ics Accounting

Criminal Finances Act 2017 Guide



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WHAT IS THE CRIMINAL FINANCES ACT 2017?

The UK Government announced the Criminal Finances Act ("CFA") in April 2017, which later came into force on 30th September 2017. The act makes it a corporate offence for businesses that fail to prevent the facilitation of tax evasion. CFA applies to all, however the sectors which may be most concerned are the Legal, Accounting and Financial.

The Offence: The facilitation of tax evasion detailed within the act covers both UK and foreign tax evasion. Of which, can be broken down into two offences:

> "Failure of a company to prevent the facilitation of UK tax evasion by an associated person", and
>
> "Failure of a company to prevent the facilitation of non-UK tax evasion by an associated person."

The CFA offences concern the actions of the 'associated persons' within the organisation. The legislation is designed to highlight the importance of looking not only within your organisation, but across the entire supply chain to ensure compliance remains consistent.

An 'Associated Person' relates to employees, agents, contractors, consultants or subsidiaries acting on behalf of a business, who intentionally facilitate the tax evasion.
In order for an 'Offence' to be enforceable, any of the following 3 elements may apply:

1. Criminal tax evasion by a taxpayer (either an individual or legal entity) under the existing criminal law.
2. The criminal facilitation of that tax evasion by an associated person of the relevant body.
3. The relevant body failing to prevent its associated person from committing the criminal facilitation act.

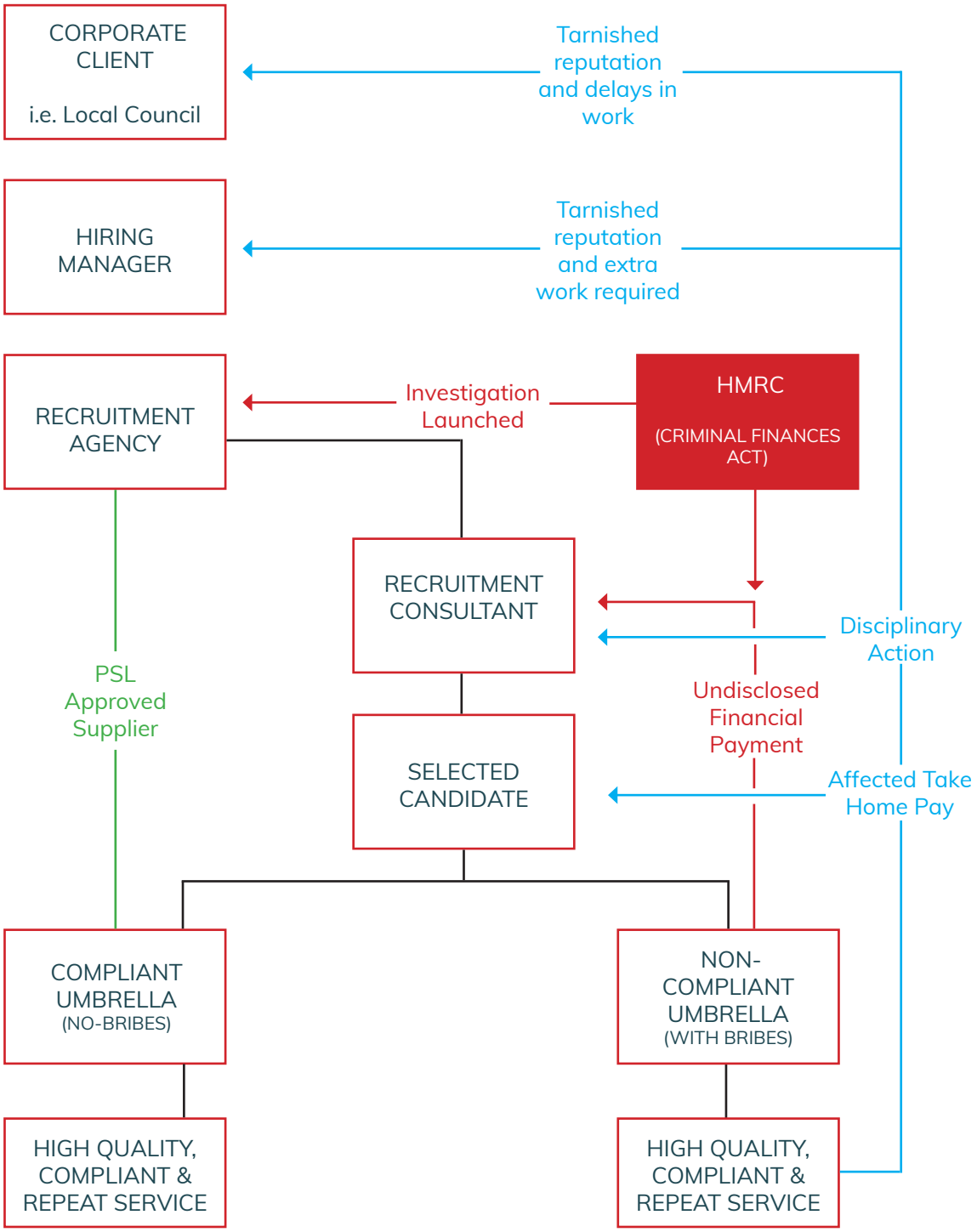
It is absolutely imperative for organisations to assess what existing steps they have in place at present, and what is required for them to comply with the legislation.

