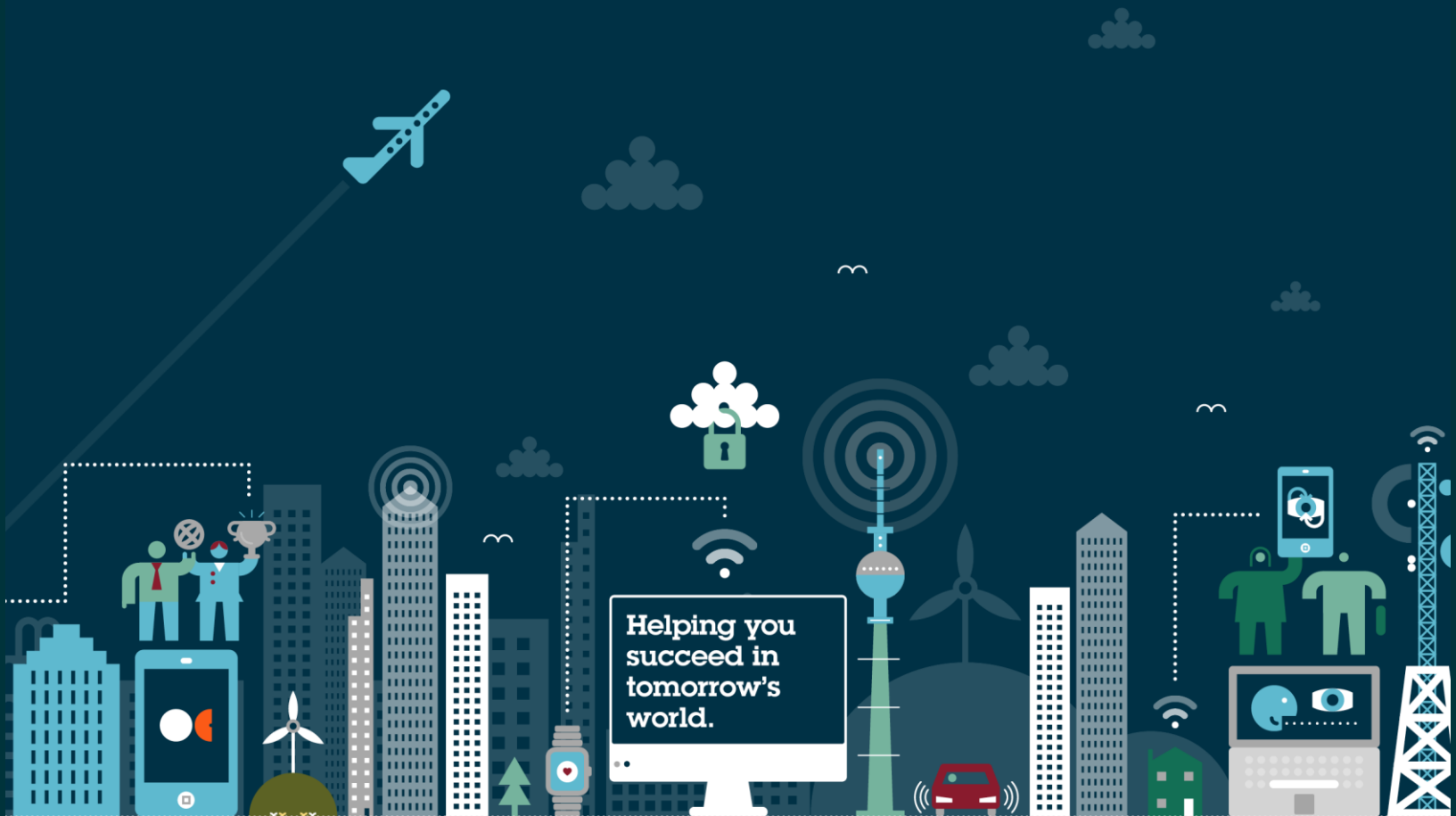


Future-proofing supply and use of PSC contractor services

Helping you find new solutions as staffing and consultancy arrangements come under fire

February 2021



How can we support you?

What's changed?

Changes to private sector IR35 (due in April 2021) are hitting the headlines at the moment, but IR35 is just one of several factors leading suppliers and users of PSC contractor services to re-think how they do business.

