

## Employed or self-employed

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Recent case law has shed some new light on the old chestnut of when an individual should be treated as employed rather than self-employed. The issue is often a complex one and no single factor is ever likely to be decisive.

In a case heard at the end of 1999, the House of Lords ruled that certain individuals who were engaged on a casual basis were not to be treated as employees. The individuals worked as guides showing visitors around on an "as needed" basis. The company did not guarantee to provide work and the individuals were not obliged to accept it. Flexibility suited both sides and there was effectively a series of *ad hoc* arrangements ([Carmichael and Another v National Power plc](#)).

This case brought out again the fact that the understanding of the parties was a significant factor, as was the lack of any provision regarding the frequency of work. The ability to turn down work seems to have been an important factor here.

Earlier in 1999 another important case dealing with this matter was heard in the Court of Appeal. An employee was made redundant and subsequently re-engaged as a driver, supposedly on a self-employed basis. This would normally be a red rag to the Revenue bull. Under the later agreement, the driver was committed to arranging at his own expense for somebody else to do the work if he was unable or unwilling to carry it out himself. The Judge held that where an individual was not required to perform services personally then it could not be right, as a question of law, to say that there was an employer-employee relationship. The view was reinforced once more by the understanding between the parties and by the absence of holiday or sickness pay ([Express & Echo Publications Ltd v Tanton](#)).

The Inland Revenue take a hard line when they perceive that an individual has been incorrectly classified as self employed. Whilst these two cases both led to decisions that there was not a Schedule E contract of service, great care is needed when considering the relationship with workers. If the Revenue carry out a compliance visit and decide that PAYE tax and NIC should have been deducted from even just one individual's pay for (say) the past six years, then the cost to the employer can be huge. Professional advice should be sought in cases of doubt.

(See also [Glasgow City Council v \(1\) Mrs MacFarlane \(2\) Mrs Stacy Skivington](#))