IR35' and that the client did not give a Status Determination Statement (SDS) to them or the worker. Therefore, the statute dictates they must pay the limited company gross monies.

The Status Determination Statement (SDS) is crucial.

What is a Status Determination Statement (SDS)?

Let's start by saying what an SDS isn't. It isn't the words 'Inside IR35'.

The updated rules in April 2021 introduced specific changes, including the Status Determination Statement (SDS), which was intended to make sure in cases where the status was 'Inside IR35', the onus for paying those taxes passed down the supply chain to the party paying the PSC.

But, there are rules for a statement to qualify as an actual SDS, requiring the following legislative requirements to be met:

- The SDS must contain the conclusion on the deemed status of the worker.
- The client must have taken 'reasonable care' in concluding the status in the SDS.
- The SDS must explain the reasons for the conclusion.

If all three requirements are met, and if the SDS is passed from the client to the worker, then the 61N(5) trigger is invoked, and the fee-payer (the party paying the PSC) assumes liability for the tax and not the client. >

Three routes to tax risk: No SDS, void SDS, or weak SDS

There are three routes rogue umbrellas can follow to implement a 'Gross Payment Model':

- **No SDS:** With no SDS, the rogue umbrella pays the money gross to the PSC and claims they were told it was 'Inside IR35', but no SDS was given to the worker.
- **Void SDS:** The words 'Inside IR35' do not qualify as an SDS. Neither does an SDS without reasons in it. Nor one where reasonable care was not taken.
- **Weak SDS:** A weak SDS could be considered by the umbrella and then just dismissed and replaced with their determination that says 'Outside IR35'. There is no statutory obligation on the fee-payer to follow what the client has concluded on IR35 status.

If the umbrella pays gross monies, the client is now unknowingly building up tax risk under the OPW rules in the abovementioned cases. The agency may also have committed an offence under the Criminal Finances Act 2017 for looking the other way and failing to prevent tax evasion.

How clients and agencies can secure their supply chains

With this risky tax loophole now understood, what should clients and agencies do?

There are four options:

- The client or agency could remain the "deemed employer," deduct the taxes, and pay the PSC the net amount directly.
 - The agency could run the payroll and provide the client with an audit trail.
 - The client and agency could insist on an entire audit trail for every payment using an umbrella, proving the correct money flows have occurred.
 - Do nothing.
- The first option is messy, leaving the client open to future employment tribunal claims. Option two removes the benefits of using umbrellas, so option three is arguably better. Option four is, at best, negligent and could lead to criminal sanctions.

Never say 'Inside IR35' again

In all engagements, the words 'Inside IR35' should never be used unless accompanied by a robust IR35 assessment that meets the statutory requirement for being a valid Status Determination Statement.

Also, using 'Inside IR35' as a placeholder for 'payroll-only' opens the door to non-compliance.

Finally – if there are umbrellas in the supply chain, an exhaustive audit trail is the only way to guarantee compliance and combat the risk that the rogues leave you with a nasty future surprise. ■





RIGHT HERE, RIGHT NOW

Sebastien Sauca, CEO & Co-Founder of SafeRec.co.uk discusses the importance of real-time compliance.

The recruitment industry, like many others, has seen a transformation in the wake of technological advancements over the past few years. The incorporation of compliance technology, particularly real-time compliance, has been a game-changer. This article delves into the evolution and impact of real-time compliance technology in the temporary labour market, focusing on its advantages, the challenges it helps overcome, and the need for recruitment agencies to adopt it.

The evolution of compliance technology

Over the past decade, technology has become instrumental in enhancing compliance within the recruitment industry. Innovative solutions, sometimes using artificial intelligence, help agencies increase their effectiveness and efficiency across their entire organisation.

The Umbrella Company is arguably one of the hottest topics in the Temporary Labour Market at the moment and a great example of what real-time compliance can solve. The recent launch from the government of a consultation presents different routes that the government is considering to regulate Umbrella Companies. One of the likely options is the implementation of a third-party debt transfer, and this is the reason why we have seen many temporary recruitment agencies looking more than ever into where potential debts come from in their supply chain. And when it comes to third-party payroll providers, the answer is nearly always about how taxes are calculated and if they are paid to HMRC. ➤

Additionally, there is always a gap when organisations talk about how compliant they are. If it is not checkable or even auditable, it is very easy for an unscrupulous average salesperson to say to agencies or workers what they want to hear to close the deal. This has led to numerous umbrella companies being implicated in operating tax avoidance schemes over the past decade.

Real-time compliance now addresses directly the issue that recruitment agencies face by auditing all payments made by third-party providers such as Umbrella Companies and ensuring all taxes have been paid to HMRC. This is what was launched in June by SafeRec with their Umbrella Certification (<https://saferec.co.uk/saferec-umbrella-certification>).

The power of real-time compliance

Real-time compliance is an innovation that offers a solution to all challenges. Systems, where rules are monitored and enforced in real-time offers significant advantages. When coupled with transparency and third-party verification, it makes the whole process bulletproof.

Any attempt to circumvent compliance becomes impossible, as the system operates as operations happen. The third-party verification offers an additional layer of oversight, ensuring that the company is operating within the law and that workers are paid correctly and their taxes properly handled. >



Temp recruitment agencies' challenges and technological solutions

In 2023, recruitment agencies face a series of challenges and are being asked to comply with more laws and regulations than ever before.

Technology is offering solutions to mitigate these regulatory burdens. Numerous tech platforms assist agencies with onboarding processes, branding, sales activities, compliance requirements, and business protection against tax liabilities. These platforms, by leveraging AI and real-time data, are enabling recruitment agencies to operate more efficiently and effectively.

In the temporary labour market, technology helps to monitor and adhere to rules and regulations on an immediate, ongoing basis. Digital tools can automatically track work hours and payments, ensuring that temporary workers are compensated fairly and in accordance with tax and employment laws.

What should you do as an agency?

As we've explored, the power of real-time compliance and technology is transformative for the temporary labour market. Technology enhances efficiency, fosters transparency, and increases accountability in an industry that desperately needs it.

Recruitment agencies need to embrace partnerships with tech companies to navigate the changing landscape successfully. By harnessing the power of technology, these agencies can not only ensure compliance but also streamline their operations and make more informed decisions.

Technology touches every aspect of recruitment. It has revolutionised sales and is now making a significant impact on the compliance side of operations. Agencies that fail to adapt to this tech-driven landscape may find themselves at a significant disadvantage. So it's high time for agencies to explore and adapt to the technological revolution.

