

ONE CALL 24 LIMITED

IR35 INTERNAL GUIDANCE

DATE OF ISSUE: 06th May 2025

INTRODUCTION

Where an individual provides services to a client through their own intermediary (usually a limited company often known as a personal service company ('PSC')), the off-payroll working rules (also known as 'IR35') need to be considered for income tax and National Insurance purposes.

Under the rules, the working relationship between the 'Client' (i.e. the party in receipt of the services) and the individual who provides their services through the intermediary (usually a PSC) has to be assessed to ascertain whether the individual would have been an employee if they were providing their services directly to the Client.

Where it is determined that the individual would be considered an employee of the Client, if not for the use of the individual's PSC, then IR35 would apply, and payments made to the intermediary or PSC must be subject to deduction of income tax and National Insurance contributions ('NIC').

As a recruitment agency, One Call 24 Limited ('OC24L' or 'we') has to consider the rules wherever they may be relevant. The purpose of this guidance is to provide general information about the rules and enable staff to apply them when we use the services of an individual who provides them via their own intermediary, typically a PSC.

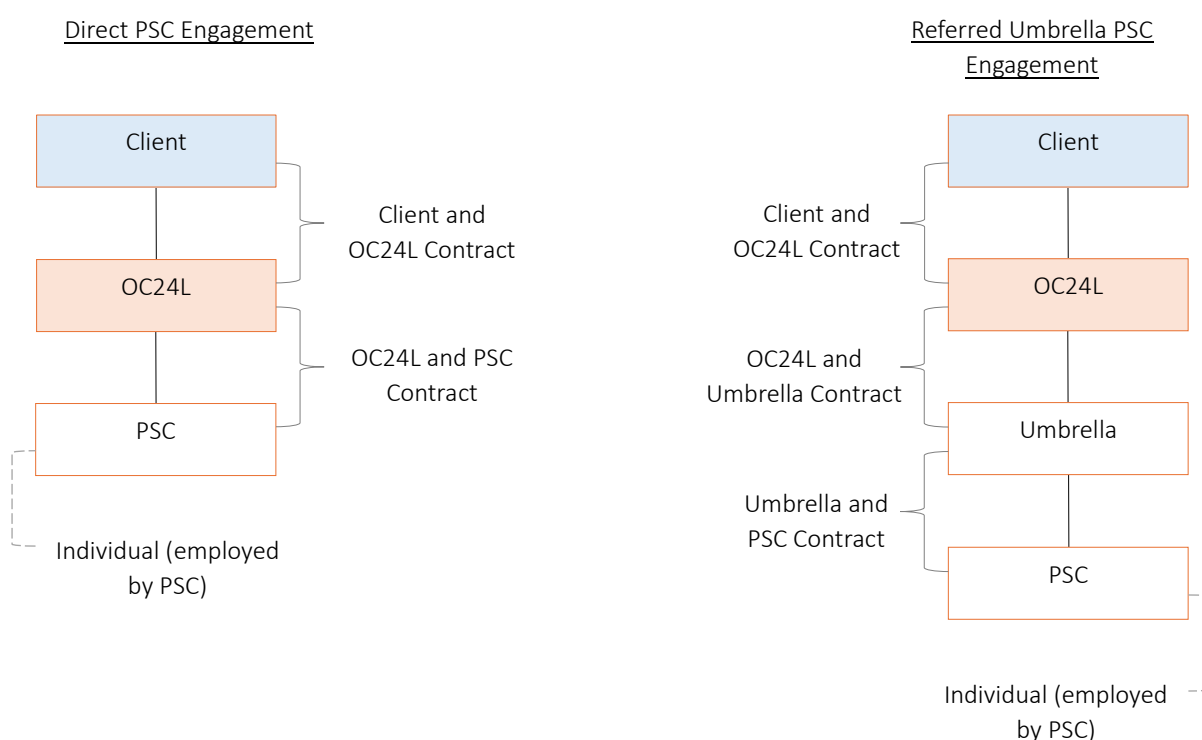
RELEVANT ENGAGEMENTS FOR IR35

For ease of reference, we have provided an outline of our general commercial practices and highlighted the engagements which will be relevant for IR35 purposes. Candidates who register with OC24L are provided with options as to how they'd like to be engaged in accordance with the Conduct of Employment Agencies and Employment Businesses Regulations 2003 ('Conduct Regulations 2003'); these regulations provide a framework of minimum standards that we (as an employment business) must adhere to. The modes of engagement will either be directly with OC24L, or through one of our preferred suppliers, such as an umbrella company, as outlined below:

