



FCSA Code of Compliance

Limited Company Advisor Questions

FCSA is dedicated to raising standards and promoting supply chain compliance for the temporary labour market. A key way we do that is to publish our Charter and Codes. We do this so that all industry stakeholders and, importantly, all the workers who use our Members' services can be assured that FCSA Members are fully compliant with the laws and regulations surrounding employment rights, personal taxation and corporate compliance with the off-payroll rules. All FCSA Members undertake to abide by our Charter and Codes as a condition of their membership and are contractually obliged to maintain these high standards throughout their membership.

Our Codes, which sometimes go above and beyond what is lawfully required, are formulated by FCSA working closely with independent experts in these areas and changes are reviewed prior to publication by a wide variety of industry stakeholders and official bodies. The Codes cover complex issues and that is why our they are constantly under review and are updated as often as is required to keep them relevant and reflective of not only the regulations but also industry best practice. We believe our Codes set the highest standards of compliance and are industry-leading in their comprehensive scope. Members are assessed against FCSA's Codes not by in-house staff or inexperienced evaluators but by a panel of fully independent and nationally renowned professional services firms, lawyers and accountants, with an authoritative level of expertise in these specialist areas. This assessment for FCSA accreditation is rigorous and stringent and, as a result, it is recognised as the industry's compliance gold standard.

I'd like to thank you for taking the time to read our Charter and Codes.



Chris Bryce

**Chief Executive
Freelancer & Contractor Services Association Ltd**

SECTION A

Clear and transparent explanations are the foundation of the following section.

When offering limited company services, FCSA expects the Member to consider the suitability of the service and the client's understanding.



Deborah Murphy
Head of Operations, FCSA

SECTION A: TAKE ON PROCEDURES

A1.

Confirm that before you sell a limited company service to a customer, you consider the suitability of this way of working for the customer by gathering relevant information on his/her individual circumstances.

FCSA require a copy of your take on questions and policy.

A2.

Do you verify the potential customer's identity and undertake due diligence to comply with the Money Laundering Regulations 2017, including but not limited to PEPs and Sanctions reviews?

FCSA require a copy of your policy/procedures, including details of the documents you obtain and checks you carry out to do this.

A3.

Confirm that you do not undertake any services for the customer, including Incorporation of a Limited Company, before you have verified the identity and undertaken due diligence.

A4.

Confirm that in considering the customer's suitability to a particular way of working you consider and discuss with the customer the following relevant factors:

- a. Whether the customer is new to freelancing or has been freelancing for some time;
- b. What freelancing future the customer anticipates;
- c. The impact of IR35 and the customer's likely employment status including their likely turnover and the type of work undertaken;
- d. The customer's attitude to the risks and responsibilities of owning and running their own business;
- e. The responsibilities of owning and being a director of a limited company;
- f. The other options available to the customer – PAYE working, umbrella employment, sole trader working;
- g. The financial implications of the different ways of working;
- h. The customer's commercial situation (e.g. one client or many, level of income being generated, placements via recruitment agencies or direct, existing limited company owner);
- i. Where the individual is currently, or was an umbrella employee, their reasons for moving to a limited company (i.e., there is a commercial rationale which is discussed individually rather than an automatic transfer process).

FCSA require a copy of any take on script used or other documentation that evidences the above (providing cross referencing where covered).

A5.

Do you offer a solution which utilises payments other than employment income or dividends to extract personal payments to owners, directors or employees of the limited company?

A6.

Are your company fees fully disclosed to customers prior to commencement of services?

FCSA require a copy of your current fee structure.

A7.

Confirm that the way in which your business operates (i.e., as an accountancy/limited company advisor) is adequately explained.

A8.

Do you incentivise staff involved in the consultation process to advise one particular way of working more strongly than another?

A9.

Is your firm regulated by a recognised Accountancy body, such as ICAEW, ACCA or CIMA? If so, confirm that your services are provided subject to the standard terms and conditions/engagement letter of the relevant regulatory body.

FCSA require a copy of this and cross reference to your terms.

A10.

If your firm is not regulated, your engagement letter contains the following:

- a. The customer's responsibilities as director of a limited company
- b. Their responsibilities regarding operating IR35 where necessary under the off- payroll working legislation
- c. The main guidelines regarding eligibility to claim expenses or direction as to where those guidelines can be found;
- d. Your role and responsibilities as an advisor, and the need for the client to understand the implications of working via a PSC;
- e. Reference to your take on process to establish the identity of the customer.

