

# IR35

## Trinity Centre Training Session

Louise Rayner – Senior Manager  
Alex Wong – Manager  
Julia Garbutt – Executive

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# IR35

## Agenda

- What is it?
- What are the practical considerations?
- Employment Status Intelligence Platform (ESIP) demo
- Q&A



# What is IR35?

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## Background



### Employee

- Payroll – PAYE & NICs
- Employer costs:
  - ✓ NICs 13.8%
  - ✓ Apprenticeship Levy
  - 0.5% annual pay bill
- Contract of service
- Employment rights



### Self-employed via PSC

- Small salary:
  - ✓ No tax or NICs
- Corporation tax 19%
- Income tax – dividend rates
- Engager – no NICs
- Contract for services
- No employment rights

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## What is it?



From **April 2020**, legislation for the taxation of off-payroll workers in the private sector will change



The responsibility for determining whether a contractor is an employee for tax purposes shifts to the end user



Employers could now be liable for PAYE and National Insurance Contributions (NIC) on their population of contractors



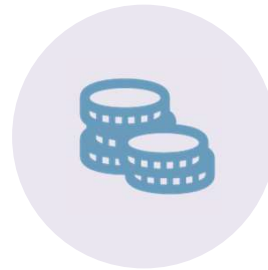
Attempt by HMRC to combat the perceived 'false self-employment' of many contractors

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## Why the change?