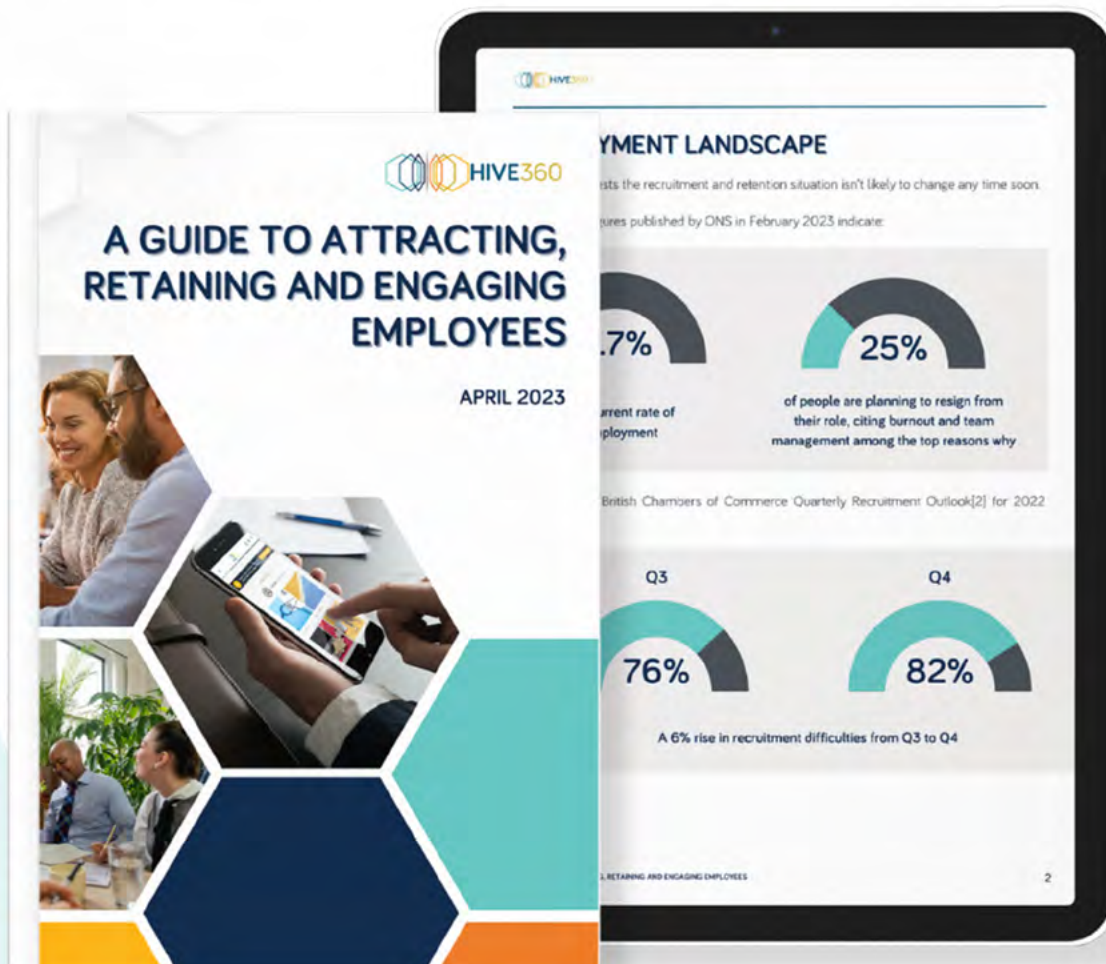
The future of recruitment lies in technology, and the time to explore is now. ■





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ALL RIGHT TO WORK?

Monica Atwal, managing partner and head of immigration and employment for Clarkslegal LLP details the background and practicalities of this area of compliance.

It is a fundamental human right to work, to derive purpose and reward from your labour, to advance and contribute to society. The United Nations Universal Declaration of Human Rights states everyone has the right to work, to free choice of employment, to just and favourable conditions of work and to protection against unemployment. Everyone, without any discrimination, has the right to equal pay for equal work.

It is only a relatively recent concept to regulate entry into countries, the UK introducing the Aliens Act in 1905. Before then you could come and go with ease onto these shores. The Act targeted “undesirables” and granted the new common status of British subject. It was a response to the worldwide mass movement of people seeking opportunity with the commensurate skill and drive, and escaping poverty and persecution. It reflected the growing tensions in the world and anti-immigrant sentiment. The 1905 Act also introduced the right to work checks. It became a criminal offence to employ anyone unless they had permission to live and work in the UK. There were on the spot fines of £2,000 payable by employers for each illegal employee. That is about £17,000 in today’s money.

Current penalties

The penalty for employing illegal workers currently is that you could be sent to jail for 5 years and pay fines (£20,000 per illegal worker) if you are found guilty of employing someone who you knew or had “reasonable cause to believe” did not have the right to work in the UK. ➤

This includes, if you had reason to believe that (a) they did not have permission to enter or remain in the UK, (b) their leave had expired, (c) they were not allowed to do certain types of work, or (d) their papers were incorrect or false. With the sophistication of forgeries and AI generation, the last category is an increasing risk. Illegal working civil penalties from 1 October to 31 December 2022 in the UK totalled £5.8 million, with 329 penalties issued and 502 illegal workers found. Employers are named and shamed, and the penalties range between £10,000 to £75,000. A review shows that fined employers tend to be small and in the care, hospitality, construction, cleaning, car wash and retail sectors. This reflects sectors that have low paid staff. That in turn reflects the value as a society we place on jobs, wages and rampant consumerism.

There are compelling economic and social arguments for global free movement of people. Climate change will only increase migration, the modern paradox of global connectivity and reliance yet with increasing protectionism by individual countries, borders and border regulation is here to stay. A further paradox, as shown by the UK migration statistics, is that for UK companies, it is currently relatively easy to obtain visas to employ overseas workers. The Office for National Statistics for the year ending June 2022, showed net migration of 504,000, the highest net migration since the Second World War and much higher than pre-Brexit levels. The issue for recruiters and employers is cost, with the July government announcement that visa application fees and the immigration health surcharge are set to significantly increase. >



RTW checks

Conducting Right to Work (RTW) checks are mandatory for a UK employer, and the current regime safeguards against illegal workers. Another issue for employers is the complexity of the checks and changing law and guidance, the type of check required depends on the immigration status of the employee from a British passport holder to those with limited rights to work requiring repeat checks.

As part of recruitment, pre-employment checks, ascertaining the right to work in the UK must be carried out in a non-discriminatory manner and on all potential employees. The RTW must be done before the employee starts to do any work for the employer. If the check is scheduled for the first day of employment, and the new employee forgets or does not produce the requisite documentation, they cannot start work.

The RTW are set out under Section 15-25 of the Immigration, Asylum and Nationality Act 2006, supported by Home Office guidance which is lengthy and regularly updated. Employers are under a duty to stay informed and be aware of the latest guidance.

By carrying out correct prescribed RTW checks, the employer can rely on a statutory defence to employing an illegal worker and avoid consequences such as fines or sponsorship licence revocation and reputational damage.