- a. **Direct PAYE:** We directly engage the individual as a temporary worker, i.e. as an agency worker. The agreement for this type of engagement will be the contract for services for agency workers.
- b. **Direct PSC:** We register the individual for work-finding services but directly engage the individual's PSC as an independent business. The relevant agreement for this type of engagement will be a business-to-business commercial agreement which is a contract for services.

- c. **Referred Umbrella PAYE:** We register the individual for work-finding services but refer them to an umbrella supplier that employs the individual under a separate umbrella contract of service (i.e. contract of employment).
- d. **Referred Umbrella PSC:** We register the individual for work-finding services but refer the individual's PSC to an umbrella supplier that engages the PSC as an independent business under a commercial contract for services.

IR35 only needs to be considered when there is a PSC in the supply chain; therefore, the engagements that we should pay special attention to are our direct PSC and referred umbrella PSC engagements, as illustrated below:



IR35 is a complex subject. We need to comply with the rules, and to do so, it is strongly encouraged that this guidance is read in full as it has been created to provide you with the following information in chronological order:

1. Background to IR35 Legislation
2. Assessing for Disguised Employment
3. IR35 and the Contractual Supply Chain

Although, in principle, the rules apply to both OC24L and One Call 24 Healthcare Limited, this guidance is specific to OC24L's commercial operations, and therefore, only suitable for internal use by staff members of OC24L.

KEY CONTACTS

If you have any questions, please contact Terry lee Newton, Director, at terry.lee@onecall24.co.uk.

SECTION 1: BACKGROUND TO IR35 LEGISLATION

The intermediaries legislation was first proposed in an Inland Revenue (IR) press release (number 35) in 1999; hence, the commonly used term, 'IR35'. It outlined the then Government's plans to counter 'disguised employment', i.e. alleged tax avoidance via the use of intermediaries such as PSCs.

APRIL 2000 INTRODUCTION OF IR35 RULES

The IR35 rules were officially introduced under the Finance Act 2000, later forming Chapter 8 of the Income Tax (Earnings and Pensions) Act 2003 ('ITEPA'), which is still in force today, and are commonly referred to as the 'old private sector IR35 rules'.

APRIL 2017 OFF-PAYROLL WORKING RULES – PUBLIC SECTOR

Changes were announced, specifically, for the public sector and draft legislation was published in December 2016 alongside a technical note which explained the effect of the new proposed legislation on the public sector. In short, the new rules put the responsibility on public sector bodies to determine whether the engagement fell inside or outside of the off-payroll working rules.

APRIL 2021 OFF-PAYROLL WORKING RULES – PRIVATE SECTOR

From April 2021, along with public sector bodies, 'medium' or 'large' private sector companies are subject to the off-payroll working rules.

Where private sector clients are 'small', and thus, do not meet the criteria for being either 'medium' or 'large' private sector companies, then the original rules would continue to apply; meaning, the PSC remains responsible for IR35 and any potential tax liability which may arise from the engagement.

DEFAULT LIABILITY

By virtue of the April 2021 reforms, the 'Client' (i.e. the party in receipt of services) within the supply chain is liable for IR35 duties by default, unless the Client can be classed as 'small'. Therefore, where IR35 applies and the Client is directly engaging a PSC, the Client would need to operate PAYE and deduct income tax and Employee's NICs from the contract income, i.e. the 'deemed payment', as defined in the legislation, as if the individual providing services through their PSC was directly on the Client's payroll. Additionally, the Client would also need to pay over Employer's NICs and the Apprenticeship Levy to HMRC and report payments through RTI.