As suppliers and/or users of consultancy "talent" you are likely to be affected by some or all of the following:

- **Potential increased costs and/or consultant disgruntlement** about having tax and NICs deducted from their fees after the IR35 changes come in
- **More emphasis on consultancy rather than staffing spend –are users on top of what they** currently spend on consultancies? Are consultancy companies aware of IR35?
- **Margin pressure**—many suppliers suffer from an increasing perception that "staffing" is a "bad" industry, with many HR departments against use of contractors, and a general perception that it is a low value commodity supply undeserving of decent margins. Is this right/fair?
- **Longer term appointments** – do you as a supplier want to increase client retention?
- **Brexit** – will it affect availability and deployability of talent?
- **Taylor Report/Good Work** – policy spotlight on aligning employment status and tax tests to challenge contrived self-employment and increase access to workers' rights
- **Staffing regulation burden** - do you want to reduce compliance burden, and have a more scalable international business model?
- **IR35 extension to private sector** – how will it affect use and supply of PSC-dependent consultancy and contracting?
- **Rise of tax avoidance schemes** – as they did in the public sector, will changes to private sector IR35 lead to increased use of tax avoidance schemes?
- **Lack of level playing field** – are you or will you be forced to compete with non-compliant businesses who rely on tax avoidance schemes to offer competitive rates to workers ?

Whether you are a supplier aim to reassure your clients or become more attractive commercially, or a user aiming to improve cost-efficiency and avoid questionable tax schemes, you will need to understand how the changes will impact yours and your clients' businesses.

We can help. As specialist advisors on consultancy arrangements, labour-intensive outsourcing and staffing we have been helping organisations operate legally compliant resourcing models for years.

Our workshops

We offer specialist advice by way of client 1:2:1 workshops to help you assess:

- current and future threats to your use and/or supply of PSC contractors and consultants
- how to engage with clients and contractors to address change, particularly regarding IR35
- how to avoid association with dodgy tax schemes
- viability of alternative business models such as SOW

Depending on your needs, we can be heavily involved or provide advice on bespoke aspects.

Importantly, we realise that, for our clients, developing a new service offering is not only about risk management and compliance. Compliance can also build greater profits and business opportunities. It can be a market differentiator, and instil trust and confidence in your brand.

Our workshop-led advice is designed to help unlock these benefits.



Kevin Barrow
Partner



What do we offer?

Our approach

We understand that obtaining legal advice represents a significant investment and cost to your business. That is why we have developed an approach which involves working with you to fully understand and complement your existing business aims and strategy. In doing this, we draw on our:

- own deep knowledge of the staffing sector and the world of consultancy and outsourcing; and
- expertise and understanding of how other businesses (both within and outside the staffing sector) are dealing with the changes affecting the use and supply of PSC contractors

This ensures that your legal spend is directed at advice that is industry-relevant, strategic and, most importantly, worth having.

Our workshops

Stage 1: How will private sector IR35 and other developments affect your business?

We will contact you a week or so before the workshop to request some **information about your current supply models or ways in which you use PSC contractors**.

We will then meet with you for a **fixed-price strategy workshop** designed to help you understand the impact of recent and proposed legislative changes on your contracting models. We work with you to look at:

- How IR35 and other changes are likely to work and methodologies which have helped minimise problems in the public sector
- What to do, when and how to comply
- How PSC contractors are used within your business to assess likely impact of the IR35 changes
- How to educate clients, contractors and your consultants to retain business and margin
- What to watch out for in terms of tax avoidance schemes currently offered in the market
- Options for your business models going forward

Workshops typically last for **3 hours** and are aimed at business owners and key decision makers.

Following the workshop we produce a **summary report** setting out our key recommendations.

Stage 2 – Is a full SOW or outsourcing model viable?

We will send you a **detailed questionnaire** to assess which parts of your business could be operated on a more fully evolved SOW or outsourcing basis.

We then meet with you for a **fixed-price strategy workshop** to look in detail at:

- What a fully evolved SOW would mean for your business: cash-flow, liability, risk, implementation, etc
- How it could deliver better margins
- How it could deliver scalability abroad
- How SOW or outsourcing could reduce your risk under the new IR35 regime, Criminal Finance Act and Enabling Legislation
- Options for other parts of your business that don't lend themselves to outsourcing or SOW

Workshops typically last for **3 hours** and are aimed at business owners and key decision makers.

Following the workshop we produce a **summary report** setting out our key recommendations.

Do you have to do both workshops?

No. The workshops are self-contained but if you are interested in finding out more about how you could adopt new business models you would normally identify this in the Stage 1 workshop and then go on to explore in detail at the Stage 2 workshop.

