

## Why is HMRC so lax when it comes to self employment in ...

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I posted some comments on HMRC's lax attitude towards self employment in the so-called gig economy on Twitter a couple of days ago. This was in the context of the Deliveroo dispute but there are so many employers it could relate to that they are just an example.

Let me be clear that the line between self employment and employment is not precise. HMRC [says on the web that](#):

*Someone is probably self-employed and shouldn't be paid through PAYE if most of the following are true:*

- \* they're in business for themselves, are responsible for the success or failure of their business and can make a loss or a profit*
- \* they can decide what work they do and when, where or how to do it*
- \* they can hire someone else to do the work*
- \* they're responsible for fixing any unsatisfactory work in their own time*
- \* their employer agrees a fixed price for their work - it doesn't depend on how long the job takes to finish*
- \* they use their own money to buy business assets, cover running costs, and provide tools and equipment for their work*
- \* they can work for more than one client*

I am, of course, this is not the last word on the issue because there is case law and much else to consider as well but it is, nonetheless a useful indicator. Many will follow these guidelines.

Let's put this into the context of delivery drivers given self employed status.

First, they're not in business by themselves; they are an integral part of someone else's

business. And by and large they're paid a labour rate with income risk being based on a) work availability b) sickness or injury c) vehicle repair costs, which are unlikely to tip the equation. The first two are no different from many employment contracts in modern business (unfortunately).

Second, most work rotas on arrangements dictated to them.

Third, it is very unlikely that they can offer substitutes in practice.

Fourth, the chance of this happening is remote. Failed work will mean termination in these jobs, as it would in equivalent employments.

Fifth, there can be fixed prices but it appears minimum pay expectations over-ride these in many cases.

It is true a vehicle is provided at cost to the contractor - but this is not true of all equipment e.g, when uniform must be worn, as is the case at Deliveroo. And the equipment provided could anyway be paid for on a mileage rate, as is true of the many employees who also provide their own vehicles for work purposes, so this condition is not conclusive.

Finally, it is rare that these contractors can work for more than one client.

Prima facie then how HMRC's self employment test is passed in many of these cases is very hard to see. So why are HMRC so regularly turning a blind eye to what looks to be widespread minimum wage and national insurance tax avoidance arrangements? Shouldn't MPs be asking the question?