However, where the Client does not contract directly with the PSC because there is another intervening intermediary within the supply chain (such as an agency), the Client may pass its liability on to the next party in the supply chain, so long as a compliant and valid Status Determination Statement ('SDS') has been provided to the requisite parties as prescribed by IR35 legislation. Further information can be found under Section 3.

SECTION 2: ASSESSING FOR DISGUISED EMPLOYMENT

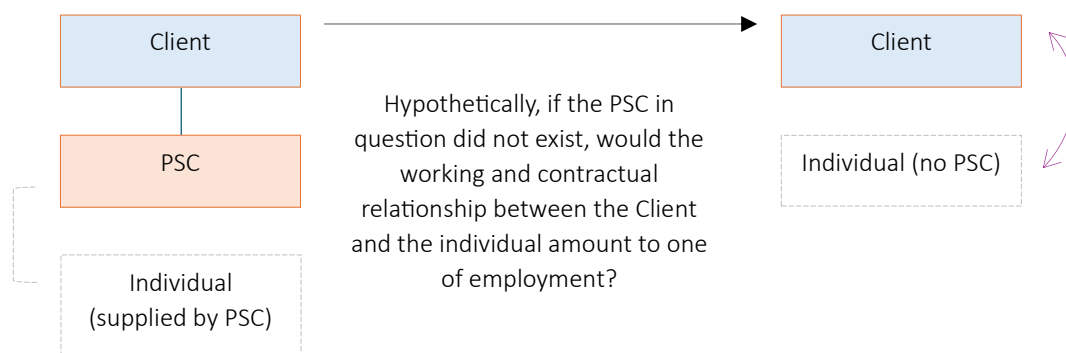
The purpose of the IR35 legislation is to uncover working arrangements where the relationship between the individual and the Client is, effectively, one of an employment; hence the term 'disguised employment'. This section explains how disguised employment is assessed under the IR35 rules.

Unless the Client is a small company (in which case the PSC remains responsible for assessing the relationship), following the reforms introduced in April 2017 and April 2021, the responsibility has shifted to public sector bodies and 'medium' or 'large' sized companies, respectively. This is the case regardless of whether there are other intermediaries within the supply chain, e.g. agency, umbrella company, or any other type of labour provider.

It is important to understand how disguised employment is assessed for IR35 purposes, particularly given there is no direct contract between the Client and the individual. In fact, the contract would be with the individual's PSC which, of course is a separate legal entity altogether.

EMPLOYMENT STATUS TEST

As illustrated below, the individual's PSC is an intervening party within the contractual supply chain in which there would not be a direct contract between the Client and said individual. Therefore, the central question to address for IR35 purposes is whether a contract of employment could, hypothetically, exist between the individual and the Client, if not for the existence of the PSC in the supply chain.



To be considered 'inside' IR35, the essential criteria of an employment relationship must be established between the parties. There is no statutory test; however, many years of case law have determined the following criteria as being indicative of an employment relationship:

- **Mutuality of Obligations** – as an irreducible minimum, there must be an obligation on the Client to pay the individual in question for work completed and an obligation on the individual to do the work. Where this would have been the case had the individual directly contracted with the Client, then this criterion would be considered satisfied.
- **Personal Service**: an obligation on the individual to personally do the work.
- **Control**: where the Client has the right to exert control (and the degree of said control) over the manner in which work is done, including where it is done and when it must be done.

Other factors, such as financial risk, will also need to be considered in the round.

Where the relationship between the individual and the Client would, effectively, be one of employer and employee, then IR35 would apply and mean that PAYE should be operated on the payment to the PSC to account for income tax and NICs.

AVAILABLE RESOURCES TO ASSESS DISGUISED EMPLOYMENT

There are various resources available to the Client to carry out such assessments which include the basic principles of the employment status test. Set out below is a general list of available resources the Client may choose to use for an IR35 assessment with some guiding commentary.

