Dear Mark

IR35 Legislation

Thank you for your letter regarding the changes to IR35 and the impact on locums in the NHS.

I think it is helpful to re-iterate that the application of IR35, and the factors that should be considered when determining whether IR35 applies, have not changed. HMRC provides comprehensive guidance on this. However, what did change on 6 April is where the responsibility rests to ensure that IR35 is applied accurately. Where this was previously the responsibility of the worker’s intermediary, it has now transferred to the public authority the worker is supplying their service to (NHS Trusts and Foundation Trusts in the case of locums).

This change has created significant additional administrative obligations for trusts. NHS Improvement's work to date has therefore focused on supporting trusts to get this right. As part of this, we have offered guidance around whether we anticipate IR35 will apply to certain roles, but this guidance has never been binding or ‘blanket’ on trusts, and has been designed to help them apply the rules as efficiently and as accurately as possible. We have been clear that our guidance to trusts should not be viewed as directive, but rather as support. We have also been clear in our support that trusts are ultimately responsible for ensuring their compliance with the legislation, including the duty of care requirement. We will continue to work with HMRC to ensure that any advice given by NHS Improvement is in line with the law and HMRC guidance.

Through this work we have also expressed our strong view, which I am confident that you and the BMA would support, that locums should pay the correct tax that reflects their individual status. Where this is not the case, it needs to be addressed. Since the rules have been introduced we have heard a number of reports where individuals have asked NHS organisations to pay increased rates to offset changes to their own tax liability. Clearly it is not appropriate for the tax-payer to pick up this cost and I would welcome your support on this point.
We recognise that through the initial transition period some confusion may occur as all parties get used to the new procedures, especially given the technical nature of the rules. As such we ask that, in the first instance, the worker discusses with the trust wherever a change in status has occurred to understand why this change has happened. However, all workers ultimately have the option of appealing directly to HMRC if they feel that they have been incorrectly taxed.

We would of course be happy to meet you again to continue our dialogue on the change and its impact, and to look at ways in which we can work with you and your members to ensure the transition is as smooth and fair as possible.

Yours sincerely

Jim Mackey
Chief Executive, NHS Improvement