



**Low Incomes
Tax Reform
Group.**

A voice for the unrepresented

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Margaret Beels
Director of Labour Market Enforcement

Via email: LMEDirectorsoffice@businessandtrade.gov.uk

Dear Margaret

FALSE SELF-EMPLOYMENT

It was a pleasure to meet you recently at the DLME roundtable and the TUC conference.

As promised, I am writing to follow up on the points I made related to the Fair Work Agency, employment status and false self-employment. Thank you very much for your interest in this extremely important subject.

Rather than make a full submission to the call for evidence at this stage, I write to summarise the Low Income Tax Reform Group's view of the main issues around false self-employment and our suggestion to consider expanding the Fair Work Agency's remit to help tackle them.

I hope what follows, in lieu of a formal response to the call for evidence, can helpfully feed into the development of your Labour Market Enforcement Strategy 2025 to 2026.

I would be delighted to arrange a follow-up meeting to discuss further.

What causes false self-employment?

We know from our work, and from our relationship with the tax charity TaxAid, that there is a serious issue with the false self-employment of workers in the UK labour market.

Sometimes it is driven by an engager's desire to avoid certain tax obligations; sometimes it is used to avoid employment law obligations.

Whichever way around it starts, in most instances, one will lead and the other will follow, meaning workers usually suffer both types of non-compliance. Given increasing employer costs and obligations, such as those that will arise from the recent Budget announcements and Employment Rights Bill, it is possible that more engagers may turn to false self-employment as a means to reduce labour costs and obligations going forward.

CHARTERED INSTITUTE OF TAXATION
30 Monck Street, Westminster, London,
SW1P 2AP

REGISTERED AS A CHARITY NO 1037771

Tel: +44 (0)20 7340 0550
E-mail: litrg@ciot.org.uk

Web: www.litrg.org.uk



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What is the problem with false self-employment?

False self-employment leads to the following problems:

- It denies workers the certainty of having their taxes and National Insurance Contributions (NIC) dealt with under PAYE. They are instead left trying to navigate the complex self-assessment regime in order to declare income and pay taxes. Failing to manage these obligations correctly can lead to significant consequences for workers.
- Not being paid under PAYE also means that workers are denied statutory payments like sickness and maternity pay, which are part funded and administered by employers.
- False self-employment also denies the worker access to employee or 'worker' rights such as the National Minimum Wage (NMW), holidays and having a workplace pension.

Through our contact with workers we know that the above is often only the start of problems for them, as the 'self-employed' status can act as a gateway to other, perhaps less obvious, issues such as:

- Working for an engager with no employer liability insurance.
- Knock on effects for Universal Credit (UC), which tends to be a more burdensome claim process and less generous route for some self-employed workers.
- Eventual impact on state pension entitlement, where insufficient NIC has been paid.
- Denial of income protection policy coverage, because workers are unable to prove their income.
- Lack of access to industrial injuries disability benefit, because it is only available to 'employed earners'.

Nature and scale of false self-employment

As far as we are aware, the government do not collect and publish information on false self-employment. We appreciate there may be challenges here, but it would be helpful if the government were to try to undertake this. In the meantime, some non-governmental organisations have attempted to make estimates in their particular areas of interest (more on this below). From this, and based on other insight we have, we understand there are serious concerns around false self-employment in both the care sector and construction industry.

We have written at great length around status issues in the care sector and the role that some introductory agencies and other intermediaries' have in facilitating false self-employment including a recent [submission to the Scottish government](#) where we summarise the UK-wide situation.

We also take the opportunity to draw your attention to the report '[Personal Assistant Employment Status](#)' that has been put together by the National Direct Payments Forum, exploring the extent of self-employed personal assistant roles within the care sector and highlighting the potential for a large amount of this to be false self-employment. We understand, anecdotally, that in one local authority, around 75% of care is now provided by self-employed personal assistants due to one of the initiatives described in the report.

As regards the construction industry, some [recent statistics](#) suggest that there were 1.2 million self-employed construction workers in 2022/23. Our belief, based on our knowledge of the demographic of workers paid under the Construction Industry Scheme (CIS), is that a significant number of these workers are likely to be in false self-employment.

Beyond these two sectors, we also know that the nature of work is changing rapidly with [the rise of the gig economy for example](#), where often low-paid, migrant, young, or otherwise vulnerable workers seem to be treated as self-employed by default with little regard to the underlying circumstances. As the labour market evolves, it seems imperative to have support in place to help ensure workers, who may be at risk of false self-employment, receive fair treatment.

Who is currently dealing with this problem?

At the moment, enforcement tends to only arise in a reactive way, when people try to enforce a specific right at the Employment Tribunal. Given the downsides to this approach (cost, accessibility, confidence, etc) and a lack of action from HMRC around status for tax purposes as explained below, many workers are being left behind.

Since the false self-employment issue touches on both tax and employment rights, we feel there needs to be oversight and enforcement across the board to protect affected workers.

For tax purposes, HMRC are theoretically able to tackle false self-employment through enforcing the operation of PAYE. However, in our experience, HMRC don't appear to use these powers extensively, meaning there is little, if any, fear of challenge at engager level.