Resource	Description	Pros	Cons
HMRC's Check Employment Status for Tax Tool ('CEST Tool')	This is the official HMRC tool for obtaining an opinion on employment status.	Can be completed anonymously. HMRC will be bound by the results, <u>if</u> the information is accurately completed. Provides reasons that can be used in the Status Determination Statement (see Section 3).	Does not accurately reflect case law and will generally be biased towards finding employment.
Third-Party Assessment Tools, e.g. QDOS	Various other third parties provide their own in-house commercial assessment tools for IR35.	Results may be more accurate than HMRC's CEST Tool (however this is not a guarantee).	May be costly. Not automatically accepted by HMRC as an assessment unlike HMRC's CEST Tool.
Formal contract review by professional advisors	Instructing advisors to carry out a formal review of the commercial arrangements.	Definitive result bespoke to the relevant contract. Feedback on strengths and weaknesses of contract for future reference.	Cost. More time-consuming to undertake, as a whole.
Request a formal opinion from HMRC	HMRC can be approached for a formal opinion on IR35.	HMRC will be bound by the decision, <u>if</u> the information provided is accurate. Free.	It will not be anonymous and thus will put both the Client and the PSC on HMRC's radar. Time-consuming.
'Instinctive' disguised employment opinion, i.e. blanket determinations by Client	Some parties will be tempted to form an instinctive opinion about whether there is or isn't disguised employment.	Quick.	Quality of decision depends on how good of an understanding there is of case law.

			May not be accurate and unlikely to demonstrate 'reasonable care' was taken if decision is wrong.
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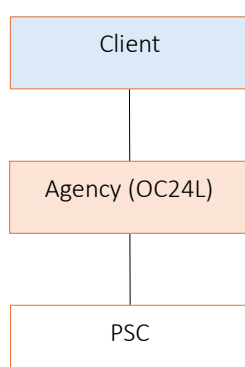
The most common approach by Clients is to use HMRC's CEST Tool. It would also be used for the basis of the content of a Status Determination Statement provided by the Client to other parties within the contractual supply chain, such as OC24L.

SECTION 3: IR35 AND THE CONTRACTUAL SUPPLY CHAIN

This section of the guidance covers the contractual supply chain in terms of our commercial business and standard operations and how the IR35 legislation may apply.

THE CLIENT'S OBLIGATIONS UNDER IR35 LEGISLATION

The Client is the party in receipt of services provided by the individual through their PSC. Given the reforms summarised above, to reiterate for completeness, the Client would be liable for IR35 by default if it is a 'public body' or a 'medium' or 'large' private sector company. On the other hand, if the Client is a 'small' private sector company, then the Chapter 8 ITEPA rules will apply instead, and the responsibility would remain with the PSC.



For the purposes of this internal guidance, please note that OC24L is an Agency, and therefore, is not the Client but will be under a direct contract with the Client.

Our Clients will be a mix of both public sector bodies as well as private sector companies. Therefore, it is important to understand the Client's position under IR35 in the general sense.

PUBLIC BODY

A 'public body' is legally defined under statute as meaning:

- a public authority as defined by the Freedom of Information Act 2000 ('FOIA')
- a Scottish public authority as defined by the Freedom of Information (Scotland) Act 2002 ('FOISA')
- the Corporate Officer of the House of Commons
- the Corporate Officer of the House of Lords
- the National Assembly for Wales Commission
- the Northern Ireland Assembly Commission

The legal definition also covers companies connected with the above.

MEDIUM OR LARGE COMPANIES

Companies within the private sector will be classes as ‘medium’ or ‘large’ if they do not qualify as ‘small’. For the avoidance of doubt, a company is ‘small’ if it meets two of the following three conditions from 6 April 2025:

- annual turnover not exceeding £15 million (an increase from £10.2 million)
- balance sheet total not exceeding £7.5 million (an increase from £5.1 million)
- not more than 50 employees

There are particular rules for other entities and connected and associated companies. For instance, subsidiary companies withing a group will be ‘medium’ or ‘large’ if the parent company is ‘medium’ or ‘large’.