In compliance with the Home Office guidance on RTW checks, there are four ways to conduct RTW checks:

- Manual Right to Work checks
- Online Right to Work checks
- Employer Checking Service
- Digital Right to Work checks

Choosing the correct check for each worker depends on different factors, such as the worker's nationality and immigration status. However, an employer cannot mandate how a worker proves their right to work, this is to avoid discrimination against anyone (e.g. if they possess an expired passport, etc.). Employers should provide every opportunity to enable an individual to prove their right to work. >





Manual right to work checks

Manual checks involve meeting the individual face-to-face and verifying their physical documentation. If this is not possible, then an online check must be carried out on the verified Home Office website, and/or the employer must continue manually checking different documents until they are either satisfied or not satisfied that the individual has a right to work in the UK.

To establish a statutory excuse and ensure the proper conduction of manual RTW checks, employers must complete three steps before the individual commences their employment.

- Obtain: Employers must first obtain original documents from the candidate.
- Check: Employers must check that the documents obtained are genuine and that the person presenting them is the prospective or existing employee allowed to do the type of work offered.
- Copy: Record keeping is crucial for compliance. Employers must make a clear copy of each document in an inalterable format and retain the copy securely during the course of the individual's employment and for two additional years thereafter.

Online right to work checks

The Home Office online right to work check offers a statutory excuse against civil penalties in case of illegal working. The online service [Check a job applicant's right to work: use their share code - GOV.UK \(www.gov.uk\)](https://www.gov.uk/check-a-job-applicant-s-right-to-work) on GOV.UK, facilitates this process. However, employers cannot check all prospective workers right to work via online checks, as some may lack eligible immigration status. In these cases, a manual RTW check should be conducted in the legally prescribed manner. >

The digital proof of immigration status is part of the UK's shift towards a digital immigration system, promoting simplicity, safety, and convenience. Individuals with eVisas, Biometric Residence Card (BRC), Biometric Residence Permit (BRP), or Frontier Worker Permit (FWP) are the categories that can only use the online service to demonstrate their right to work, with physical BRCs, BRPs, or FWPs not accepted as proof.

With checks conducted online, employers must still meet the new employee face-to-face on their first day of work, confirm their identity and keep a copy of the online check for the duration of their employment and for two years thereafter.

Employer checking service

Individuals unable to provide viable documentation and/or use online checks due to pending applications, appeals and similar, can use this free online service provided by the Home Office, enabling employers to conduct right to work checks. This service must only be used when the necessary original documents and/or online checks are not available.

Digital right to work checks

From 6th April 2022, employers can carry out remote digital checks for British and Irish citizens holding British/Irish passports or Irish passport cards. These checks are conducted using an Identity Document Validation Technology (IDVT) used to confirm a person's identity. Employers will obtain a statutory excuse where they can demonstrate that they have complied with all the statutory requirements to conduct right to work checks. Where they have used an IDSP (IDSPs are a provider of identity verification services using IDVT), the statutory excuse will only be obtained where the employer has checked a digital copy of a physical document relating to the person for the purpose of confirming the document's validity and the person's rightful ownership.

IDVT checks are invalid if the British or Irish passport/passport card relied upon has expired. To obtain a statutory excuse for an expired British/Irish passport or Irish passport card, the employer must carry out a manual right to work check in the legally prescribed manner. >



Outsourcing right to work checks to third parties

Since April 2022, with the introduction of IDSPs providers, it has been possible to 'outsource' right to work checks. Employers can engage IDSPs to conduct these checks only for valid British and Irish passport holders and valid Irish passport card holders.

It is important to note that outsourcing these checks does not transfer legal obligations to the third party provider. The IDSPs provider must conduct the checks in the prescribed manner, however, it is the business' responsibility to ensure that the checks conducted are done in the prescribed manner and match the employee's identity on employment's commencement. Organisations should audit their IDSPs and ensure the contractual arrangements are robust. But prevention of illegal working and exploitation requires a review of all in your supply chain.

Immigration changes announced on 17 July 2023

Relevant to RTW, it is important to keep up to date with changes to immigration rules. On 7 August 2023 there will be seven additional occupations added to the shortage occupation list. These are in the building sector (brick layers, roofers, carpenters, construction, plasterers) and fishing industry. They have lower salary requirements and lower UKVI visa application fees. Other changes were announced and came into effect on the same day (17 July 2023) regarding student visas and removing the right to bring dependants (dependants of visa holders are able to work in the UK). Another change brought into force on the same day was the removal of international students being able to switch out of the student route into work routes before their studies have been completed. ■





ENHANCE COMPLIANCE WITH DIGITAL RIGHT TO WORK CHECKS

TONY MACHIN, CEO OF TRUSTID DESCRIBES HOW DIGITAL RIGHT TO WORK (RTW) CHECKS AND ID VALIDATION TECHNOLOGY HELP RECRUITERS ADD VALUE AND PROTECT RELATIONSHIPS.

Businesses in the UK are required by law to perform Right to Work (RtW) checks for every new hire, and there are penalties for employing someone who is not entitled to work in the UK. While the legal obligation for recruiters and recruitment agencies to perform these checks varies depending on the type of contracts their applicants take, there are very real benefits for all agencies to adopt a robust candidate RtW process.

Right to Work (RtW) check guidance has been in place since 2006 helping businesses to understand their obligations around checking an employee's right to work in the UK. Increasingly, recruiters are opting to introduce technology, either to support physical document checks in-house or remote checks through an Identity Service Provider (IDSP).

Of course, there's a slight difference in the legal requirements of recruitment companies and agencies to perform RtW checks. When it comes to agency workers, where the worker is employed by the agency throughout their contract, the agency has the legal responsibility to make relevant checks on their work status. Recruitment companies who source and put forward candidates to fill permanent roles might not be legally required to perform the checks, but many choose to do so for a number of reasons, including to protect their reputation and to offer a 'stand-out' service. Good recruiter-client relations lead to repeat business, which is why many recruiters perform RtW checks before the interview stage, even if the hiring business still needs to carry out its own RtW checks once a candidate is successful. >

What are digital Right to Work checks?

Since April 2022, RtW guidance has allowed employers to make digital checks. This started when pandemic restrictions made it necessary to perform checks remotely, with permanent adjustments then introduced in October 2022 to continue a remote process for eligible applicants.

Digital checks remove the need to meet applicants face-to-face, which saves recruiters time and money arranging physical meetings especially as many people now work remotely.

Under the Digital Scheme, a recruiter can carry out a digital RtW check on holders of in-date UK and Irish passports and passport cards using identity document validation technology from an IDSP. As part of a compliant digital check, it is vital to confirm the applicant's identity through biometric facial matching to avoid 'imposter fraud'. An IDSP matches a selfie image to the image provided in the ID verification document.