Workers who present to HMRC as being within false self-employment may be signposted [to the CEST tool](#), advised by HMRC to 'talk to their employer', or simply encouraged to complete the self-employment pages of a tax return anyway. In our view, placing the onus of addressing employment status concerns on the worker is wrong, unhelpful and does little to address the underlying causes. In fact, we understand from the charity TaxAid, that in their experience HMRC sometimes target workers, concentrating on 'failure to notify' penalties and underreporting issues around 'self-employment', without considering whether it is genuine self-employment in the first place.

Employment status may occasionally be addressed as part of an HMRC NMW investigation. While it appears that investigations based on [worker status error](#) are rising, they are still small. Also, from the recent LPC [report on the gig economy](#) (where we know some workers have 'worker' status and should therefore be covered by the NMW), it is not clear whether HMRC officers universally consider digging into status as part of their NMW enforcement role, or whether they (or perhaps some caseworkers) simply tend to accept a self-employed status on face value.

What role can the FWA play in tackling false self-employment?

We think it is vital that enforcement of employment status should feature as a specific responsibility of the new Fair Work Agency (FWA).

In our view, the provision of an FWA ‘declaration of employment status’ type function (the result of which could be tested further in the Employment Tribunal if necessary), could bolster worker bargaining power and could act to disincentivise/deter engagers from operating outside of the rules.

We often hear that status is uncertain, unclear and complicated to determine. However, for false self-employment involving low paid workers, this is not often an issue. In lower income cases, the employment status is usually quite clear, it’s just that engagers choose to apply something else.

Sometimes a worker may have an inkling that something is wrong with their ‘self-employment’ but engagers will explain it away. For example workers may be told that because they have a Unique Taxpayer Reference (UTR) from previous periods of self-employment, their position is temporary, or because they provide their own small tools, they are self-employed. These things are incorrect and the reasons are not sufficient for the worker to be genuinely self-employed.

Sometimes there might be a more sophisticated attempt to paint a self-employed picture. For example a worker may be given a ‘contract for services’ – perhaps with a substitution clause (as the unfettered ability to send a substitute is [generally determinative](#) of self-employment). But [case law](#) tells us that labels and paperwork are ignored if they don’t reflect the actual working arrangements and the nature of the relationship between the parties involved. In reality, it would be extremely unlikely for a low paid worker to genuinely be able to send a substitute.

In our view, there is likely to be a significant number of very obvious false self-employment cases out there. Such cases would be easy to challenge by enforcement officers doing a basic fact find and then asking simple questions, such as ‘does the person work for someone else or are they in business on their own account?’. An enforcement body could also hopefully pay short shrift to the use of sham substitution clauses in contracts.

Some advanced training or recourse to expertise would be necessary for enforcement officers in more complex cases, but overall, status issues might not be as time-consuming, onerous or technical to investigate as perhaps perceived.

Will the FWA have capacity to deal with status?

The remit of the FWA would need to be extended to include status enforcement. We know that other proposals and suggestions have been made for the FWA, including enforcing holiday pay and umbrella company regulation and we appreciate the new body will not have unlimited resources. However, there have been a couple of developments over the past year that make us think that these two issues might not keep the FWA as busy as expected and that there may be capacity to take on status.

- The holiday pay regime has been massively simplified with the [formalisation of the 12.07% method](#) for irregular hours workers. In our experience, workers know and understand this method well, allowing them to recognise and challenge when they are not receiving their full entitlement. Engagers also benefit from the greater clarity in legislation, which should be helping in them avoid accidental non-compliance.
- For many years LITRG have been heavily involved in researching and discussing umbrella companies with HMRC, culminating in the [recent announcement](#) that from April 2026,

recruitment agencies and end clients will be legally responsible for accounting for PAYE on payments to workers. This will essentially render the current umbrella company model of engagement redundant for tax purposes. Given one of the likely reactions will be that some agencies will stop using umbrella companies and administer workers' pay and tax in-house, the urgent need for regulation of umbrella companies for employment law purposes may also fall away.

Final thoughts

Employment status underpins everything to do with employment rights, yet it causes significant problems for some workers. These problems will continue to exist without effective intervention.

It seemed widely agreed at the TUC conference that getting the FWA 'right' is most definitely necessary to support the upgrade to employment rights. It is our view that this **must** include the extending of its remit to the enforcement of employment status to stop engagers side stepping the rules via the use of false self-employment. Without this, the envisaged benefits to workers and the labour market will simply not be realised.

The potential impact of plans to introduce a [single status of worker](#), could help simplify the landscape for both workers and engagers and cut down on false self-employment to the extent it is caused by confusion or misunderstanding. However, the proposed carve out for the genuinely self-employed will still leave a boundary in place and the various differentials between the statuses will therefore continue to make distortive hiring behaviour inevitable. The low paid are often in a weak position and rely on effective state enforcement to help protect them from this.

The FWA assuming a role here could see a step change in outcomes for workers. Furthermore, it would level the playing field for businesses that adhere to the law and bolster Exchequer funds. The fiscal losses arising from false self-employment must not be forgotten, which is another reason why action should be taken.

We recognise there are many considerations, not least around resourcing and capability of the FWA, and suggest that a full consultation be launched to help gather views and insights, in order that the most effective and workable function possible, can be designed.

Thank you for your attention to this important matter and I look forward to providing you with any information you may need to see positive action taken forward.

Best wishes

Yours sincerely



Meredith McCammond

Technical Officer, Low Incomes Tax Reform Group