




When are the self-employed, employed?

## IR35 and related issues

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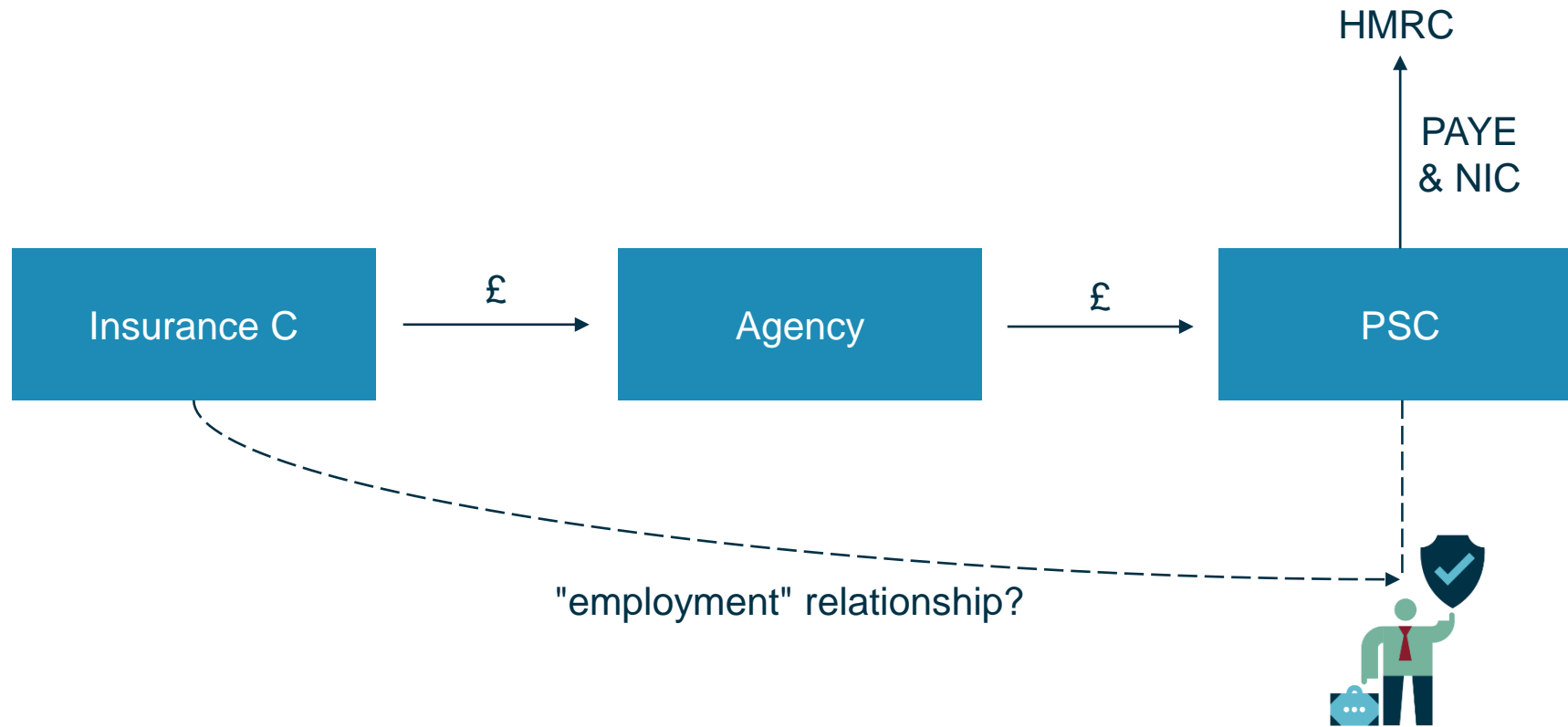
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# What is IR35?



# What is IR35?

An anti-avoidance rule

Applies where contractor would have been an employee if engaged directly

Imposes employment tax (PAYE and NIC), on the PSC



# Failing the IR35 test

It's NOT employment!

Tax consequences

Other....

- Brand (see BBC...)
- CFA
- SAO
- Risk rating



# What is the IR35 test?

Section 49 ITEPA – where a person through third party arrangements

- "personally performs...services for another person..."
- "the circumstances are such that...if the services were provided...directly...the worker would be regarded as an employee"
- "[including] the terms on which the services are provided..."

## CEST

- HMRC's online test
- Is it right?
- ...garbage in....



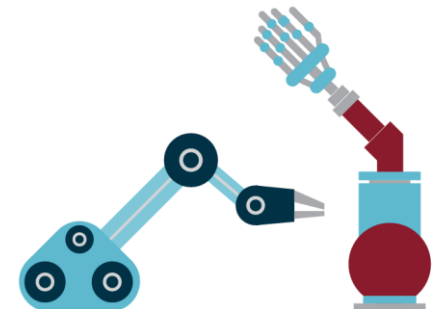
# What do the cases say?