Only 10% of PSCs compliant



HMRC don't have resources



Change burden of responsibility

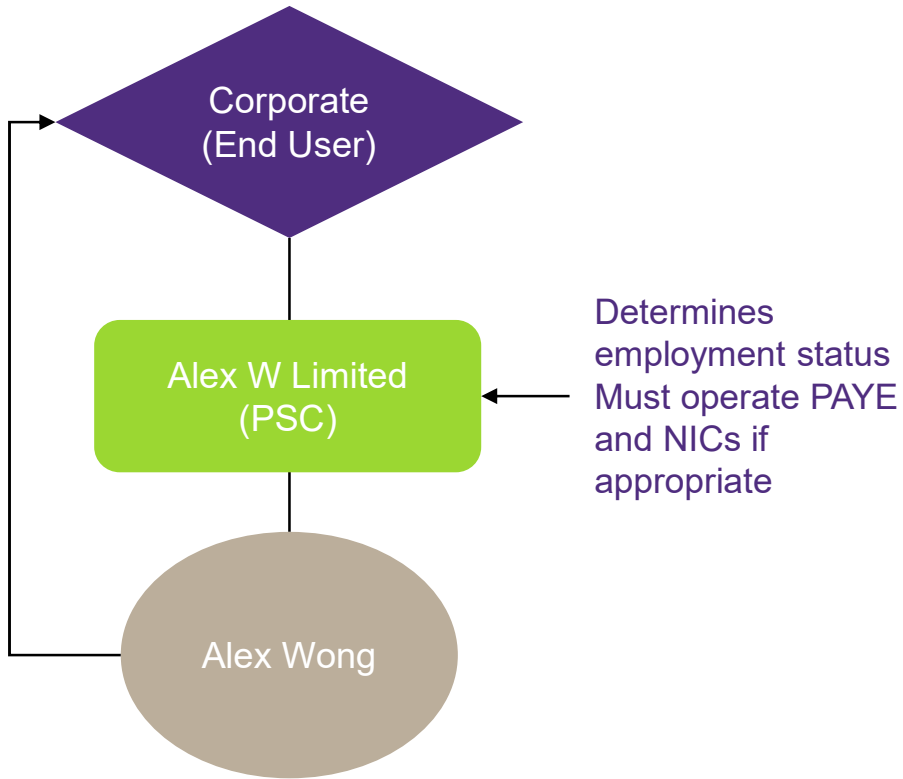


Mainly admin change

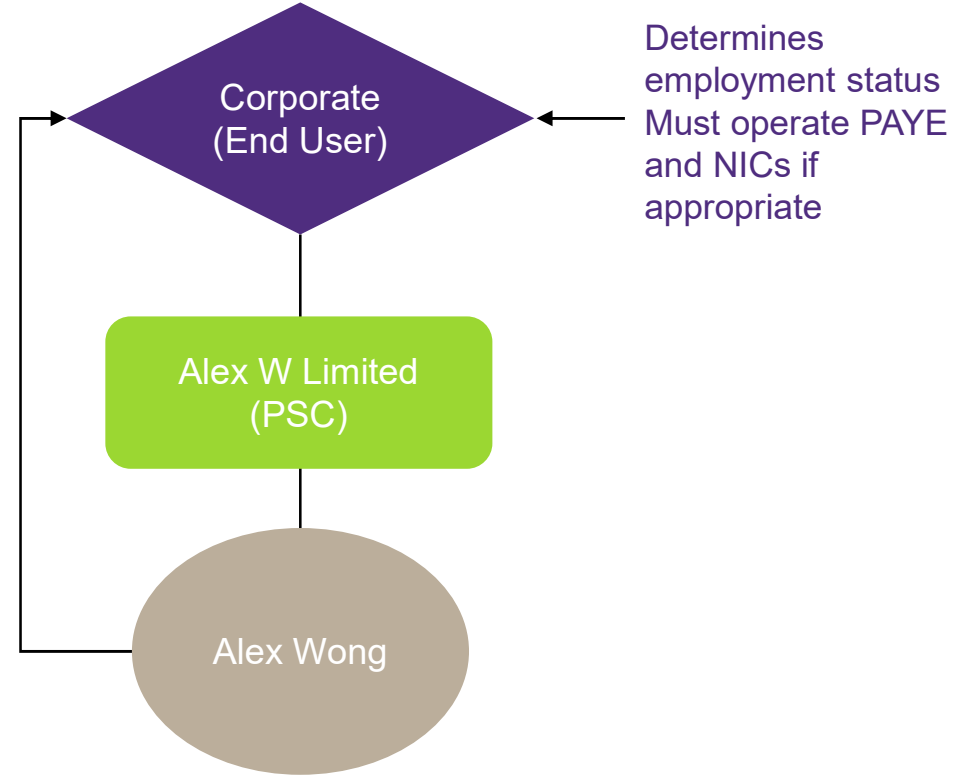
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## How does it work?