EXAMPLE SCENARIO

"Client confirms that chosen temporary worker is caught by IR35. Hiring Manager then appoints Agency Payroll/Umbrella to purposefully engage outside of IR35".

EXAMPLE OF CFA WITHIN THE SUPPLY CHAIN

For an organisation to be held accountable, there must be a tax evasion related offence committed within the supply chain. This can happen in various formats, however typically it is committed by the Recruitment Consultant.



CRIMINAL FINANCE ACT 2017 BREAKDOWN

In brief, for a typical offence to be caused, the Consultant will have provided a non-compliant recommendation, not necessarily for financial gain.



If the Consultant goes 'Rogue' and defies the rules clearly imposed by management, they will typically be facilitating some form of tax evasion based on their recommendation. If the recommended Payroll Provider is not on the Preferred Suppliers List ('PSL'), and are not an 'Approved Supplier' of the agency, they are then running the risk of breaking the chain.

Once a Temporary Worker ('Worker') is placed with an non- compliant Payroll Provider there is no guarantee on the service they'll receive. In worst case scenarios:

- The Umbrella Company provides unethical working practices, at the detriment of the temporary workers take-home pay. 'Tempted by 90% Take Home Pay' - If it sounds too good to be true, chances are, it is. All Umbrella companies work within the same guidelines. If the provider is advertising an inflated amount of Take Home Pay, they will be providing a non-compliant offering and should be avoided.

- Vanishing Act; There have been situations in the past whereby Umbrella Companies have disappeared before payment to the Worker is made.

- Even worse, if HMRC launch an investigation into the Temporary Worker, the support from the Payroll Provider (which they'd typically receive) is non-existent and they are left in the dark.

Short term gain will almost certainly come at the expense of long term pain, felt throughout the entire chain.

HOW CORPORATE CLIENTS ARE AFFECTED

Corporate bodies can be affected by a non-compliant chain both directly and indirectly. However, non-corporate bodies are not liable under the CFA (I.e. Councils, Charities, etc.) Some common scenarios within Corporate bodies are:

- **POOR RECOMMENDATIONS**

Appointed Hiring Manager is swayed by unregulated Recruitment Agencies / Payroll Providers.

- **BAD REPUTATION & LOSS OF TRUST**

Across all of the supply chain, if a non-compliant suggestion is authorised, there will be a knock on effect and the Corporate Client will be impacted. The candidates within your chain trust both you and your recommendations. If a poor recommendation is made, the degree of trust will have eroded and important talent will be lost.

- **DAMAGING DELAYS**

If a Worker is placed within a role and set-up via a non- compliant payroll provider, the non-approved solution could miscalculate the Workers Take-Home pay, miss payments or even vanish. If the Worker has missing/incorrect payments, the work they are expected to carry out may not be to the expected standard, or in some circumstances not completed at all.



HOW HIRING MANAGERS ARE AFFECTED

Corporate bodies can be affected by a non-compliant chain both directly and indirectly. However, non-corporate bodies are not liable under the CFA (I.e. Councils, Charities, etc.). It's important for a Hiring Manager to fully understand the chain in which they are apart of. When making your recommendations, understand the repercussions that can be caused on you and your organisation if you purposefully appoint a non-compliant business. **Scenarios that Hiring Managers are affected:**

- **POOR RECOMMENDATIONS**

As you are appointed as the Hiring Manager, you must ensure that you only work with businesses which are regulated Recruitment Agencies / Payroll Providers. However, some Hiring Managers accept 'incentives'. For example;

"Hiring Manager in Business X is tasked to place workers for a specific Job. The Hiring Manager is then swayed by 'unscrupulous' Recruitment Agents / Payroll Providers, via tax evasion incentives."

- **BAD REPUTATION & LOSS OF TRUST**

Across all of the supply chain, if a non-compliant suggestion is authorised, there will be a knock on effect and both Hiring Manager and Council will be impacted. The candidates within the chain trust both you and your recommendations. If a poor recommendation is made, the degree of trust will have eroded and important talent will be lost.

