

# Supreme court ruling on referees' employment status

In PGMOL v HMRC, the Supreme Court considered whether professional referees were self-employed. The case has the potential for far-reaching implications across the employment world.

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## Background

Professional Game Match Officials Limited (PGMOL) engaged a group of referees to officiate the EFL and FA Cup matches. Most of the referees had other full-time jobs and refereed around their other commitments. It was an extremely flexible relationship where PGMOL awarded matches every week with no obligation to offer a game, nor was there an expectation that a referee must accept one offered. PGMOL treated them as self-employed and so paid them gross. HMRC challenged this and said that PGMOL should have treated them as employees and deducted tax and NI at source. In 2014/15 and 2015/16, HMRC raised an assessment against PGMOL of £584,000. PGMOL disagreed, and they brought the matter before the Supreme Court. The Supreme Court is the final court of appeal in the UK for all civil and criminal cases originating in England, Wales and Northern Ireland.



## The three-part test

Case law, from as long ago as 1968, established one of the earliest tests for assessing whether an individual is an employee, detailed as follows:

### Stage 1: Mutuality of Obligation

An agreement exists to provide personal service in return for a wage.

### Stage 2: Control

There is a sufficient level of control by the engager.

### Stage 3: Other factors

The other provisions of the contract are consistent with an employment relationship.

Since then, courts have identified (i) Mutuality of obligation, (ii) control and (iii) personal service and substitution of rights as being central factors in determining whether an employment relationship exists. They

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are now commonly referred to as the "irreducible minimum".

## How does the test apply to the PGMOL case?

In the PGMOL case, the Supreme Court determined that the referees met Stages 1 and 2 of the irreducible minimum test.

### Stage 1: Mutuality of obligation

This element requires that the individual provide a personal service, and the engager is obligated to pay for that service in return.

PGMOL argued that there was no mutuality of obligation because either party could terminate the arrangement right up until before the match. The Supreme Court rejected this.

### Stage 2: Control

For an employment relationship to exist, the engager must have sufficient control.

The Supreme Court made it clear that the bar for finding control is very low and that there is no need for the engager to have a right to intervene in every aspect of performance. The Supreme Court used the example of a surgeon – whilst they are employees, the employer couldn't intervene and perform their duties (or at least you would hope not!).

The Supreme Court determined that PGMOL had a sufficient level of control, citing various examples, including PGMOL's ability to sanction referees after the match, comment on their performance and its ability to terminate the engagement.

### Stage 3: Other factors

In earlier cases, the Court of Appeal confirmed that Stage 3 is an overall assessment of all the relevant factors, including the extent of the mutuality and control identified in Stages 1 and 2.

Whilst the relationship met Stages 1 and 2, the Supreme Court deemed that a fact-specific holistic approach was needed to determine whether it met Stage 3. All relevant factors must be considered, including assessing the degree of mutuality of obligation and control, i.e. Stages 1 and 2. Therefore, Courts must place greater scrutiny on the outcome of Stage 3.

[PGMOL v HMRC](#) has been referred back to the First-Tier Tribunal (Tax) to consider Stage 3 and determine whether the contracts were, in fact, contracts of employment. We wait with bated breath for the Tribunal's decision on the referees' final employment status.

## Wide-ranging implications

If referees are employees, it may lead to higher costs for PGMOL and similar governing bodies.

While this case determines the tax status of the referees, it also determines an individual's employment status. Therefore, it is relevant not only to tax but also to the employment relationship.

Employers must note the direction of travel here. Based on this case, it is increasingly likely that more workers in the gig or freelance economy will seek to gain rights such as holiday, sickness pay, and unfair dismissal protections.

**If you're unsure of whether your existing arrangements could land you in hot water at the Employment Tribunal or HMRC, speak to employment solicitor [Patrick Simpson](#) today of West End law firm RIAA Barker Gillette (UK), who will advise you on what steps you should take to mitigate the risk moving forward.**

*Note: This article is not legal advice; it provides information of general interest about current legal issues.*