RtW checks on non-UK/Irish citizens who hold an eVisa are performed by checking the share code and date of birth provided by the applicant with the Home Office checking service.

A recruiter can still check a candidate's physical documents. These must be original documents, not copies, and biometric residence permits or cards (BRP or BRC) are no longer permissible. >



What are the benefits for recruiters?

Recruiters are under enough pressure to source and qualify candidates without becoming immigration, legal or documentation experts. Performing RtW checks manually can be time-consuming and, in a fast-moving recruitment environment, could be potentially deal-breaking. Which is why more than 700 recruitment companies in the UK have chosen TrustID as their government-certified IDSP partner for benefits that include:

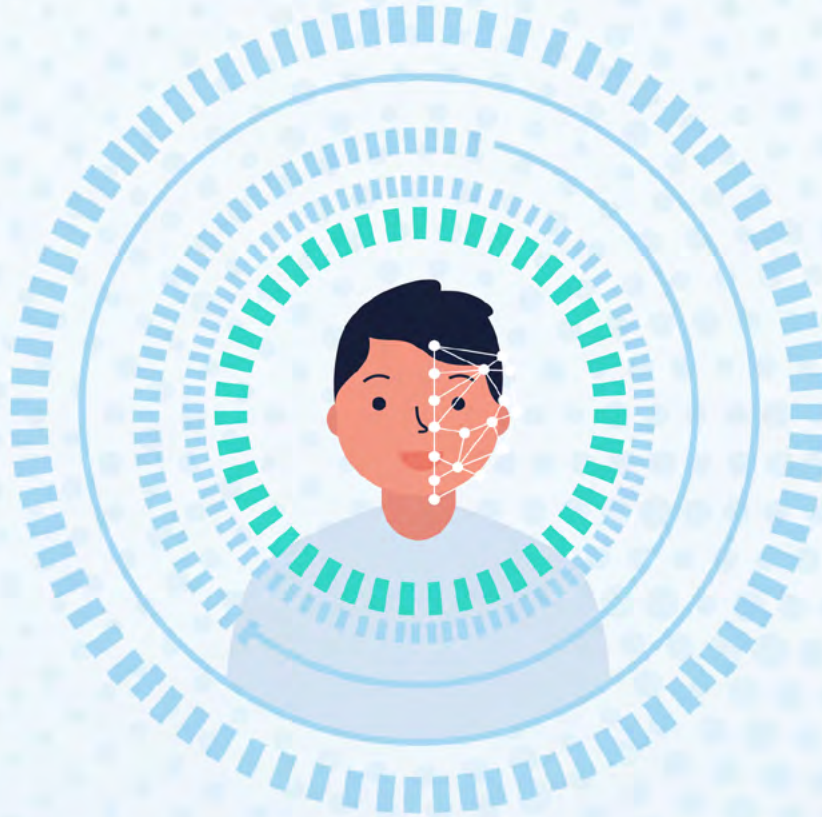
- **Efficient, on-going compliance from anywhere.**
With digital validation, candidates don't need an appointment to perform a physical document check as they can upload their documents via a one-time access email.
- **Flexibility to meet seasonal demands.**
A pay-per-check pricing model with low minimum order volumes and no set-up or user licence fees means recruiters can scale up for a big event and scale back down when things are quieter.
- **Reduced administration.**
Creating a RtW report for each applicant that the recruiter downloads and stores in their own system avoids photocopying and filing images of identity documents. HR and onboarding teams can easily access the information to support future audits.
- **A professional and transparent check.**
IDVT provides a highly professional way to show compliance to both applicants and clients, as one recruiter told TrustID, "ID checks set the tone for the professional way that we work".
- **An easier way to stay on top of compliance.**
Keeping up with legislation changes can be challenging, especially when it comes to recruiting people with different documents. TrustID's Right to Work services contain built-in 'wizards' which are updated as guidance changes to maintain compliance.

The benefits of using an IDSP for document validation and Right to Work checks provide recruitment companies with greater peace of mind, through cost-effective technology that is simple to grasp.

To find out more, please [visit our website](#). ■



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GETTING THE RIGHT RIGHTS

Ikram Malik from the business immigration team at law firm Brabners discusses getting to grips the Right to Work.

In March, the Government implemented a set of changes to the Employer's Guide to Right to Work checks, which sets out the steps which firms must take to ensure that all employees are legally eligible to work in the UK.

All employers are obliged to verify that individuals working for them have a valid right to work. However, as all UK citizens are valid for employment, the rules are especially important for firms reliant on business immigration with failure to comply bringing serious consequences. These can include fines, closure of your business, disqualification of directors and, in very serious cases, the risk of a criminal conviction.

The Prime Minister has stated his intention to free-up Home Office resources during 2023 to allow for greater enforcement action. That's reflected in the recent announcement to increase the civil penalty to £45,000 from £15,000 for first time offenders, and to £60,000 from £20,000 for repeat offenders for employing an illegal worker. With this in mind, it's more important than ever that recruiters are following rules to the letter. So, what exactly are the new changes, and why are they important? >

Digital verification

One key change to the rules relates to the use of Identity Service Providers (IDSPs) to undertake remote identity checks, in a move that provides further clarity on measures introduced in April last year.

The Government previously introduced legislation to help accommodate for the surge in remote working, allowing employers to use Identity Document Validation Technology (IDVT) to confirm that employees are who they say they are. In order to ease the administrative burden, employers have been able to use IDSPs to undertake digital identity checks for them. This is usually completed by video call or in person, and the employer remains liable for any civil penalty if the check has not been done properly by the IDSP.

However, it's clear that several IDSPs have been offering to complete manual and online right to work checks for clients – both of which are out of their legal remit. To combat this, the guidance has been updated to confirm that this is not permitted and that these checks must be completed by the employer.

With this in mind, employers need to ensure that they are not relying on IDSPs in this way, at risk of receiving illegal working penalties.

3C leave

Employers should also note new changes to 3C leave, which refers to the period granted while a visa extension is being processed. The Government has implemented new functionality to allow individuals to digitally verify their right to work using a share code.

Historically, the only way for an employer to establish that individuals in this situation have a valid right to work has been via the Employer Checking Service (ECS), often leading to a protracted process and causing uncertainty for the applicant. >



The latest update means that eVisa holders will now be able to prove they have a right to work where an application is pending via a share code. But it's worth noting that this will only provide employers with confirmation that individuals have the right to work for a 6-month period. This means employers will still need to undertake follow up checks when this period expires.

This will have only limited application to start with, and for those without an eVisa, employers must still conduct checks through the ECS. However, as time goes by, more and more individuals will be able to demonstrate their right to work in this way as the Government continues aiming to free up the administrative burden on business immigrants.

How should employers prepare?