Prior to 6 April 2020

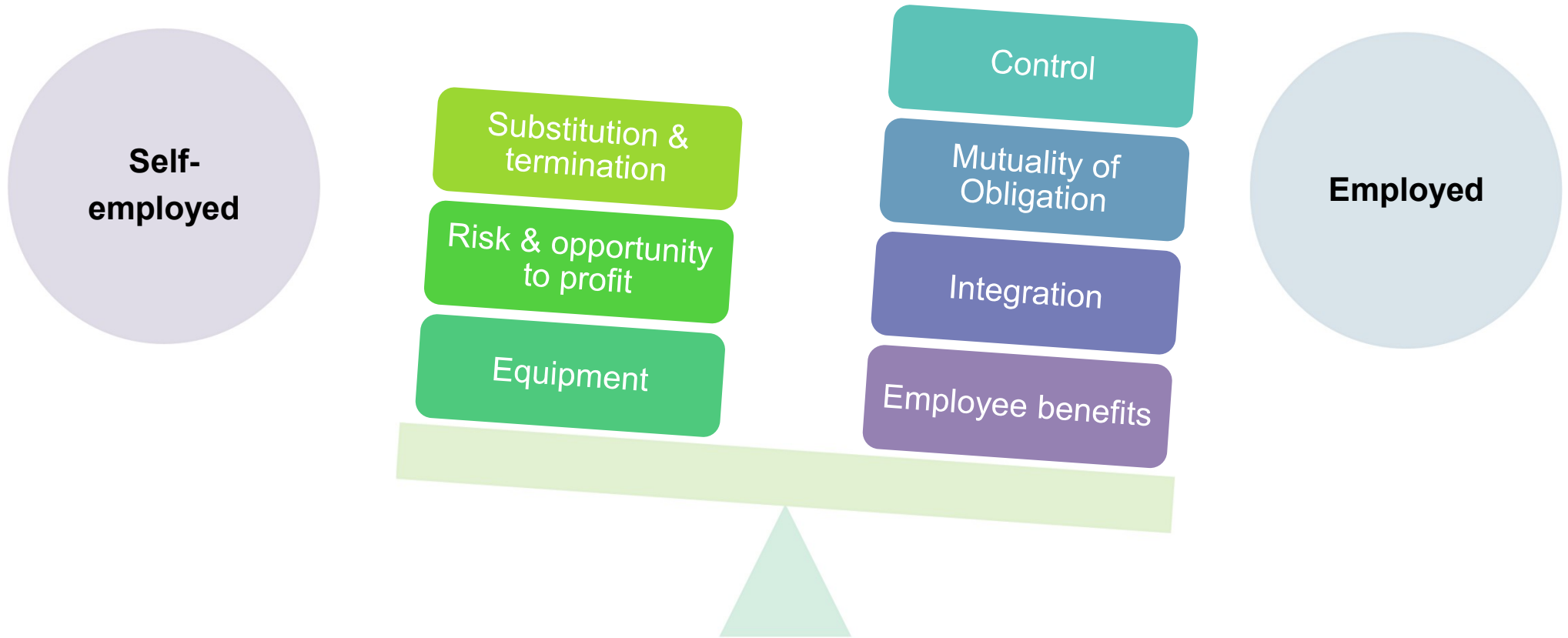


From 6 April 2020 onwards



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## How is employment status assessed?





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## What issues does this cause for employers?



Employment status is a key area of focus and scrutiny for HMRC.



There is an administrative burden to identifying and accounting for contractor populations



PAYE and National Insurance Contributions on a large contractor workforce are a significant cost



HMRC's Check Employment Status for Tax (CEST) isn't fit for purpose



In October 2019 **the NHS was hit with a £4.3 million tax bill** after HMRC decided it had set its contractors' IR35 status incorrectly, despite using its CEST tool.

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## Practical considerations

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## What do employers need to do?

- 1) Identification of contractors
- 2) Communicating the changes to contractors
- 3) Managing the cost implications
- 4) Outsourced services
- 5) Interaction with intermediaries
- 6) Status determination statements and dispute resolution
- 7) Demonstrating reasonable care
- 8) Payroll considerations
- 9) Other considerations

N.B. Commercially, the above processes will also need to be considered as part of the Senior Accounting Officer's responsibilities and any due diligence work being performed.



# Employment Status Intelligence Platform (ESIP) demo

# Employment Status Intelligence Platform

## Overview:

- Artificial Intelligence powered employment status assessments
- Records audit trail of assessment result and logic
- Users will receive email notifications throughout the process where action is required
- Acts as a contractor database
- In-built workflow & notification system between hiring manager and approval team
- <https://ir35.grantthornton.co.uk>

# Thanks for listening

# Questions?

# Appendices

# Appendix A: IR35

## How will it work from April?

### Prior to April 2020 changes

Responsibility	When engaging with a PSC	When engaging with a PSC via a UK third party
Who is required to operate PAYE and NIC?	PSC	PSC
Who is required to determine deemed employment status?	PSC	PSC

