

# Furloughed employees and fraudulent claims – practical steps for employers

A study from economists at the Universities of Cambridge, Oxford and Zurich<sup>1</sup> published on 7 August 2020 (the “Study”) highlighted some frankly alarming statistics relating to the UK’s Coronavirus Job Retention Scheme (“CJRS”), which is likely to have ramifications for HMRC’s investigations and compliance checks together with a number of gender pay gap concerns.

## Background

The CJRS was initiated by the government to cover businesses’ wage costs due to the severe financial impact of COVID-19. For the period from 1 March to 30 June 2020 it provided businesses with the ability to reclaim 80% of a furloughed employee’s wage costs (capped at £2,500 per month) together with the employer’s national insurance and minimum auto-enrolment pension contributions. For the period between 1 July and 31 October 2020 the CJRS allowed “flexible furlough” so that previously furloughed employees could come back to work for less hours than usual, with businesses receiving financial support for the “unworked” usual hours (on a reducing sliding scale between 1 August and the cessation of the scheme on 31 October).

The most important condition was that the furloughed employee was not to carry out any employment duties.

## Furloughed yet working

The Study states that *the prohibition of working whilst furloughed was routinely ignored* and found that **63%** of furloughed workers performed some sort of employment duties when they were specifically prohibited from doing so. The Study found that, on average (and including those workers who performed no employment duties whilst furloughed) furloughed workers worked 15 hours per week.

Whilst almost two thirds of furloughed workers performed employment duties when they shouldn’t have, only **19%** of furloughed employees in the Study were explicitly asked to work by their employer. However, the Study found significant variation – with employees who could do their job fully from home apparently more likely to be asked to work by their employer, and with **44%** of furloughed employees in “Computer and Mathematical” occupations and **35%** in “Information and Communication” occupations being asked to work.



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These results come after a report from Crossland Solicitors on 18 June<sup>2</sup> which found that **34%** of furloughed employees had been asked to work whilst furloughed by their employer.

HMRC’s statistics show that for the period to 30 June 2020<sup>3</sup> 9.4 million employments had been furloughed across more than 1.1 million employers and that claims under the CJRS totalled £26.5 billion.

The combination of the swiftness of paying claims (necessarily reducing the ability of HMRC to run detailed checks), the amount of money paid out, and the apparently high level of compliance failures by furloughed workers is likely to mean an eye-watering amount of money has been overpaid and will need to be repaid to HMRC.

## HMRC action

As mentioned above, HMRC initially focused on paying claims as quickly as possible and it was always expected that corrective action would come later. The results of studies such as this one will provide further impetus for HMRC to open investigations and carry out additional checks.

In June HMRC allowed employers to self-report any errors in previous claims and to pay back overclaimed amounts. This is likely to mean that where HMRC checks find overclaimed amounts, penalties are more likely to be imposed (unless the case is clearly an administrative or low-level error) given the possibility for self-correction.

In July it was widely reported that an individual in the West Midlands was arrested in connection with suspected fraud under the CJRS. It is expected that many more similar instances will come to light over the coming months as more than 6,700 reports of suspected fraud have already been made to HMRC<sup>4</sup>.

The combination of such studies together with widespread newspaper reporting is very likely to mean that HMRC will open checks into the vast majority of

large claims under the CJRS and will take decisive action.

HMRC’s factsheet on penalties<sup>5</sup> confirms that a penalty of up to 100% of any overclaimed CJRS amounts can be charged together with the potential to be “named and shamed”.

## How to prepare

It is now vital that businesses who have made claims under the CJRS take time to review their claims in detail and determine if any mistakes have been made. It will be in employer’s best interests to self-report these to HMRC as soon as possible. The usual reductions in potential penalties (such as for “telling”, “helping”, and “giving”) apply – effectively meaning that employers who self-report now are unlikely to receive a penalty.

Notification to HMRC should be made by 20 October 2020 (or 90 days after the receipt of a grant that a business is not entitled to, if later).

Common mistakes for employers to look out for whilst reviewing their claims include:

- claiming for employees who performed employment duties;
- claiming for national insurance contributions covered by the Employment Allowance; and
- calculating the claim including discretionary bonuses.

<sup>1</sup> <https://drive.google.com/file/d/173cuSrweSe9kIMW0q98EDth5-ow5zsQa/view>

<sup>2</sup> <https://www.crosslandsolicitors.com/site/hr-hub/furlough-fraud-coronavirus-lockdown>

<sup>3</sup> <https://www.gov.uk/government/publications/coronavirus-job-retention-scheme-statistics-july-2020/coronavirus-job-retention-scheme-statistics-july-2020>

<sup>4</sup> Received by HMRC up to 22 July as reported at <https://www.peoplemanagement.co.uk/news/articles/furlough-fraud-claims-rise-by-53-per-cent-in-three-weeks>

<sup>5</sup> [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/904535/CC-FS48.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/904535/CC-FS48.pdf)