If you have recently done a workshop with us you may decide you want a "refresher" session or go straight to Stage 2. We have found that most clients need the Stage 1 workshop in order to get full benefit from the Stage 2 workshop. We would be happy to discuss these options with you.

Stage 3 - Key contracts and implementation advice

Whether you decide to implement consultancy/SOW models or review supplies involving PSC contractors you will need advice on how to structure your services in a commercially viable and legally compliant way, including new or amended contracts.

*Further details of the key contracts and related advice you will need are set out in **page 7**.*



Our experience – helping recruitment businesses

Our team and experience

Our team draws on Osborne Clarke's longstanding expertise in the recruitment sector and in advising clients on consultancy, outsourcing and staffing projects.

The team advises consultancies and major outsourcing companies, hirers and suppliers on market-leading national and international flexible workforce (MSP, RPO and VMS) projects, regulation of digital recruitment and online exchanges, and worker misclassification and 'co-employment' class actions.

Our team can also draw on commercial and outsourcing experts throughout Europe and further afield, as required.

Here are some recent examples of Osborne Clarke's experience in helping recruitment sector businesses change their contracting models. Many of these examples engage our experts in several jurisdictions.

IT consultancy companies

Advising on improvements to current arrangements to reduce the risk of supplies appearing to fall within the scope of the IR35 off-payroll legislation. Future-proofing supply models in respect of possible extension of IR35 changes to the private sector.

UK payment intermediary company

Advising staffing company and payroll intermediary on setting up a new outsourcing arrangement to enable its client to supply an outsourced service to a national chain. This involved carrying out a feasibility study of whether an outsourced service would work for all involved in the supply chain, all parties discussions regarding the basis for charging and production of contracts to implement the arrangement, including contracts with PAYE workers and other contract resource.

UK construction staffing company

Advising a staffing company operating in the construction industry on setting up an outsourced, deliverables-based construction service including advice on scoping, charging, expenses and re-branding.

Healthcare staffing companies

Moving three separate health/care staffing companies from a staffing model to the provision of managed packages of care on a VAT exempt basis using SOW arrangements

Energy/oil and gas staffing companies

Advising three separate energy sector staffing companies frame supplies in the UK and overseas as a deliverables-based service including advice on scoping, charging, expenses and re-branding, and avoiding issues with local regulation and staffing law.

IT consultancy arm of a major recruitment group

Reviewing and re-structuring outsourcing arrangements and related contracts to help ensure that services operated outside the scope of the IR35 off-payroll legislation, looking, in particular, at practical issues relating to personal service and rights of substitution, method of charging and migration of legacy supplies to new arrangements.

US payment services company

Helping the client assess whether the US model of contractor status testing could be replicated in the UK, including advice on IR35 tests, MSC risk and Payment Services Regulations.

Suppliers of interims and senior professionals

Helping two clients move their models from one of the supply of interim managers on a staffing basis to the supply of interim projects on a SOW/outsourcing basis.

UK warehouse temp supplier

Helping our client re-design its service by offering shift packages, charged for on a deliverables basis.

Driving agency

Working with a driving agency to implement consultancy services and SOW arrangements.



Workshop Structure

How your project might be structured

1

Stage 1 – legal developments

- **Review/update** of current operating models
- Identification of **key challenges** and drivers for change
- Advice on how **changes to IR35** are likely to work
- Advice on current **tax avoidance schemes** causing concern
- How will developments affect your current operating models?
- How will your consultants, contractors and **clients be affected** and what can you do to prepare them for change?
- What are your **likely best options** going forwards?
- **Written summary** of main points covered and our recommendations

2

Stage 2 - SOW/Outsourcing

- **Advice on how to do it** – scoping, pricing structures, success fees, payments for out of scope work, replacing a "timesheet" approach, revenue recognition issues, back to backing arrangements with sole traders and PSCs, use of subcontractors or employed staff, defects process, training staff, managing projects., **insurance** requirements
- **Key legal risks**, including liability, credit risk, cash flow funding, tax avoidance legislation
- Analysis of types of **service requirement suited to outsourcing** and best approaches for each
- **Migration** from current service models and TUPE.
- **How to sell** to clients including pricing
- **Written summary** of main points covered and our recommendations