Mackenna J in *Ready Mixed Concrete*: an individual is in a contract of service (employment) exists where;

- In consideration of a wage/other remuneration he will provide his own work and skill in performing some service("mutuality of obligation")
- He agrees expressly or impliedly he will be subject to the other's control ("control")
- The provisions of the contract are consistent with it being a contract of service

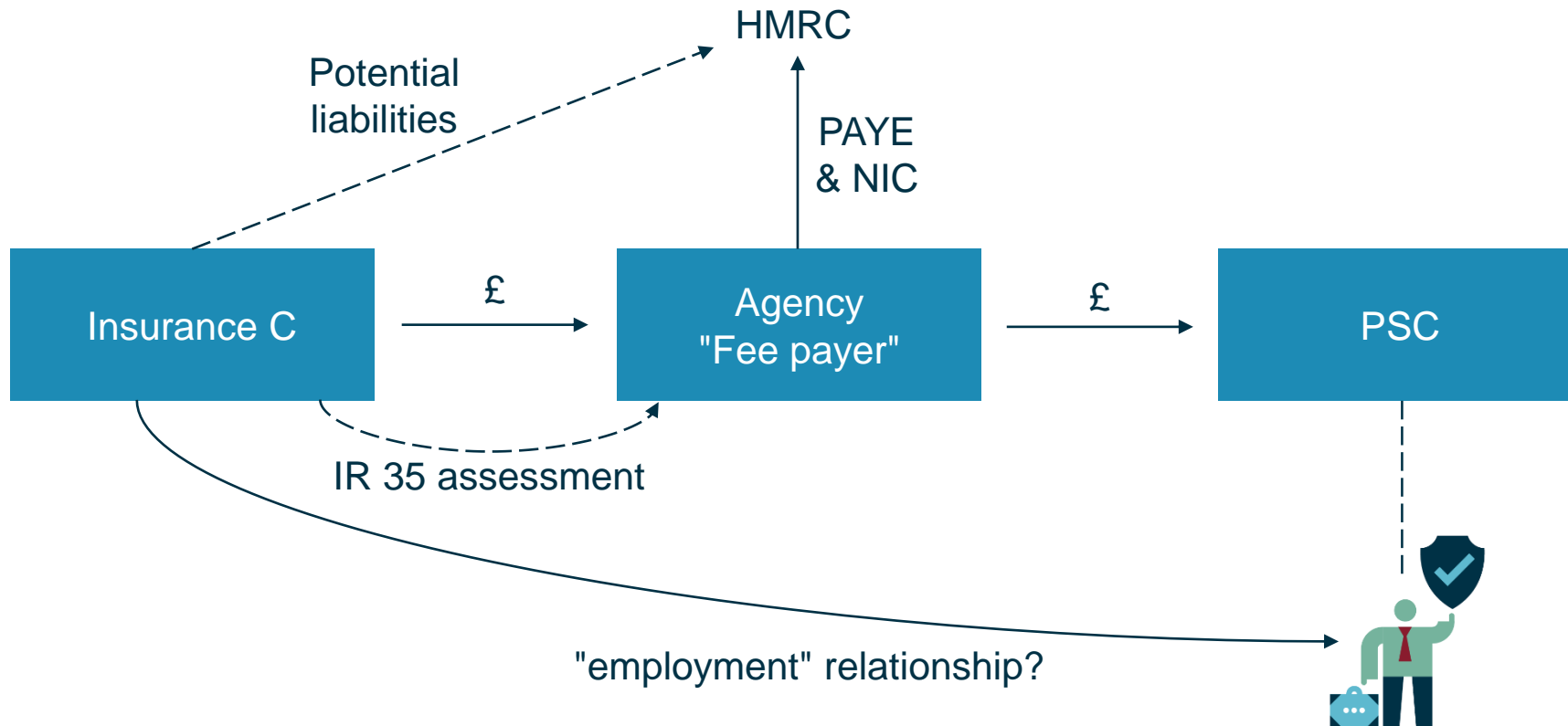
Other points from other cases;

- There is no exhaustive list (but financial risk, whether provides own equipment and/or helpers, whether an established business...)
- Nolan LJ in *Hall v Lorimer*: "*The object of the exercise is to paint a picture from the accumulation of detail*"
- Control is important (the right to decide what, when, how, where work is undertaken) but not determinative, especially skilled workers
- Statements in the contract that its not employment are (almost) irrelevant



# April 2020: the new rules

...the problem is IR35 doesn't work....so....



## April 2020: the new rules

So, the end users ("Insurance Co") are being made liable for the PAYE/NIC

- Liability (normally) attaches to the "fee payer" – the one who pays the PSC
- Agencies may insist on indemnities from Insurance Co
- Insurance Co can also be liable directly to HMRC if;
  - Fails to carry out/communicate the results of an IR35 assessment in relevant time limits
  - Intentionally misleads the agency or is careless in its assessment
  - Agency becomes insolvent (cf public sector rules)





# Practical consequences: what are the contractors going to do?

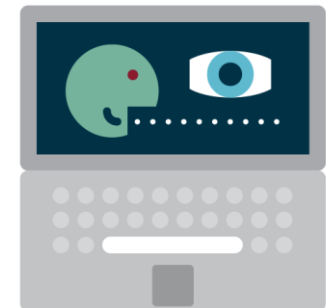
Ask for more money?

Go elsewhere?

Dispute Insurance Co's IR35 determination?

Ask for new arrangements?

Move to operate via a dodgy intermediary?



# Practical consequences: Understanding your risk

What PSCs do you have?

Under what terms?

Who engages them? (and can you control them?!)

In fact do you already have some operating via dodgy intermediary arrangements?



## Practical consequences: getting the agencies in order

What agencies do you use?

Under what terms? (indemnities, pricing etc)

Are they ready for April 2020?



# Practical consequences: what should April 2020 look like?

## How to manage the risk

- CEST every time? Is CEST reliable?
- Pass it onto agencies?
- External validators?
- Payroll? SOW?
- A combination of the above?

## Other factors

- Internal controls/training
- Check agency indemnities, solvency, processes etc
- Watch for new "clever" schemes
- Timing – do not issue old style assignments straddling 6 April 2020

