



FIELD COURT TAX CHAMBERS

Personal service companies¹

Are we sure that something has not gone wrong here?

A great deal has been written lately about the case of *Christa Ackroyd Media Ltd v HMRC* [2018] UKFTT 69 and the decision of the First-tier Tribunal is certainly deserving of close analysis.

The facts are pretty well known. Christa Ackroyd is a TV journalist who presented various BBC TV programmes for some years. Her company, Christa Ackroyd Media Ltd, entered into a contract with the BBC. HMRC considered that the arrangements fell within the intermediaries legislation in ITEPA 2003 ss 48-61 with the result that a substantial amount of tax unexpectedly arose. The reasons (and motivation) behind these arrangements are controversial and the subject of some dispute; no doubt we will hear more about that in due course.

The aspect which is intriguing me, is how to apply the judgment more widely – for example, to the position of a concert pianist.

If we look at the judgment in *Ackroyd*, we are told by the tribunal that we have to consider mutuality of obligations; the degree of control exercised by the putative employer; and whether the terms are consistent with a contract of employment – such as the provision of any necessary equipment, the provision of other benefits and whether the individual has to hire his own helpers.

The mutuality of obligation was said to be Ackroyd's obligation to perform the work and for the BBC's obligation to pay her for it. When it comes to control, the BBC was said to exercise control over her services, although she had no set hours or set working days or set location. Nor did she have any holiday pay, sick pay or pension entitlement.

Let us assume that a famous concert pianist is engaged to play Beethoven's Piano Concerto No.5 at the Albert Hall. He turns up and they pay him – so there is your mutuality of obligation. Using the tests in *Ackroyd*, do they have control over his services? You bet they do. He must attend at the Albert Hall on a specific day, at a specific time and will play a specific piece on a specific instrument. In fact, we can be much more precise than that. The piece he is being paid to play has certain specific notes and he will be told that he must play every one of them the right number of times – and in the right order. That is substantially more control than the BBC had over the services of Christa Ackroyd. Moving on to other provisions in the contract, he would not be permitted to send a substitute; nor will there be any holiday pay, sick pay or pension entitlement – just like Christa Ackroyd. Nor will he provide his own equipment because the piano will be provided and all the supporting people in the orchestra will also be provided, so he will not hire his own helpers. And of course, his entire performance will be under the direction of a man with a stick.

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As a result of all this, it is inescapable, on the basis of the judgment in *Ackroyd*, that the concert pianist would be regarded as an employee. But we know that he would not be an employee and would be properly regarded as self-employed. This would be the case whether he was directly engaged or whether he provided his services through a company and we would have to consider the hypothetical contact which would have existed between him and those for whom the services were provided.

How can this be right when, on the *Ackroyd* tests, the case for him being an employee would be absolutely overwhelming?

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