



Tutoring

The Changing Landscape

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Executive Summary

As a result of a recent High Court decision, the operating model for many, perhaps most, tutor supply companies will have to change.

The traditional, probably dominant, business model used by these companies is no longer viable in the changed legal environment.

It is now illegal to run a tutoring business that:

- Charges tutors a fee (however it is formulated) for introducing them to clients; and
- Collects tuition fees from clients on behalf of tutors.

And these are only two of the consequences of the recent decided case.

Tutoring companies must now comply with The Employment Agencies Act 1973 and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (as both have been amended) (Agency Laws).

This will necessitate changes to the commercial operations and contractual terms used for tutors and clients for those companies not yet within the laws and regulations.

The Employment Agency Standards Inspectorate (EAS) has enforcement powers and has already stated that it is willing to use them to bring about the changes needed in the industry.

[Contracts-Direct.com can help](#) by checking tutoring companies' existing terms and conditions and providing compliant replacements, where needed.

What is a tutoring service?

For the purposes of this guidance, EAS considers a tutoring service to be a service which seeks to introduce tutors to students. This includes services which:

- are free or which are run with a view to profit; and
- are provided together with other services.

Other services which may be provided might include:

- payment collection and distribution services
- diary management
- dispute resolution.

The method of service delivery may be on-line, remotely or face to face or a combination of them.

Tutoring Business Models

Tutoring has become big business in the UK. So big in fact that it is now attracting the attention of the regulators, following a recent High Court decision. More on that down the page.

There are a couple of business models that commonly feature in the industry, along with some variations within each type.

THE INTERMEDIARY MODEL

A high percentage of tutoring businesses are set up and run on the basis that they are acting as an online platform (i.e. a website) to connect clients (parents mostly, but also schools) with tutors, who offer a wide range of skills to help children accelerate and improve their learning.

These so-called 'intermediaries' frequently do not provide the tutoring themselves as a service. Instead, they offer up the services of individual tutors registered with their platform.

Most intermediary tutor finding platforms are not like a comparison website, because their tutor charges are usually fixed on a rate card basis.

Some intermediaries charge would-be tutors to register on their platform to gain access to clients.

Registration fees may also occasionally be charged to clients who want to find tutors via the platform.

THE AGENCY MODEL

Many tutor finding platforms claim to be acting on behalf of the tutors, who are described as self-employed, rather than as employees of the platform.

This can take the form of telling clients that the platform will invoice them and collect tuition fees from them on behalf of the tutors and, by implication, if not expressly stated, also pay those fees on to the tutors.

The main advantage of this model is that the platform can add its margin on the tutors' fees and retain it from the client's payment. This in turn enables the platform to reduce its potential liability to VAT by limiting its own income to the margin charged.

While acting as the tutors' payment agent, a platform may also impose terms of engagement on its clients on behalf of the tutors.

THE EMPLOYMENT BUSINESS MODEL

Some tutoring companies provide tutoring services themselves.

Here, they deliver the tutoring via their own employees or through a contract for services with self-employed tutors.

This model requires a tutoring business to charge its clients for tuition services it delivers, rather than as the tutors' agent.

VAT is more likely to have to be charged by a tutoring business using this model as it collects tuition fees exclusively for itself.

It can then expense what has to be paid to its tutors under their services contracts.

Read more about the definition of an employment agency and an employment business in the Schedule.

The case that changed the tutoring landscape- SLT et al. vs EAS

Or to give the case its full title: Simply Learning Tutor Agency Ltd and others v Secretary of State for Business, Energy and Industrial Strategy.

Businesses that supply labour (as opposed to services) are regulated by legislation including the Employment Agencies Act 1973 (EAA) and the Conduct of Employment Agencies and Employment Businesses Regulations 2003 (Conduct Regulations).

These laws provide a framework of protection for both employers and workers by regulating the activities of intermediaries, such as recruiters.

The recent case in the High Court concerned nine tutoring companies, whose business is to introduce tutors to parents, who may then enter into contracts for services with the tutors to provide home tuition to their children.

The companies were challenging a finding that they were labour suppliers and so required to comply with this legislation.

The question at issue was whether the tutoring companies fell within the definition of an “employment agency” or “employment business” as defined in section 13 of the EAA. In summary:

An “employment agency” - more commonly known as a recruiter, agent, head-hunter or job-board - makes introductions to hirers who then engage work-seekers directly; and

An “employment business” - more often referred to as a temping or staffing agency supplies labour to hirers on a temporary or ongoing basis.

In a nutshell, the High Court decided that where a business holds itself out as a 'middleman' between a person who needs services and the person offering to supply them, the protective terms of the EAA and the regulatory requirements of the Conduct Regulations will usually apply to the 'middleman' business, for the protection of work-seekers, hirers, and work-users.

What does the ruling mean for tutoring businesses?

The consequences of this decision are far-reaching.

The traditional model where an agency sends its clients an invoice on behalf of the tutors, collects the fees on behalf of the tutor (even if this is into a trust or client account), and deducts an agency commission or margin and remits the balance to the tutor, is a breach of the law and a potential criminal offence.

Companies providing tutoring services must be compliant with the EAA and the Conduct Regulations.