Employers should leave no stone unturned in ensuring that they are following the updated rule given the serious implications of non-compliance. As a first step, we would advise all employers and recruiters to review their policies and procedures to ensure that they meet the up-to-date requirements.

This should involve examining how they are engaging with IDSPs to ensure that they are undertaking compliant checks. Employers should also provide training for staff undertaking right to work checks, to make sure that the checks are being properly implemented in practice.

Business owners and employers should as a precautionary step proactively audit their existing right to work checks to flush out and address any issues before they arise.

Business immigration guidance can often be tricky to navigate, so it's important to always take extra care in ensuring that your operations are in order. Insight from a specialist adviser can often be the best way to guarantee compliance.

For more information, visit:

<https://www.brabners.com/services/employment/business-immigration> ■





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PRE-EMPLOYMENT SCREENING TECHNOLOGY: A MUST-HAVE FOR RECRUITERS

In the rapidly evolving landscape of recruitment, identity document validation technology (IDVT) has taken centre stage. In 2022, the UK Government introduced new standards to support pre-employment screening checks being conducted digitally. As a recruiter, embracing these changes will not only ensure compliance with the latest regulations but also save you valuable time and effort. Additionally, it will position you as a forward-thinking and innovative recruiter, setting you apart from the competition and enhancing your reputation in the industry. >

Navigating Right to Work and DBS Checks

In response to recent changes to the Right to Work legislation, recruiters are now required to utilise a UK government-certified Identity Service Provider (IDSP) to perform digital Right to Work checks on their candidates. Similarly, for conducting DBS criminal record checks digitally, recruiters must now also rely on a certified identity provider.

In-person verification of documents is still an option, but it comes with significant challenges in validating document authenticity. The process can be complex, time-consuming, and carries inherent security risks. Inaccurately conducted Right to Work checks can lead to a civil penalty of up to £20,000 per illegal worker hired. Statistics from the Home Office reveal that between 11th December 2022 and 23rd January 2023, 92 civil penalties were imposed for illegal working, costing businesses a staggering £1.5 million. Opting for digital checks with a certified provider ensures a more efficient and secure process, safeguarding your business from potential penalties and maintaining the highest standards of compliance.

Choosing the Right Digital Provider

In today's market, the abundance of Identity Service providers can make choosing the right one for your business a daunting task. Making the wrong choice could lead to a disjointed onboarding experience. Picture the frustration of realising essential tasks still demand manual intervention, or that you are tied to multiple providers for different checks.

Given that each provider offers an array of features, recruiters must carefully pinpoint the best fit for their distinct candidate vetting process, onboarding needs, and internal workflows. Here are some key considerations to guide you when choosing a provider: ➤



Certification and Compliance: Ensure that your chosen Identity Service Provider has undergone the Home Office-approved accreditation process and has achieved full certification under the UK Trust framework for Right to Work and DBS checks.

Comprehensive Suite of Checks: Opt for a provider that consolidates all essential pre-employment checks including Right to Work and DBS checks in one place, eliminating the need to use multiple providers.

Ease of Use: Your chosen provider should offer a fully digitised and secure process that is easy to navigate for both you and your candidates. Avoid providers that offer hybrid solutions, as they can introduce human error and slow down the process.

End-to-end Onboarding: Seek a provider that surpasses basic pre-employment checks and offers unique solutions to streamline the entire candidate onboarding process. Look for functionalities that enable secure and quick information sharing and document exchange, ensuring seamless end-to-end onboarding.

Training and Support: Prioritise a provider that is easy to set up, offers user-friendly training to quickly familiarise your team with the platform and provides ongoing support for both you and your candidates.

Accessibility: Choose a provider that caters to the diverse needs of your candidates, such as offering app and web-based platforms for access through various devices along with fallback routes designed to accommodate specific candidate onboarding requirements.

As a UK government-certified digital provider for both Right to Work and DBS checks, Amicus offers comprehensive pre-employment screening and end-to-end candidate onboarding, all in one platform.


For more information, please visit the [Amicus website](#). ■



REFORMS FOR RECRUITMENT

Compliance First: Tania Bowers, Global Public Policy Director outlines the current state of play for regulation of the recruitment sector.





The regulation of the recruitment market in the UK has faced significant changes in recent years, with 2023 so far proving to be no exception. We've already seen the announcement of the IR35 set off mechanism and Retained EU employment law reforms, both of which we welcome, though more could have been done, in APSCo's view, in relation to both announcements.



Aside from these more 'high-profile' regulatory developments, we have also seen a number of consultations launched in recent months, which could have a big impact on the recruitment market in the near future. So what other reforms are on the cards for recruiters?

Education consultation

The pressures on the education labour market and teachers themselves have certainly been a hot topic as strikes continue to impact the sector. The shortage of professionals in the industry is well documented. Our own research – produced in conjunction with Broadbean – has shown that vacancies for 2023 so far remain high, with January and February both reporting annual increases in jobs (up 36% and 44% respectively). However, application numbers are not keeping pace with this growth.

The Education Select Committee has taken action to address this issue, launching an inquiry on teacher recruitment and training. While it is hoped that the review will drive positive changes in education recruitment, we believe that current requirements from the Department for Education (DfE) and Ofsted are too rigid and should be simplified in order to address talent attraction and retention issues. >



Based on the insight from our members in the education sector, we have also highlighted in our response to the Committee that it should consider additional steps, including:

- Prioritising Early Years and literacy due to the impact on later attainment.
- Allowing more school-based and localised decision-making, while reducing the focus on external measurement as a signifier of success or failure.
- Financing extra teacher training to increase routes into the profession and boost wellbeing support.
- Reducing and clarifying the DfE and Ofsted's guidance on recruitment and compliance. This includes producing clear pathways to recruitment that give headteachers themselves the confidence to hire and remove unnecessary administrative processes and compliance steps.

At the time of writing, the consultation had closed, with no clear indication as to when the Committee's findings will be published.

Child and family social worker consultation

Another area that is facing a critical shortage of resources is the child and family worker sector. Although the extent of

the skills shortage is such that an overnight solution isn't feasible, we are of the opinion that improvements can be made. In particular, we feel that greater collaboration is necessary across the recruitment supply chain.

Another area that is facing a critical shortage of resources is the child and family worker sector. Although the extent of the skills shortage is such that an overnight solution isn't feasible, we are of the opinion that improvements can be made. In particular, we feel that greater collaboration is necessary across the recruitment supply chain.

The DfE opened a consultation earlier in 2023 that would see a potential new set of rules introduced around the engagement of agency social workers. The recommendations included introducing price caps on pay for agency workers.

Having reviewed the proposals, APSCo has recommended that a number of actions are implemented, including:

- Extending the focus beyond just recruitment spend on agency workers and looking at ways to assist with the retention of substantive staff.
- Recognising the importance of a regional approach and working within existing structures. ➤

“32% of recruiters and outsourcing providers stated that 51-75% of invoices are paid late.”