As such, it is essential for the purposes of IR35 liability to assess accurately whether or not the Client is ‘small’, as this determines the liable entity within the contractual supply chain. However, please note that it is the Client’s responsibility to determine its size, and there is a duty on the Client to confirm whether it is ‘small’, if asked by the individual providing services through their PSC or the Agency (i.e. OC24L).

STATUS DETERMINATION STATEMENT (‘SDS’)

Where IR35 must be considered by the Client (as it cannot be classed as a ‘small’ company, as explained above), the Client will need to determine whether an engagement falls within scope of the IR35 legislation, i.e. whether it is ‘inside’ or ‘outside’ IR35. In order to do this, the Client is responsible for understanding the service arrangements provided by the PSC as well as the roles of any other commercial entities within the contractual supply chain if not directly contracting with the PSC.

Following the above, the Client must communicate its determination in the form of an SDS.

The legislation does not specify a prescribed form for the SDS. However, it does confirm what needs to be included for the SDS to be valid:

- the Client must state in the SDS whether or not the individual providing services via the PSC would be an ‘employee’ or ‘office holder’, or is an ‘office holder’, for tax and NICs purposes if they were directly engaged by the Client;
- the Client must provide its reasons for coming to that conclusion; and
- the Client must have taken reasonable care in coming to its conclusion.

REASONABLE CARE

If the Client says that IR35 does not apply but does not take reasonable care in reaching its conclusion, the SDS will not be considered valid. As a result, the Client will remain liable for IR35. What constitutes as ‘reasonable care’ will often be a fact-based question.

HMRC’s Guidance states that ‘reasonable care’ means acting in a way that *‘would be expected of a prudent and reasonable person in the in the client’s position.’* In other words, whether the Client has taken ‘reasonable care’ will often depend on the Client’s ability, experience and circumstances. As such, there is a higher threshold of ‘reasonable care’ for multi-national companies with sufficiently large resources in comparison with a much smaller entity with minimum resources to carry out IR35

assessments on both the services to be provided by the individual through their PSC but also the wider commercial arrangements within the contractual supply chain, as well.

Overall, there is an expectation on the Client to have a reasonable understanding of the contractual supply chain as well as the practices in commercial reality.

PASSING ON THE LIABILITY

The Client is then required to provide the SDS to the individual providing services via their PSC as well as the next party within the supply chain, which will often be the Agency. As such, usually, OC24L should be supplied with the SDS.

Unless and until the Client does so, the Client remains liable for IR35, by default.

DISPUTING THE CONCLUSION WITHIN THE SDS

The receiving party of an SDS (either the individual worker providing services through their PSC or the party liable for the IR35 duties as a result of having received a valid SDS) can challenge the employment status conclusion. The challenge is made directly to the Client. This is known as the Client-led Status Disagreement Process under the legislation.

The process is started by any representations that the status conclusion is incorrect. Once this happens, the Client has 45 calendar days from the date of receipt of such representations to provide a response. The Client therefore must confirm, with reasons, why it feels that the original employment status conclusion is correct, or in the alternative, not correct (in which case the Client agrees to change it).

If the Client does not respond within 45 calendar days, the responsibility for the deduction of tax and NICs, and where applicable, apprenticeship levy, will revert to the Client (and this cannot then be subsequently transferred away from the Client by merely passing on the SDS once again).