Specifically, according to published sources:

- a. **It is illegal** to collect payment on behalf of tutors (self-employed or otherwise) that are introduced to clients unless the company (and not the tutor) is providing the tuition service – in which case the company must charge VAT on the tutor’s part of the fee in addition to the company’s commission;
- b. **It is illegal** to charge tutors a fee (even if it is described in a different way such as 'commission') for introducing them to clients;

- c. Agencies must fulfil the necessary safeguarding, health and safety and other checks required under the EAA (these go beyond an Enhanced DBS)

Directors of tuition companies that breach the above requirements are breaking the law to the criminal standard and may be prosecuted or prohibited from running an organisation, and the Court also has the power to issue unlimited fines under the EAA and the Conduct Regulations.

See the [Clause Clues](#) for wording that might tend to indicate a business model operating in a non-compliant manner.

Compliant Business Models

In summary there are two possible routes for tutoring businesses to comply with the law:

1. **Employment Business Model**, in which the company engages with an employed, or subcontracted self-employed tutor to provide services on behalf of the company to its client. In this model the company would be required to charge VAT on the entire fee (including the tutor's fee); and
2. **Employment Agency Model**, whereby the company sends the client two invoices – one from the company that outlines its commission/fee + VAT, and a second invoice directly from the tutor to the client (without VAT if an exempt supply). If the company sends its clients the tutor's invoice along with its own invoice, it cannot collect payment for the tutors. Their payment has to go directly from the client/parent to the tutor.

The Solution

Tutoring companies need to act promptly to ensure they bring themselves within the law.

What are the recommended steps?

1. Review current terms and conditions for tutors and clients;
2. If the review report shows they are non-compliant, then;
3. Decide which business model to adopt- agency or employment business, then;
4. Prepare and adopt terms and conditions appropriate for the chosen model; and
5. Make the necessary changes to operating procedures.

How we can help?

As a leading bespoke business contract supplier, we have the resources and experience to help tutoring businesses deliver on the above steps as follows:

1. Reviewing terms and conditions that usually takes no more than two hours;
2. Reporting on whether they are non-compliant;
3. Supporting analysis to decide on the appropriate business model to adopt;
4. Providing a set of replacement terms and conditions within two weeks of a decision on business model.

We charge reasonable fixed price fees for each step- details on application.

Get in contact with us to ask about our services and how we can help.

Email: tutoring@contracts-direct.com :

Tel: 0208 05 88902

Schedule A- Defining Employment Agency and Employment Business

The meaning of the terms “employment agency” and “employment business” are defined in full in section 13 of the Act as amended (sets out that “employment” includes (a) employment by way of a professional engagement or otherwise under a contract for services), but the following is a summary:

Employment Agency

Broadly speaking an employment agency introduces a “person” (work-seeker) to an “employer” (hirer) for direct employment by those employers. The legal definition within the Act is very wide and includes “any service”, including the “provision of information” about work-seekers to employers or about employers or jobs to work-seekers.

This is sometimes called “permanent recruitment” although, in fact, the duration of employment can be long term or very short term.

This model can include websites or job sites that provide a matching or selection service for students, or parents of students, to find a suitable tutor for their needs; or for tutors to market their skills and details in order to obtain work as a tutor.

Employment Business

An employment business engages a work-seeker directly and supplies that work-seeker, sometimes called an “agency worker”, to a hirer under a contract between the employment business and the hirer for temporary assignments or contracts where they will be under the hirer’s supervision or control.

The duration of these assignments can be short term or sometimes long term. This is usually known in the recruitment industry as the “supply of temporary workers”.

A company engaged in both “permanent recruitment” and “the supply of temporary workers” will fall into the definition of both employment agency and employment business to reflect both sides of the business and must comply with the regulations as they apply to employment agencies and employment businesses respectively.

The principal factor determining whether the Act and the Regulations apply is whether the work-seeker is or is seeking to be in an employment relationship with the hirer in the employment agency model or the employment business in the employment business model.

Unlike most areas of employment law, “employment” is very widely defined in section 13 of the Act and includes some relationships which are not generally considered to be “employment”. For this reason, the status of a work-seeker as an “employee”, “worker” or “contractor” under general employment law principles does not determine whether the Act or Regulations apply to a particular business model.

If a tutoring service is providing a work-finding service, as either an employment agency or employment business, which seeks to match a work-seeker (tutor) to a hirer (student/parent) through the provision of information (electronic or otherwise) **then EAS considers that the tutoring service is likely to be concerned with “employment” as defined by the Act and so is likely to be operating within the scope of the Act and Regulations.** Whether it is, as a matter of fact, will depend on the precise nature of the business model.

Extracted from EAS guidance on the application of the conduct of employment agencies and employment businesses regulations 2003 to providers of tutoring services (emphasis added).

Schedule B- Clause Clues

The following wording in terms and conditions would tend to indicate a potentially non-compliant business model:

“The Tutor authorises the Agency to invoice and collect tuition fees on his/her behalf.”

“The Agency will deduct its commission for making the Introduction to the Student when remitting the tuition fee to the Tutor.”

“Any tutoring hours you deliver must be billed through our system, at our agreed rates.”

“The Agency charges the Tutor a commission at []%, which covers VAT, Stripe (payment) fees, marketing, technology, and operational costs.”

“The Tutor must submit invoices for his/her tuition services to the Student via the Agency’s online billing system in order to receive his/her fees.”

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Note: This publication does not necessarily deal with every important topic nor cover every aspect of the topics with which it deals. It is not designed to provide legal or other advice. The information contained in this document is intended to be for informational purposes and general interest only.

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