- Working with local authorities, framework providers and the recruitment supply chain to develop a more collaborative contract management programme and even-handed terms. The prime goal being to work for the good of the community being served.

- Controlling project work, rather than banning it altogether.

The Government's response to this consultation are expected to be published in September 2023.

Prompt payment proposals

The issue of prompt and long payment in the supply chain is one that resonates with recruitment firms and those in the outsourcing

community. Last year, APSCo UK and APSCo OutSource surveyed its membership to ascertain a clearer picture of current payment terms and how these are impacting businesses. We found that while most sectors had terms of 30-60 days, some reported much longer timeframes: 91-120 days was common for 11% of outsourcing firms in life sciences and pharmaceuticals with 31-90 days the norm for 67% of those operating in this industry. For engineering outsourcers, 33% stated that 61-90 day payment terms were normal.

While we are seeing longer payment clauses – largely driven by the end client community and cashflow pressures – late payments are a big concern. In fact, in the pharmaceuticals remit, 32% of recruiters and outsourcing providers stated that 51-75% of invoices are paid late. >

For the recruitment sector, the growing length of contractual terms and late payment culture are both creating a financial burden on second tier suppliers. The contingency labour market is subject to the stress of being required by law or regulation and by good practice to pay workers or their employers on short terms, ranging from 7-28 days of invoice. The invoice is triggered by the submission of a timesheet, usually within a few days of the period of work. Some end hirers, either directly or via their outsourcing partner's contract, mandate payment to workers on 7- or 14-day terms while imposing these longer payment terms on their suppliers.

As a result, many outsourcers work on pay when paid terms. This means that second tier suppliers can often be required to bridge a payment gap of up to three months. Given that these are often SME recruitment firms shouldering this financial burden, we believe that fairer practices are needed.

In April 2023, we submitted the results of the above survey and our responses to questions outlined in regards to the Amendments to Payment Practices and Performance Regulations 2017 and the Limited Liability Partnerships (Reporting on Payment Practices and Performance) Regulations 2017 [consultation](#).

The regulation in question came into effect in April 2017 and requires all large UK companies to report publicly on their payment policies, practices and performance. The rules currently run until 6th April 2024.

Under the proposed reforms, the regulation would be extended and further changes would be made to ensure fairer payment in the supply chain. These include greater transparency of contractual requirements across the supply chain and referencing payment reporting in a company's director's report.

While we agree with some of the planned reforms, we have reported back that these should be built on further. Results of the now closed consultation are expected to be published later in 2023.

There's clearly a lot of reform taking place across the employment market in the UK, which is to be expected given the significant changes that we're experiencing in the world of work at the moment. While we agree that reforms are needed, APSCo remains committed to the need to ensure the voice of the recruitment sector is heard in any such developments. It will certainly be interesting to see how the regulatory landscape pans out for the rest of 2023. ■





THE DEBT YOU TAKE

Recruiters could soon be on the hook for their umbrellas' dodgy practices says Julia Kermode, CEO PayePass.

After nearly 18 months of deafening silence, on June 6th the government finally issued its response to the umbrella company consultation. But rather than revealing long-overdue plans to regulate the sector—promises which were made more than six years ago, I should add—the response included a new set of proposals for us all to consider. The lack of immediate action is concerning, however.

It feels like the regulatory can is being continually kicked down the road, with the government failing to prevent tax avoidance or ensure fairer working practices in the industry. That said, several valid ideas were put forward, such as ensuring proper due diligence is carried out on umbrella companies. One proposal that would have a major impact on recruitment agencies is focused on debt transfer.

Severe implications

It means that the implications of engaging a tax avoidance scheme posing as an umbrella company are likely to be severe for agencies as they may be held financially liable, with tax debt transferring up the labour supply chain.

The government has done something similar before, of course. Upon the introduction of the off-payroll working rules in both the public and private sectors, the tax liability shifted from contractors to fee-paying recruitment agencies.

The new proposal would see recruiters carry the can for tax non-compliance of the umbrellas they work with. Once again, in implementing this change, the government would be delegating its enforcement responsibility to the supply chain.

It means that recruiters will need to do everything in their power to make sure that the umbrella companies used aren't dodgy. If a tax avoidance scheme is engaged, even accidentally, the financial liability can quickly build up to the point where it could wipe out

agencies if the debt transfers to them.

One argument for this approach (and given recruitment agencies effectively control the umbrella market) is that the debt transfer (umbrella market) is that the debt transfer could incentivise agencies only to work with compliant umbrella companies.

Regardless, this potential change on the horizon means recruiters should be taking the behaviour of umbrella companies seriously, and keeping an eye out for warning signs of non-compliance.

For example, umbrellas paying over the odds to agencies to appear on their PSLs might not be compliant, because they could be in a position to price competitors out of the market simply by avoiding tax. So this debt transfer, while one more consideration that recruiters might not like the sound of, could go some way to encourage agencies to engage umbrella companies based on factors other than finances.

What's more, engaging umbrella companies based on compliance, transparency and fairness is of enormous benefit to workers—especially the thousands who have unknowingly worked through tax avoidance schemes over the years and been left with devastating tax bills as a result. And in a candidate-led market, retaining your workers has got to be of utmost importance.

I can't imagine any incoming change happening without some caveats, though. Similar to the debt transfer under the off-payroll working rules, it seems likely that 'reasonable steps' would be taken into account.

This means that a tax debt may not be transferred if a business can evidence that it has taken reasonable steps to ensure an umbrella company has paid its taxes. It is however too early to know what these steps may entail. >

“The new proposal would see recruiters carry the can for tax non-compliance of the umbrellas they work with. Once again, in implementing this change, the government would be delegating its enforcement responsibility to the supply chain.”

Prepare now

We may be some way off the debt transfer being introduced. Even so, it's in recruiters' best interests to prepare now, making sure the umbrella companies they engage do not put them at risk.


While taking umbrella company compliance seriously is something that must start at the top of your business, it should run throughout it, too. Directors and owners would be wise to stress the importance to staff that umbrella companies can't bribe their way to be a company's preferred supplier—this is a message that must be communicated and enforced.

The good news is that recruitment agencies can navigate all of this. With the right approach, it's perfectly possible to irrefutably prove that an umbrella company is paying the appropriate amount of tax—something all agencies should be doing right now irrespective of the government's plans to transfer the debt. ■



THE COST OF SUPPLY

David Thornhill, Managing Director, Simplicity, says HMRC's Supply Chain Fraud mission could be expensive for recruitment agencies.