THE AGENCY'S OBLIGATIONS UNDER IR35 LEGISLATION

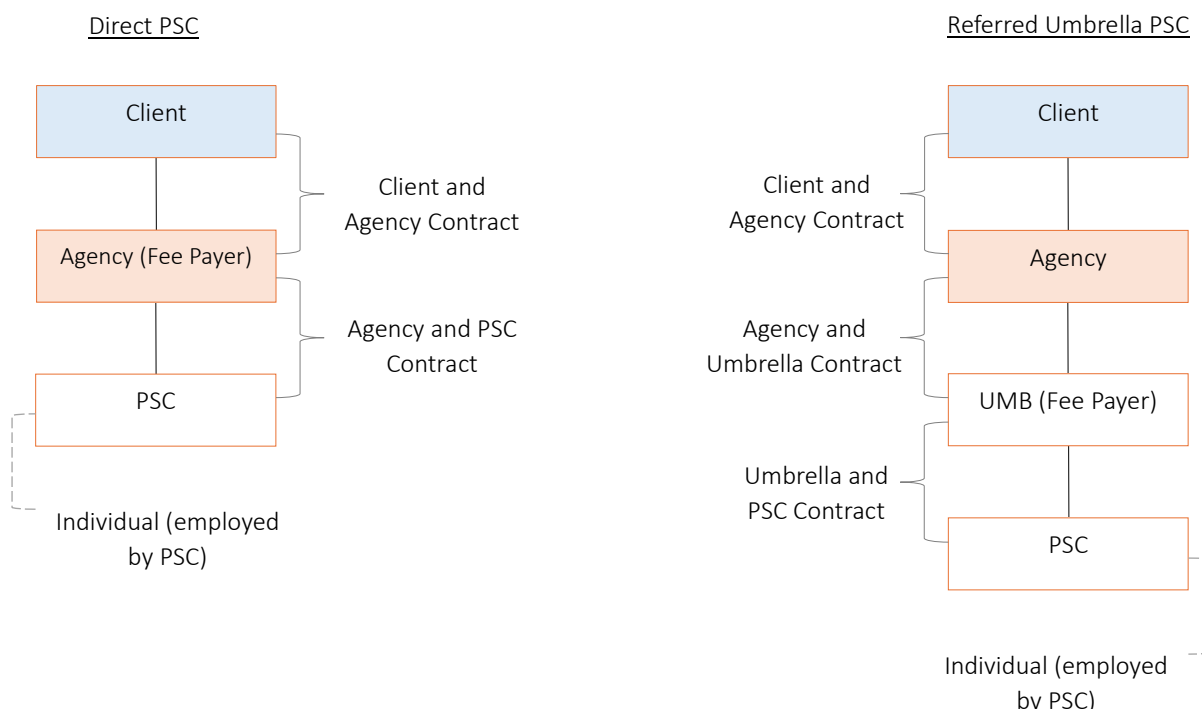
This part covers OC24L's commercial operations and what is required when IR35 is relevant for a particular mode of engagement.

In brief, OC24L will need to consider:

- the relevant engagements subject to IR35
- whether the Client has issued us with an SDS
- whether the conclusion within the SDS is 'inside' or 'outside' IR35
- whether we are the Fee Payer
- and what our contractual obligations are

AGENCY OBLIGATIONS

As mentioned above, the modes of engagement available to our candidates which need to be considered for IR35 purposes are our Direct PSC and Referred Umbrella PSC Engagements.



PASSING ON LIABILITY TO THE FEE PAYER

The 'Fee Payer' (as highlighted above) is the party sitting immediately above the PSC within the supply chain that is responsible for making direct payment to the PSC. As illustrated, OC24L is the Fee Payer for direct PSC engagements. However, we are not the Fee Payer in referred umbrella PSC engagements; in that case the Fee Payer would be the umbrella company, given it is responsible for paying the PSC. As such, OC24L's obligations may vary depending on the mode of engagement.

To confirm:

- where OC24L is the Fee Payer, we will need to make payment to the PSC in accordance with the SDS received from the Client.
- where OC24L is not the Fee Payer, we must ensure the SDS is passed on to the next party in the supply chain, which usually would be the umbrella company (and it would be the Fee Payer). Failure to pass on the SDS would mean that OC24L would remain responsible for any duties arising where the engagement falls 'inside' IR35, i.e. to operate PAYE and make deductions for income tax, NICs, Apprenticeship Levy (where relevant), and remit such duties to HMRC.