FCSA require a copy of your standard terms and conditions and/or engagement letter, cross referencing where the above points can be found.

- f. In addition to the above, you confirm that your letters of engagement are renewed at regular intervals
Note: Letters of engagement should not exceed a period of 4 years.

A11.

A financial illustration is optional but must be provided when requested and must comply with the requirements following. Confirm that any financial illustration:

- a. Clearly states that it is only an estimate
- b. Includes expenses in the calculation that are representative of the usual level of expenses claimed and reflect the individual's actual circumstances;
- c. Lists the assumptions used;
- d. Gives a clear explanation of the fee structure

FCSA require a cross referenced copy.

A12.

If the client indicates that they will be working abroad at any time, do you have a process for helping them ensure that they account for PAYE/NIC as appropriate as well as withholding taxes in the host country? This process may include providing advice to the customer directly or referring them to a suitably qualified specialist advisor.

A13.

Confirm you provide advice on VAT registration, considering with the client Flat Rate VAT and other VAT accounting options.

FCSA require supporting narrative in respect of the level of VAT advice provided to clients.

A14.

Confirm that if you offer a Flat Rate VAT service:

- a. You assess whether the client meets the definition of a limited cost trader (has VAT inclusive expenditure spend of less than 2% of its sales on goods (not services) in an accounting period, or it spends less than £1,000 a year even if this is more than 2% of the firm's VAT inclusive turnover on goods).
- b. You do not market your services as 'Fee free'
- c. That this is part of your suite of normal services rather than a dedicated service purely aimed at flat rate VAT users.
- d. Your services are clearly marketed as Limited Company advisory services for (PSC) and not as a single person Umbrella company.
- e. Your Limited Company customer receives the full benefit of any profits generated by the Flat Rate Scheme.
- f. Points a.) to e.) are clear in your marketing information and/or letter of engagement.

FCSA require supporting evidence of your process for assessing limited cost trader status. FCSA require you to provide marketing material and/or letter of engagement and cross reference where points a.) to e.) are stated.

A15.

In relation to the VAT reverse charge for construction services, effective since 1 March 2021, please confirm you provide advice:

- a. Where your customer may be operating as a VAT registered construction business, advising your customer on checking whether their supplies to their customers should be subject to the reverse charge;
- b. Where your VAT registered customer is or will be in receipt of construction services, advising your customer on checking whether they are liable to apply the reverse charge or whether they fall outside the requirements by meeting the conditions of an 'end user' or other exclusion;
- c. Where applicable, confirming that the measures apply to standard and reduced- rated supplies of building and construction services made to VAT registered businesses, who in turn also make onward supplies of those building and construction services;
- d. Where applicable, confirming that a contractor will be responsible for paying the output VAT due rather than the sub-contractor, and can continue to reclaim this amount as input tax;
- e. Where applicable, informing customers that the scope of supplies affected is closely aligned to the supplies required to be reported under the Construction Industry Scheme, but does not include supplies of staff or workers; and
- f. Where applicable, relating to relevant invoicing requirements in respect of the reverse charge.

FCSA require supporting narrative in respect of the level of VAT reverse charge advice provided to clients and the support you offer. This should include VAT registration numbers for relevant constructions companies or customer in receipt of construction services.

A16.

If you offer to provide insurance, you have appropriate FCA regulation in place, e.g., an IAR or DPB licence.

FCSA require evidence of FCA regulation.

SECTIONS B&C

The difficulties in correctly assessing IR35 status and the increasing complexity of administering off-payroll working mean that an employment status review is key to the question of allowable expenses.



Chris Bryce
Chief Executive, FCSA

SECTION B: EXPENSES

B1.

Confirm that customers are advised that travel and/or subsistence expenses are not tax deductible where the customer expects to or reaches more than 24 months working on the same site.

FCSA require a copy of your expense's guidance document.

B2.

Confirm that customers are advised that if a contract falls within IR35, travel and subsistence expenses are claimed in accordance with s339 ITEPA 2003 and accordingly may not be allowable.

FCSA require supporting evidence of the above advice being provided to customers.