In recent years, supply chain fraud has emerged as a significant concern for both businesses and HMRC. As supply chains become increasingly complex and global, the risk of fraudulent activities, such as VAT fraud and missing trader intra-community (MTIC) fraud, has grown substantially. In the United Kingdom, the tax authority responsible for combating such fraud is Her Majesty's Revenue and Customs (HMRC). Below delves into the assertiveness and proactive measures undertaken by HMRC in addressing supply chain fraud and the impact it has on clients.

The Expanding Menace of Supply Chain Fraud

Supply chain fraud refers to a complex set of illicit practices aimed at exploiting the complexities of supply chains to evade taxes or gain financial advantages unlawfully. Common forms of supply chain fraud include carousel fraud, where goods are repeatedly imported and exported, creating artificial transactions to reclaim VAT, and missing trader fraud, where a trader vanishes without paying the due VAT after selling goods. >

What actions are HMRC taking to tackle supply chain fraud?

- **Risk Assessment and Intelligence Gathering:** HMRC employs a sophisticated risk assessment system to identify high-risk supply chains and potential fraudsters. By leveraging data analytics and intelligence gathering, they can pinpoint suspicious activities and patterns within supply chains.
- **Collaboration with Industry Partners:** HMRC actively collaborates with industry experts, professional bodies, and technology companies to stay abreast of emerging fraud trends and develop effective countermeasures. These collaborations facilitate the exchange of information, enhances their fraud detection capabilities, and fosters a united front against supply chain fraud.
- **Robust Investigations and Prosecutions:** HMRC's approach to tackling supply chain fraud is characterized by its vigorous investigations and prosecutions. They employ specialised teams equipped with advanced data analytics tools to uncover complex fraud schemes. Once identified, HMRC takes legal action against fraudsters, aiming not only to recover lost taxes but also to deter potential offenders.
- **Legislative Measures:** In response to the evolving nature of supply chain fraud, HMRC has actively sought legislative changes to strengthen its powers. The introduction of Joint and Several Liability (JSL) provisions in 2012 made directors and other parties connected with fraudulent businesses personally liable for the unpaid VAT. Such measures act as powerful deterrents, dissuading individuals from engaging in fraudulent activities. >



Supply Chain Fraud and Umbrella Companies

Recruitment agencies are the party in the supply chain that invariably either introduces a scheme to workers or signs contract agreements with them. This includes schemes dressed up as legitimate umbrella companies when they're anything but legitimate.

HMRC's avoidance blacklist raises a number of questions that are not easy to answer, particularly if you're a first-timer contractor or a newcomer to the contractor industry. You might be wondering why would a recruiter introduce a tax avoidance scheme to a worker in the first place.

In the vast majority of cases the answer is a desire to boost their income. Some companies claiming to be a bonafide umbrella and/or payroll company will offer payments for introductions made. These sums can start at £5 per week, per worker, and this sum can, to avoid tax, be pre-loaded onto a payment card. Although £5 might not seem much but over a year, some recruiters might be £250 better off as a result. Multiply that figure by 200 workers, which is not unrealistic if you're an agency with good clients, and you're looking at a staggering £50,000 effectively in cash!

There are of course many great, respectable, legitimate and customer service-focused umbrella companies, operating in accordance with HMRC and the Department for Business & Trade guidance. Indeed we are proud to work with many of these legitimate umbrellas. >



So what are the implications for Recruitment Agencies of HMRC's stance?

HMRC's unwavering commitment to combatting supply chain fraud has significant implications for recruitment agencies, particularly those inadvertently caught up in fraudulent schemes:

- **Increased Scrutiny:** As HMRC intensifies its efforts, innocent businesses and individuals may face heightened scrutiny. Supply chain transactions and VAT returns may be subject to more frequent audits or investigations, even if there is no direct evidence of fraudulent activity. While this might be seen as an inconvenience, it is a regrettable necessary step to ensure the integrity of the tax system.
- **Collaborative Compliance:** Recruitment agencies are encouraged to adopt a collaborative approach to compliance, actively engaging with HMRC and industry experts to understand fraud risks within their supply chains. By embracing transparency and voluntarily sharing information, agencies can demonstrate their commitment to compliance and reduce their vulnerability to fraudulent activities.
- **Legal Implications:** Clients unknowingly involved in fraudulent supply chains may face legal consequences, even if their involvement was unintentional – harsh as that might seem. Ignorance or negligence is not a valid defence in such cases. It is critical that recruitment agents exercise due diligence when selecting suppliers and diligently monitor transactions to mitigate the risk of inadvertently participating in fraudulent schemes.

HMRC's dogged pursuit of supply chain fraud highlights its determination to protect the integrity of the tax system and whatever you feel about it personally is founded on their desire to ensure a level playing field for all businesses. Through its proactive approach, robust investigations, and collaborative efforts, HMRC aims to detect and deter fraudulent activities. By actively engaging with HMRC and implementing strong due diligence processes on selection and ongoing compliance measures on all its supply chain, recruitment agencies can mitigate their exposure to supply chain fraud. ■



Know every link in your supply chain

The risks around using non-compliant providers 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 encouraged compliant practices by advising agencies to work with a list of trusted providers.

When it comes to assessing your providers' compliance, we recommend that you do all of the following:

1. Send out compliance questionnaires, and review processes and policies
2. Check actual payslip calculations and PSC management accounts to ensure they give a complete breakdown of earnings
3. Check provider processes to ensure transparency runs throughout the contractors' journey
4. Check if they are based in the UK with a nominated UK bank account
5. Ensure the provider has third party accreditations and external audits
6. Review the financial strength from the latest statutory accounts
7. Carry out your own site visit



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DOES THE REST OF THE WORLD HAVE A SOLUTION TO THE UK'S FLAWED UMBRELLA SYSTEM?

ANDREW FAHEY, GLOBAL CCO OF PEOPLE 2.0

The UK's long-awaited consultation into regulation of the umbrella market should have presented an opportunity to re-assess our broken system of contractor engagement. Instead, it offers sticking plaster solutions in place of effective reform, as we've seen time and time again. It's high time that UK policy makers look at international best practices for their inspiration.

Ineffective solutions

Proposals for regulation of the umbrella market have been welcomed by the contracting community, and rightly so. All-too-common issues of non-compliance and poor payroll practices negatively impact contractors, recruitment agencies and the end hirers, creating unnecessary risk and distrust in the system.

The government's solutions, set out in the latest consultation (closing on 22/08/23), are various options for regulating umbrella companies. The problem is that all of these options push further risk and responsibility onto the supply chain, and recruiters in particular.

A race to the bottom

Recruiters have been trapped in the middle ever since the new IR35 rules came into effect in April 2021, forcing many contractors to work under the PAYE of umbrella companies. The new legislation left agencies educating clients about the rules, while trying to manage additional compliance in their new supply chains, all on slimmer and slimmer margins. >

A fundamental issue with the system is that poor margins for the umbrella company can leave workers to shoulder the cost through opaque service charges or payroll practices known as 'skimming'. This model inadvertently pushes workers to seek cheaper services or perceived better take home pay, fuelling an environment where poor practices can thrive.