It is important to keep in mind that being the Fee Payer within a contractual supply chain does not automatically mean that OC24L is responsible for IR35 duties arising if the engagement is 'inside' IR35. As confirmed above, the Client is responsible for issuing the SDS to us as well as the to the worker. If that is not done, then the Client would remain liable by default. For the avoidance of doubt, as the Agency, OC24L is not responsible for determining whether IR35 applies for any particular engagement: that obligation rests with the Client.

Note, if we do receive an SDS from the Client, then staff of OC24L should forward the SDS on to the Finance Department for processing and verification. In addition, staff need to consider the commercial position, as described below, with a Director [Terry Lee Newton at terry.lee@onecall24.co.uk] before proceeding with the booking.

COMMERCIAL PROVISIONS AND RESTRICTIONS

Although the IR35 legislation remains a Client responsibility, as explained above, the commercial reality is that the Client may often 'contract out' their statutory obligations to us, the Agency. The primary method of doing so would be under the terms and conditions of a particular commercial agreement between us, OC24L (operating as the Agency), and the Client.

Therefore, we encourage all staff to familiarise themselves with the following commercial considerations which may likely apply (either directly or indirectly) in the agreement we have with the Client and to act accordingly, where appropriate:

- 1. The terms and conditions within the Client agreement directly or indirectly restrict the type of labour we, the Agency, can supply.**

We have already identified the types of engagements to which the IR35 legislation will likely apply, i.e. our Direct PSC Engagements and Referred Umbrella PSC Engagements. However, staff need to check the terms and conditions in the Client agreement to determine whether there is a restriction at the outset regarding the type of labour that can be supplied. The type of restriction, in particular, which would be relevant is one which does not allow Personal Service Companies ('PSC') to be supplied. Sometimes, this may be expressly stated in the agreement, i.e. a direct prohibition on PSC engagements. Other times, however, the restriction may be indirect, i.e. implied.

For instance, where there is a PAYE only provision in the contract, staff need to be aware that it may mean that all payments to all operatives must be made directly to the individual and subject to PAYE for income tax and National Insurance contributions ('NIC') purposes. This would imply that PSCs cannot be supplied, as payments made in that sort of arrangement would go to the PSC (and not directly to the individual). Alternatively, the provision may mean that PSCs can be supplied, but all payments made directly to the PSC must be subject to PAYE for income tax and NIC purposes, which in reality, is a complex operation to carry out.

Therefore, if such provisions exist in the Client agreement, we advise staff (particularly those working within the recruitment division of OC24L) to verify this information with a Director [Terry Lee Newton at terry.lee@onecall24.co.uk] before confirming any bookings into our system with candidates.

- 2. The terms and conditions within the agreement may include indemnity and warranty clauses in favour of the Client regarding any potential tax liability (including IR35 liability) or financial losses arising from or related to the labour we, as the Agency, have supplied to them.**

The aim of an indemnity clause in a commercial contract is to enable one party to recover specific losses from the other contracting party. In the context of IR35, this would be related to any outstanding tax and/or NIC liability determined by HMRC e.g. following an enquiry. Although IR35 is a Client responsibility at the outset (and so is any purported unpaid tax or NICs owed to HMRC), an indemnity provision would effectively allow the Client to 'clawback' (i.e. recover) this liability from us, the Agency.

A warranty clause often includes certain representations and assurances. For instance, the commercial agreement may require us to warrant that all payments made to operatives and/or PSCs be subject to PAYE, as described above (assuming it does not outrightly prohibit PSC engagements). Therefore, if the PSC is engaged and supplied (either directly by us or indirectly through a referred umbrella supplier), and PAYE is not operated on the payments made to the PSC in accordance with the warranty described above, this may amount to a breach of warranty (and, in turn, breach of contract). Ultimately, a Client could claim damages given the breach of contract with the possibility of court proceedings to do so.

As such, all staff (particularly those working within the recruitment division of OC24L) need to familiarise themselves with any general indemnity and warranty provisions in the commercial agreement with a Client and verify the position with a Director [Terry Lee Newton at terry.lee@onecall24.co.uk] before moving forward with the booking.