B3.

Confirm that you have a process to check expenses when producing year end accounts and tax computations, in line with the requirements and standards published by HMRC for tax agents and accounting professionals.

FCSA require detailed narrative of the process you follow and/or supporting process documentation.

B4.

Confirm that your expenses review procedure involves either:

- a. The receipt of and review of original customer expenses receipts; or
- b. Reasonableness check on expense levels with further information then requested for any claims falling beyond normal parameters.

If your service involves the customer companies using round sum expenses or expenses dispensations, FCSA require you to provide details.

B5.

Confirm that you will not knowingly facilitate the submission of tax returns for customers with non-allowable expenses included as a deduction. If you receive an instruction to submit a tax return on their behalf in such a case, following your advice, then you would resign.

B6.

Confirm that if a customer insists on you preparing statutory accounts on an inappropriate basis, or the submission of tax returns with non-business expenses included, you would refuse to act for the customer.

SECTION C: IR35

C1.

Confirm that you have a process for reviewing and verifying a full and detailed employment status review process for all limited company customers for assignments which are subject to Chapters 8 and 10 Part 2 of ITEPA 2003, i.e., where a private sector end client is considered small or in support of any dispute where your customer is looking to appeal to their end client, etc. This either follows a robust process set out in your own policy or you outsource this to a suitably qualified provider.

FCSA require any process and/or policy documentation covering the level of support you offer to customers in respect of them meeting their obligations in relation to the above.

If outsourced, please provide details of the provider, and a link to their web URL and any supporting evidence where such arrangements are set out to the customer.

C2.

Confirm that where the review is taken up by the customer, you review the contract under which the customer works to ascertain whether the assignment is inside or outside IR35.

C3.

Confirm that where the review is taken up by the customer, you consider the working practices of the customer to ascertain whether the assignment is inside or outside IR35.

C4.

Confirm that where the review is taken up by the customer, that as part of your review of the working practices of the customer, you specifically gather and consider evidence in relation to the following factors:

- a. Length of assignment/contract;
- b. Type of services being provided, particularly the levels of skill and knowledge and the level of fees charged;
- c. Any previous employment with the client;
- d. The level of financial risk involved in the provision of the services;
- e. The extent to which the customer is part and parcel of the client organisation;
- f. The level of control exercised over the customer;
- g. The mutuality of obligations, if any, between the customer and the client;
- h. The customer's unfettered right of substitution on the assignment;

Please confirm how you document the evidence gathered and discussions with the customer and provide supporting evidence including a copy of any IR35 guidance issued and questionnaires used. FCSA require you to provide cross-referencing to the above as applicable.

C5.

Confirm that where the review is taken up by the customer, you offer to check consistency between the contract and working practices.

C6.

Confirm that where the review is taken up by the customer, you offer to review the customer's IR35 related circumstances on an assignment-by-assignment basis.

C7.

Confirm that where the review is taken up by the customer, you offer an employment status review at least once each 12-month period for all customers whose assignment has not ended.

C8.

Confirm that for those customers who do not choose to go through the comprehensive IR35 review process, you obtain a direct and specific instruction from them prior to the submission of their statutory accounts and other annual returns on the employment status basis upon which the returns should be prepared.

FCSA require an anonymised evidence of specific instruction having been obtained.

C9.

Confirm that where you have information that confirms a customer is captured by IR35 for a particular assignment, if a customer insists you prepare documentation on the basis that he/she is not captured by IR35 for that assignment, you would resign or refuse to act as advisor to that customer.

C10.

Confirm that for those customers who have contracts that are captured by IR35 you have a process for discussing and checking the 'deemed employment payment' at the end of the tax year, including the taxation of travel and subsistence expenses where appropriate.

C11.

Confirm you do not market your Limited Advisor services as 'IR35' proof or, that you are not guaranteeing that there will be no financial consequences should HMRC challenge the worker's status.

SECTION D

It's important that the service provider does not offer their services in such a way that they could be seen as an MSC provider. FCSA's code is designed to help members and clients ensure that they avoid any possible pitfalls.



Chris Bryce

Chief Executive, FCSA

SECTION D: MSC BEST PRACTICE

D1.