Unscrupulous umbrella companies often resort to creating a perception of better take-home pay to attract these cost-conscious workers. However, this perceived advantage can mask the underlying non-compliant practices, potentially exposing the workers, recruitment agencies and end hirers that utilise these umbrella firms to significant risk.

Through the current consultation's proposed debt transfer model, agencies could soon find themselves directly liable for engaging with umbrella companies that are deemed to be non-compliant. While this may have the desired effect of incentivising supplier accreditation, it puts pressure on an already strained supply chain that may lead to even more 'creative accounting'.

A better way forward

What concerns me, is why UK policy makers are ignoring a solution that is common practice across the rest of the world. The established practice of the international staffing industry is The Employer of Record (EOR)/Agent of Record (AOR) structure. In all of the countries that People2.0 operate in, only one doesn't use it: the UK. >



In this setup, the organisation seeking to outsource its employment and payroll responsibilities directly pays for the service. The cost typically includes compliance checks, onboarding, payroll, and funding. There is no special calculation or different way of processing PAYE, thereby offering a transparent and straightforward approach.

In this way, EOR/AOR eliminates the need for workers to bear the costs, as the outsourcing organisation covers the service fees. It ensures a cleaner, more transparent payroll process, minimising room for non-compliance and deceptive practices.

Incorporating an element of risk transfer, similar to IR35, can further enhance the robustness of the EOR/AOR model. The outsourcing business would be liable if they engage an EOR/AOR found to be non-compliant, thereby creating a strong incentive to work with reputable and compliant providers.

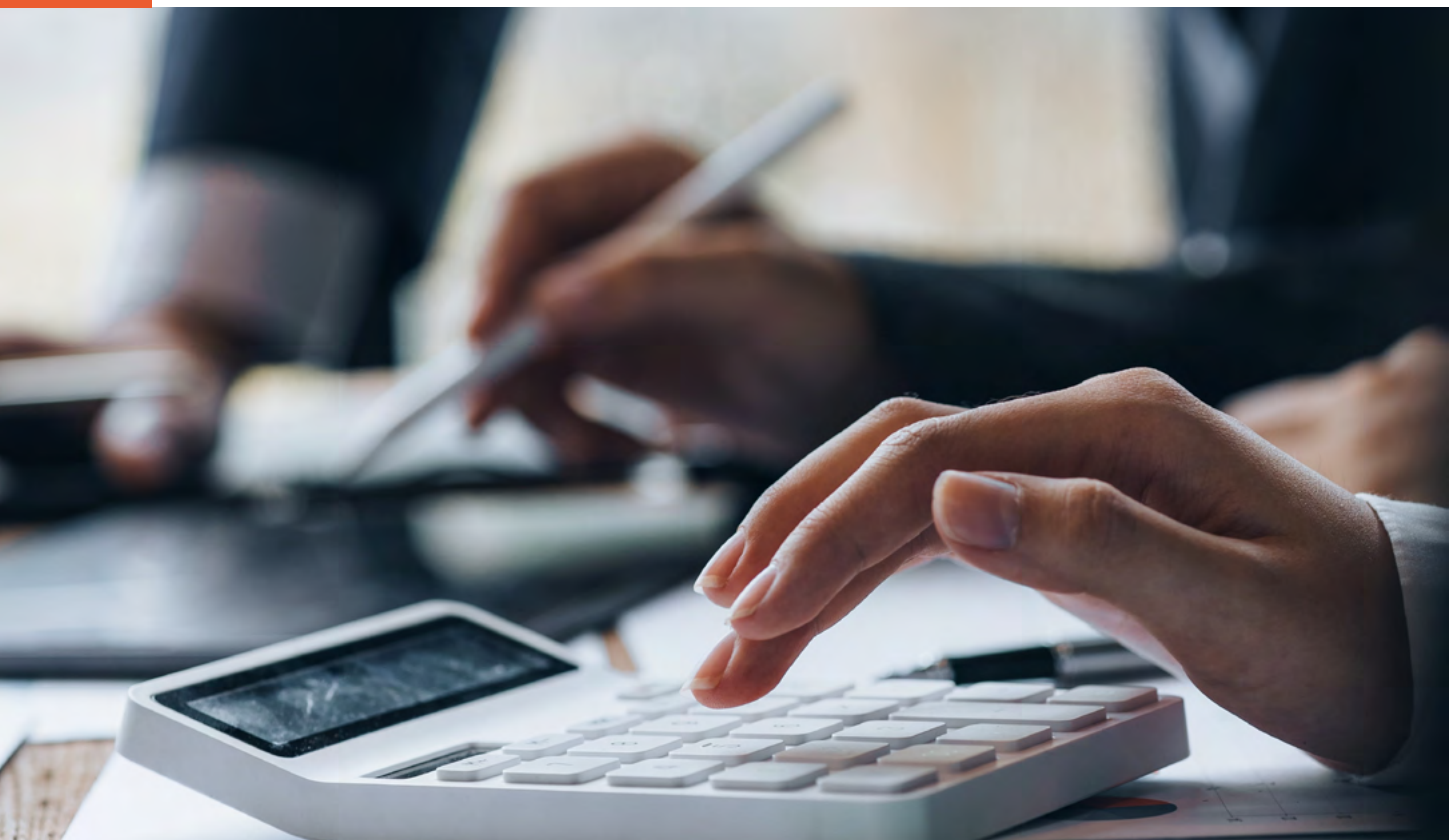
This 'flow-back' of liability reinforces the responsibility of the engaging business to ensure due diligence in their choice of EOR/AOR and helps to build a compliant, transparent, and more equitable recruitment ecosystem.

Advocating for change

It's time for the UK to move away from the problematic umbrella company market and align with international best practices. The EOR/AOR model, tested and proven in the global staffing industry, presents a comprehensive and effective solution.

By adopting the EOR/AOR structure, the UK could create a transparent, compliant, and efficient recruitment sector that protects the interests of all stakeholders – businesses, workers, and recruitment firms alike. This transformation would position the UK staffing industry at the forefront of compliance, innovation, and worker welfare.

People2.0 is the world's leading enabler of global, mobile, flexible and remote work arrangements. Andrew Fahey was formerly CEO of Brookson Group, which has been providing services to UK contractors, recruitment sector and contingent labour supply chain for over 20 years. ■



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3. Choose a growth strategy
4. Secure funding
5. Address talent gaps and evaluate core staff readiness
6. Review onboarding standard operating procedures (SOP)
7. Determine support needs
8. Research competitors
9. Anticipate economic fluctuations
10. Prepare for lifestyle adjustment

Free Guide



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