3. The terms and conditions of the Client agreement may delegate certain obligations relating to the Status Determination Statement ('SDS') to us, the Agency.

As above, the Client is responsible for issuing the SDS to both the individual worker and the next qualifying party within the contractual supply chain which is, typically, the Agency i.e. us. As such, our obligations (as the Agency) would only arise once an SDS has been provided to us. At that point, we would need to act accordingly depending on whether we are the Fee Payer, or if not the Fee Payer, then steps must be taken to pass the SDS on to the actual Fee Payer instead.

However, Clients may attempt to 'contract out' certain responsibilities to us nevertheless, which would deviate from the statutory position and obligate us to operate in a certain way as a matter of contract. For example:

- The agreement with the Client may require OC24L, as the Agency, to pass on the SDS directly to the worker and to the next qualifying party within the contractual supply chain (e.g. umbrella company), where applicable. Under IR35 legislation, it is the Client's responsibility to ensure the worker and the next qualifying party both receive the SDS.
- The agreement may refer to an SDS being issued in a specific context only, e.g. 'outside' IR35. Where this is found in the relevant agreement, it should be considered carefully, as it may be implying a general presumption that all engagements will fall 'inside' IR35 unless otherwise specified in writing. If so, we may need to consider our commercial position further if such a presumption applies to our supply of PSCs.

Therefore, to ensure we remain protected, both as a matter of law and contract, all staff should forward **all SDS's** received (or any relevant correspondence or documentation relating to employment status received) to the Finance Department. In addition, all staff must verify terms and conditions, such as those mentioned above, with a Director [Terry Lee Newton at terry.lee@onecall24.co.uk] before proceeding.

SUMMARY OF THE OBLIGATIONS OF THE PARTIES IN ACCORDANCE WITH IR35 LEGISLATION

The Client is responsible for:

1. Understanding whether PSCs are being engaged and supplied for services within the contractual supply chain.
2. Determining whether the Client is a public body or private sector company (if latter, then determining its size, i.e. small, medium, or large).
3. Assessing for disguised employment (most likely using one of the available resources listed under Section 2).
4. Making an IR35 determination in the form of an SDS where the Client must clearly state whether the engagement falls inside or outside IR35 while providing reasons for its conclusion. The Client must also take reasonable care when drawing its conclusion as to whether the engagement is inside or outside IR35.
5. Issue the SDS to the next qualifying party within the contractual supply chain (for the purposes of this guidance, it would be OC24L) as well as the individual worker.

OC24L as the Agency is responsible for:

1. Understanding where it sits within the contractual supply chain (i.e. which parties does OC24L engage with, and which engagements are relevant for IR35).
2. Checking whether an SDS has been received from a Client and acting in accordance with it, if we are the Fee Payer.
3. Passing on the SDS to the next party in the supply chain if it is not the Fee Payer.

SUMMARY OF OC24L'S COMMERCIAL CONSIDERATIONS AS THE AGENCY

The Client may:

1. Restrict the type of labour we, the Agency, may supply to them in practice.
2. Include clawback provisions, such as indemnity and/or warranty clauses to recover any losses resulting from IR35 liability.
3. Try to 'contract out' its statutory obligations relating to IR35, particularly in relation to the SDS.

Therefore, staff of OC24L should:

1. Forward any SDS we, the Agency, have received for a relevant engagement to the Finance Department at OC24L for processing and verification. Where appropriate, the Finance Department will pass the SDS on to the relevant Fee Payer (i.e. umbrella company).
2. Identify the relevant commercial agreement between OC24L and the particular Client in which a PSC booking is being arranged.
3. Review the agreement for any provisions relating to IR35 and potential restrictions on the type of labour that can be supplied (e.g. temporary workers only) or how payments to operatives and/or PSCs are to be treated for tax purposes (e.g. PAYE only).
4. Review the agreement for any provisions relating to indemnities and/or warranties.
5. Refer the relevant agreement to a Director at OC24L [Terry Lee Newton at terry.lee@onecall24.co.uk] for review and confirmation prior to staff completing the booking on OC24L's system.