Confirm that fees paid by the customer to you are not directly linked to the level of income generated by the company. Any fees should be linked to the amount of work that you do, and not to the work carried out by the Limited Company.

D2.

Confirm that fees paid by the customer are linked to you providing your services to the customer and not to the customer providing his/her services to third parties.

D3.

Confirm that on-going or recurring referral fees are not paid to agencies or other third parties on the basis of the periods during which the customer provides his/her services.

D4.

Confirm you are not earning any income (other than fees for services provided) directly from the cash flow of the customer's limited company. Examples of this would be:

- ▶ Retention of VAT refunds in lieu of fees (such as flat rate scheme income);
- ▶ Retention of HMRC electronic filing incentives in lieu of fees;
- ▶ Receiving interest in relation to cash balances of customer limited companies in lieu of fees.
- ▶ Compulsory insurance products

If you do earn revenue from customer cash balances/bank accounts/referred products or services, confirm:

- a. The basis of the revenue received is fully disclosed to your customer;
- b. The customer has free choice of relevant bank accounts and other products or services.

FCSA require a copy of any commission/introductory fee arrangements if applicable.

D5.

Confirm that you do not negotiate the limited company's contract for services with its end client/customer without specific instruction from the customer.

D6.

Confirm that you do not raise invoices without express instruction from the limited company customer.

D7.

Confirm that you are not an authorised signatory on the company bank account.

D8.

Confirm that you do not (or anyone acting as your agent) receive funds on behalf of the limited company or the individual and then pay these on to the limited company or the individual.

D9.

Confirm that you are not authorised to undertake any bank transactions on behalf of the limited company.

D10.

Confirm that you do not determine the level, frequency or type of payments that are made to the individual from their limited company.

D11.

Confirm that you do not make any payments on behalf of the limited company (e.g., National Insurance Contributions, Income Tax, Corporation Tax payments, VAT payments).

D12.

Confirm that you do not hold client's funds on behalf of the limited company.

D13.

Confirm that you do not determine the remuneration structure of the limited company including the setting of dividend levels for the company.

FCSA require evidence of your process for gaining client instruction with regards to dividend levels including sample data.

D14.

Confirm that you do not have any ownership of the limited company, either wholly or partly, including any options to acquire such ownership stakes.

D15.

Confirm that you are not a director or company secretary of your customer's limited company.

D16.

Confirm that no one other than the registered shareholder controls your customer's limited company, e.g., via trustees, power of attorney, etc.

D17.

Confirm that you do not predetermine the treatment of any business expenses which may be reimbursed from the limited company.

D18.

Confirm that you do not register the limited company for PAYE, VAT or Corporation Tax without specific instruction from the limited company.

FCSA require supporting evidence such as standard wording for client clearance.

D19.

Confirm that you do not submit PAYE, VAT and Corporation Tax returns or annual accounts for the limited company without these being reviewed and explicitly approved/signed by the customer (director of the limited company). In the case of RTI returns, the client can authorise you in advance to submit returns based on the agreed pay levels unless they advise you on changes to pay levels. If the client does advise on changes to pay levels, you should confirm the pay/filing position at least quarterly and at the end of the tax year.

FCSA require supporting evidence.

D20.

Confirm that you do not automatically register the limited company for the Flat Rate VAT scheme, i.e., you obtain explicit instruction from the customer to register after giving advice on their options.

FCSA require supporting evidence of explicit client 'sign ups'.

D21.

Confirm that you do not offer to your customers, directly or indirectly (including by way of referrals to a third party) either tax loss insurance or any form of guarantee in respect of future tax liabilities.

D22.

Confirm that you do not insist on the limited company having any of the following as part of the service:

- a. An off-the-shelf company provided by you;
- b. Company formation services provided by you;
- c. A registered office service provided by you;
- d. A company bank account provided by you;
- e. A particular type of company bank account or a bank account from a particular bank;
- f. A company secretarial service provided by you;
- g. An invoicing service provided by you;
- h. A credit control service provided by you;
- i. Insurance as part of a standard package.
- j. Conducting business only through your online portals

D23.

Confirm that you have a policy whereby:

- a. The customer can bring along their pre-existing limited company;
- b. The customer does not have to use any particular bank to receive your services;
- c. You offer an IR35 review process for individual assignments;

FCSA require evidence of such policies and cross reference as appropriate.



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