3

Follow-up and Contracts

- More detailed advice, as needed, on specific aspects
- Client contracts including pricing on deliverables basis and risk mitigation if clients misuse SOW/outsourcing resource
- SOW contracts with PSC contractors
- Employment contracts with employed workers
- Review of existing consultancy contracts
- Negotiation of new consultancy terms
- Help explaining benefits to clients
- Training about how to sell and manage new models
- Post-implantation audit of new outsourcing and SOW arrangements to check that they operate as intended

Our tips for a successful project

- **Senior management** buy-in and **involvement** is essential
- Sharing and analysing **existing/proposed business models** with us is a key stage in the overall project
- Taking into account any additional upcoming legislation and regulatory guidance will ensure a robust solution for the future
- **Internal training** is important – an understanding of the issues will be important for anyone speaking to clients about forthcoming changes to IR35
- Early assessment of willingness to buy-in to a new supply model, and educating clients about the changes and benefits, will be essential

Our fees

How much does it cost?

Stage 1 - How will private sector IR35 and other developments affect your business?

A fixed fee of **£8,000 plus VAT** – includes our preparatory work, a workshop at our London offices and a summary report.

Stage 2 - Is a full SOW or outsourcing model viable?

A fixed fee of **£7,000 plus VAT** – includes our questionnaire, a workshop at our London offices and a summary report.

*We can provide stages 1 and 2 as a discounted package for a total price of **£14,000 plus VAT if booked together**.*

Stage 3 – Contracts and implementation advice

Fees are based on the contracts and advice required as decided by you (on the basis of recommendations by us at Stage 1 and/or 2). All fees are agreed with you in advance and we work to a fixed fee wherever possible.

A list of possible outputs, advice and **indicative pricing** are set out on the next page.

Smarter fees

We recognise that managing legal expenditure so that you remain fully aware of legal costs at all times during our relationship is as important as ever.

We are keen to ensure that you receive a cost-effective service from us that meets your financial needs. Consequently, we have provided fixed fees where we are able to do so, complemented by fee ranges and indicative pricing where the scope of work is currently less certain or unknown.

Our first and fundamental rule is 'no surprises'.

Where possible, we will give you a clear and defined scope of work and cost estimate for each task on an on-going basis. We will keep you regularly updated with progress against that scope and estimate so that you can control your legal spend and know we won't run away with your budget.

How we work to save you money

We aim to be as cost-effective as possible by:

- making our billing flexible and transparent;
- understanding the sector in which your business operates and competes
- managing resources cost-effectively;
- setting fixed prices for certain elements of work we can identify;
- discussing how our performance compares against your expectations on a regular basis.

Assumptions

The following assumptions apply to our fee estimates:

- Current fee estimates only cover English law advice. We can estimate separately for multi-jurisdictional advice, where required.
- Amounts exclude VAT and disbursements (if any).
- We will receive timely responses from you when instructions are required.
- We will invoice monthly.

Our fees

Stage 3 – indicative fee estimates

As part of Stage 3 we would expect at least some of the following to be required. Please note that the costs shown are **purely indicative** at this stage.

Compliance activity / Deliverable	Description	Indicative cost
Consultancy service contract with client	For use when supplying consultancy services to your client	£3,500
SOW Contracts with PSC	For use where you subcontract parts of the consultancy services to PSC contractors. This estimate assumes that these contracts would be used in conjunction with the client consultancy terms above	£2,500
Outsourcing contract with client	For use when you supply services on an outsourced basis to your client. E.g. an agreement to supply a managed IT support team service as opposed to IT staff	c. £5,000 to £25,000 depending on service complexity and commercials
Employment or worker agreement	For use where employing staff to deliver outsourced service to the client. To be used in conjunction with the outsourcing agreement above	£2,000
Migration advice	To advise on how to move existing supplies into the new consultancy arrangement without triggering unwanted legal risks	£2,000-£3.500
Communications advice	Advice on communications (such as letters, scripts, policies and FAQs) with PSC contractors and clients about IR35 changes and to help implement new contracts and contract variations	£2,000- £6,000
Training	To help your consultants understand the new business model and sell to your client	£2,000
Review of existing PSC terms	To help assess whether they need updating to remove any suggestion that they are staffing arrangements	£ to be agreed on a case by case basis
Review of sales and marketing approach	To help you to align your sales and marketing messages with any new SOW or outsourcing arrangements you decide to offer	£ to be agreed on a case by case basis

Osborne Clarke is the business name for an international legal practice and its associated businesses. Full details here: osborneclarke.com/verein

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