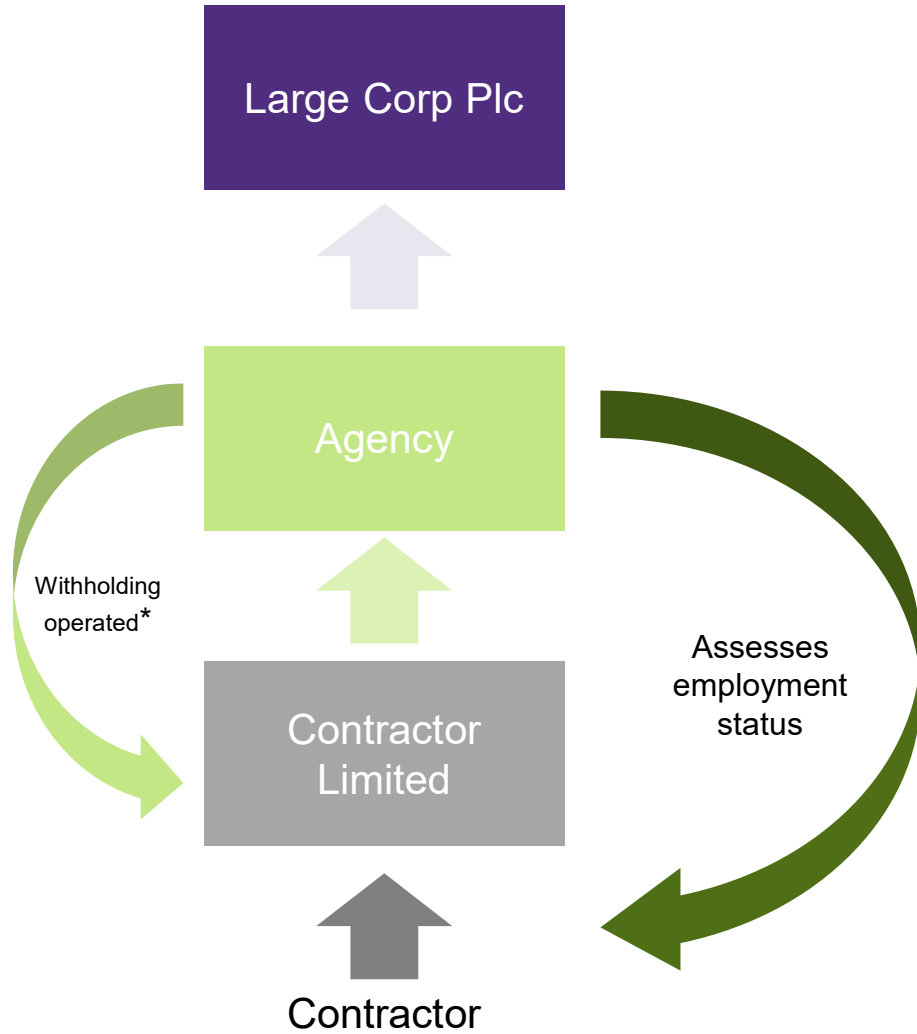
### Post April 2020 changes

Responsibility	When engaging with a PSC	When engaging with a PSC via a UK third party
Who is required to operate PAYE and NIC?	End User	Third Party
Who is required to determine deemed employment status?	End User	End User <i>(End user is liable for determining status and notifying the third party within the time limits otherwise they can become liable for PAYE and NIC)</i>