- **DAMAGING DELAYS**

If a Worker is placed within a role and set-up via a non-compliant payroll provider, the non-approved solution could miscalculate the Workers Take-Home pay, miss payments or even vanish. If the Worker has missing/incorrect payments, the work they are expected to carry out may not be to the expected standard, or in some circumstances not completed at all.

HOW RECRUITMENT AGENCIES ARE AFFECTED

It's most common that within the chain, the Recruitment Agencies themselves run the biggest risk. It's much more common within the relationship between Recruitment Consultant to Umbrella Provider that there will be an element of undisclosed tax evasion.



The Umbrella/Payroll industry is extremely competitive, so comes as no surprise that some agencies are trying to 'buy' business. It's these actions where CFA comes into action.

Recruitment agencies are typically affected by:

- **HMRC INVESTIGATION**

If HMRC catch wind that members of your organisation or evading tax, they won't be held accountable, you will. There isn't a standard length as to how long an investigation can last, however it's imperative you are able to demonstrate you have provided the correct training and matching culture within your organisation.

- **BRAND DAMAGE / LOSS OF EARNINGS**

As your Agency will have been appointed as the recommended supplier, it's your reputation which will be damaged. Having your organisation look non-compliant could be detrimental. Everyone needs to work from the same PSL.

HOW TEMPORARY WORKERS ARE AFFECTED

It's most common that within the chain, the Recruitment Agencies themselves run the biggest risk. It's much more common within the relationship between Recruitment Consultant to Umbrella Provider that there will be an element of undisclosed tax evasion.

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Temporary Workers are typically affected by:

- **LOSS OF EARNINGS**

It's not uncommon that should a temporary worker be placed in the hands of an Umbrella firm (which isn't compliant) the pay they receive is incorrect. Typically some agencies promise 90% take home pay, which should flag huge warning signs.
If you are referred to a Payroll provider which claim anything above 75%, raise it with your recruitment consultant.

- **DISAPPEARING AGENCIES**

In the worst cases, some agencies are even known to receive the pay from the end-client and then disappear. As this is an unregulated industry, you'd need to go back to your end-client to work out a remedy.

- **UNEXPECTED TAX BILLS**

Even though your finances are being managed by another company, it is still your responsibility to ensure you're paying the correct level of tax. If you are found by HMRC to be underpaying tax, you can receive an unexpected tax bill.

HOW TO COMPLY WITH THE CFA

ICS recommend putting in 5 preventative measures to allow you to clearly illustrate your intention to comply with the CFA.

FORMAL RISK ASSESSMENT

As an agency you should assess the extent and nature of exposure to risk by ensuring both current and prospective candidates are fully vetted.

PROPORTIONALITY

To understand whether a procedure/process is reasonable, it must be com risk faced. Recruitment is typically seen as a “high risk” industry, therefore we expect that the authorities will be keeping a tentative eye and ensuring considerable steps are implemented to prevent tax evasion.

SENIOR LEVEL COMMITMENT

Senior Managers/ Consultants should be vocal and committed to ensuring tax evasion is prevented. We recommend that enforcing a culture in which tax evasion is not tolerated should be enforced throughout the Agency.

DUE-DILIGENCE

Agencies need to ensure that they are keeping a concise record of communications throughout their supply chain to demonstrate both due diligence and compliance.

REGULAR MONITORING AND REVIEW

All recruitment agencies need to be consistent in monitoring and reviewing its prevention procedures and able to make impvements (if necessary).

PENALTIES

Organisations will be liable even in the cases where senior management were either uninvolved or unaware of the acts.

If it is proven that there have been systematic failures within the prevention procedures, organisations will be hit with a corporate criminal offence, find themselves barred from public procurement, hit with unlimited fines, and deal with a damaged reputation.

Unfortunately, ignoring that this may be happening within your overall supply chain is simply not enough. HMRC have taken a “guilty until proven innocent” approach, therefore, until you can clearly demonstrate that you have taken all reasonable precautions, you may be held liable.

Time is of the essence to ensure that you have a well-documented and widely-adopted risk procedure policy.

DEFENCE AGAINST THE CFA

If the relevant policies and procedures are in place, and have been actioned sufficiently, you may be able to demonstrate a defence. However, if compliant policies are not enforced and tax evasion is apparent you will have no defence against HMRC and the charge.

IMPORTANCE OF COMPLIANCE

It is extremely common for Non-Compliant Umbrella Companies (with no experience or accreditations) to tempt Consultants with benefits. However, this is why the PSL must regularly assessed and always enforced.

The importance of a fully-compliant supply chain remains at the core of the Criminal Finances Act. By being members of compliant-centric associations, such as the ‘FCSA’ and ‘APSCo’ you can have the confidence that your entire network are all assessed and working within the same guidelines.



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