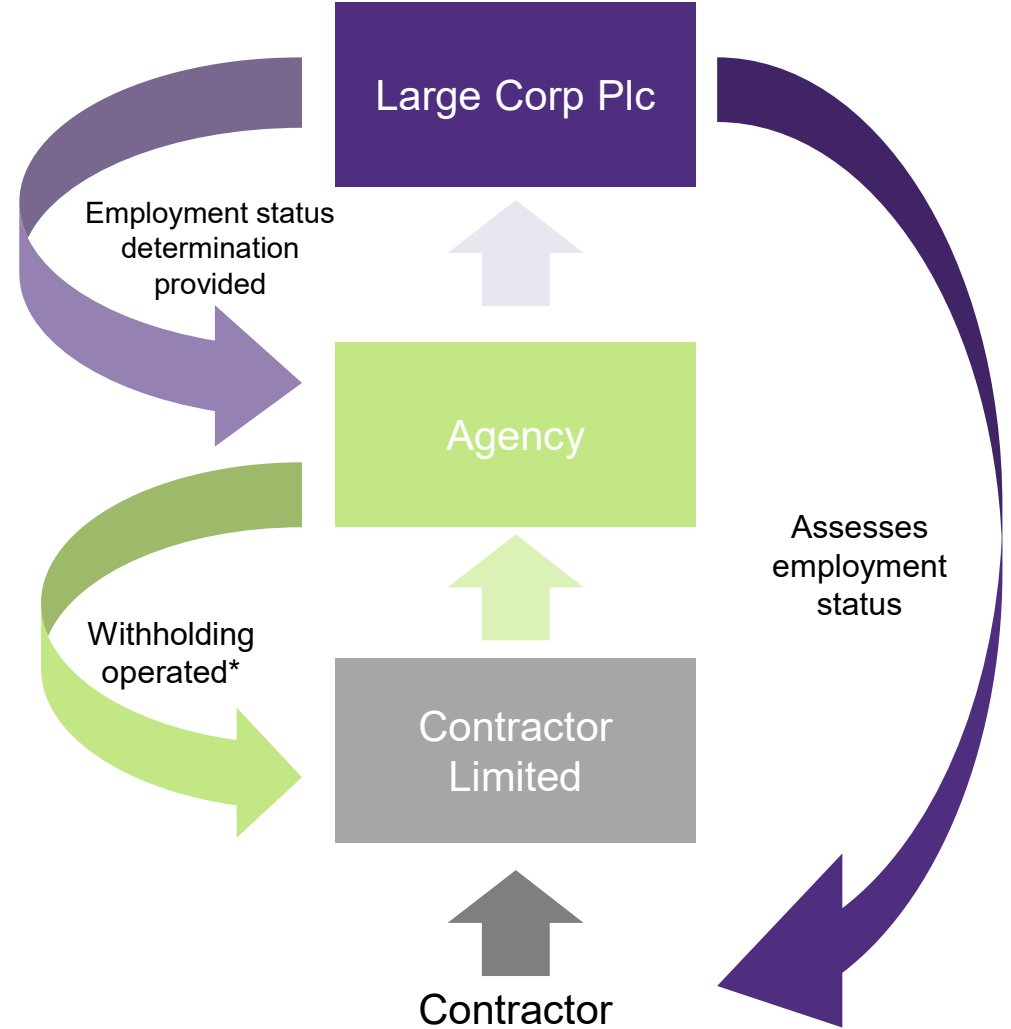


# Appendix B: Outsourced services - an example

Agency provides outsourced service.

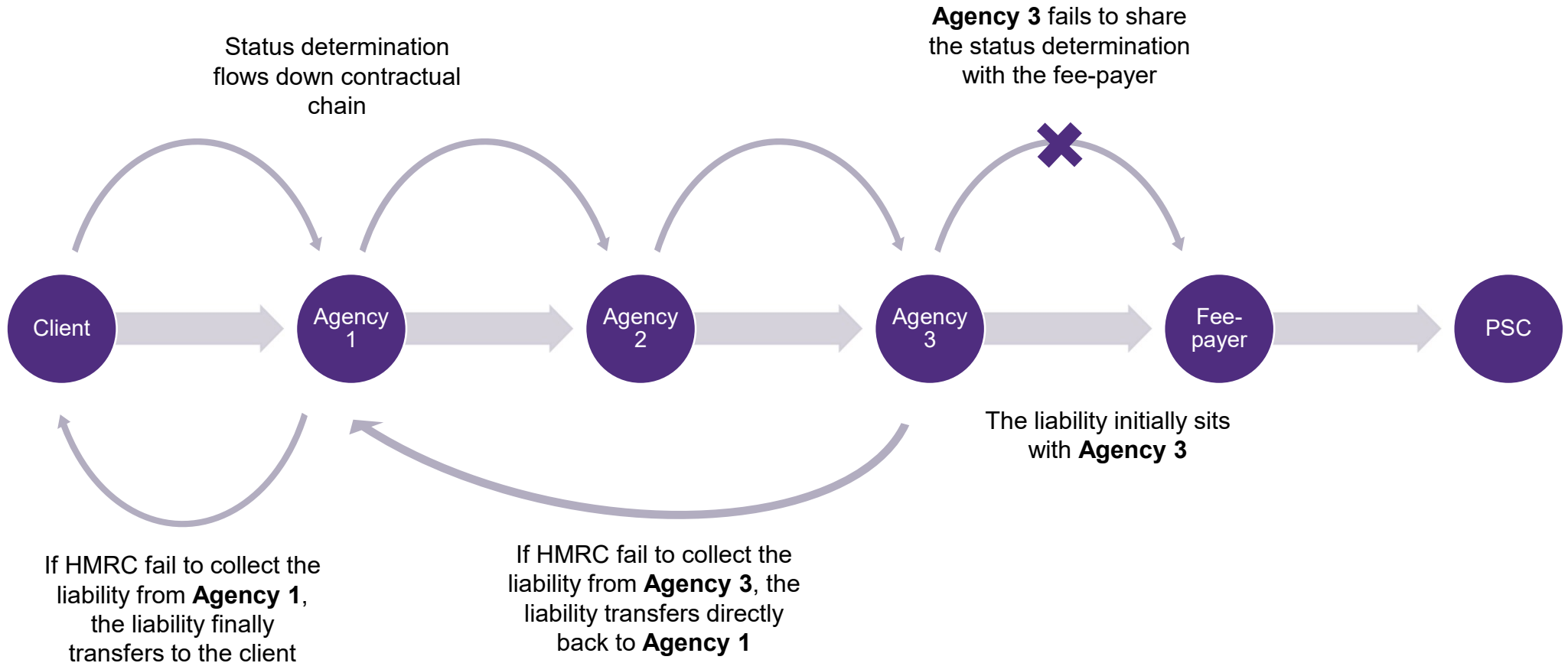


Agency provides personal service of contractor



\*the employment status determination statement has been provided to the worker

# Appendix C: Interaction with intermediaries - an example



# Appendix D: Status Determination Statements (SDS) and the Dispute Resolution Process



## Issues to consider

- End clients are required to provide a status determination statement (SDS) to workers
- This must clearly set out the decision and the reasons behind that decision being taken
- End client has 45 days to respond to any dispute from the worker (or agency), or the liability will transfer to the end client
- No limit to the number of disputes that can be raised or timeframe for the disputes
- End client to consider further representative made and a further statement provided to either amend the original determination, or retain original determination, with reasoning



## Questions to ask

- Should the factors that point towards “self-employment” be considered and included (or vice versa)?
- Certain roles may require certain factors to be given greater weighting - how will this be demonstrated in the SDS statement?
- Who is best placed in the business to make the determination?
- Will there be a process in place to regularly review the SDS of workers?
- If original assessment proved incorrect, how will any adjustments be processed through payroll?
- Can the dispute resolution process be forward managed, to avoid potentially large number of disputes on 6 April 2020?

# Appendix E: Dispute process

Must respond  
within 45 days  
of receipt

## Review decision

- If correct provide reasons why
- If incorrect issue new status determination

If end user  
fails to  
respond within  
45 days they  
are treated as  
fee-payer

No limit to  
number of  
disputes:  
**consider  
contractual  
terms**

# Appendix F: Demonstrating reasonable care



## Issues to consider

- Statutory requirement to take “reasonable care” when making the employment status determination
- Potential risk of HMRC seeking underpaid income tax and NIC due
- Untested legislation, so unknown how HMRC will police this criteria



## Questions to ask

- Are there sufficiently robust systems and processes in place?
- Periodic reviews recommended – this will help demonstrate “reasonable care”
- Are you undertaking a “role based” assessment? From our experience, there are risks associated with this approach
- Check Employment Status for Tax tool (CEST) – risk of potential HMRC and contractor challenge when using this tool



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