FCSA You're in good company.

Ms Rachel Reeves MP
Chair of the Business, Energy and Industrial Strategy Select Committee
House of Commons
London
SW1A 0AA

02 April 2020

Dear Ms Reeves MP

I am chief executive of the Freelancer & Contractor Services Association (FCSA), and I need to make you aware of numerous, very significant, concerns facing our members currently in relation to business support during the coronavirus pandemic. FCSA is the professional body for umbrella employers, CIS payroll providers, and accountants that specialise in supporting contractors. Collectively our membership represents the interests of 175k freelancers and contractors.

By way of background, umbrella firms employ contractors whilst also enabling them to have flexibility of working for numerous end-clients on short-term assignments. A compliant umbrella will provide workers with all 84 statutory rights and benefits of employment, whilst also giving the worker freedom to undertake a series of short-term contracts for multiple different end-hirers. In essence it is the best of both worlds; the freedom of being an independent contractor with the stability of employment. There are 400+ umbrella firms in the UK that support 625k professional contractors, and collectively the industry pays in excess of £7bn to the Exchequer in PAYE, employees NICs and employers NICs.

I must draw your attention to three main points that, as Chair of the Business, Energy and Industrial Strategy Select Committee, I feel you need to be aware of:

1. Whilst we are welcome the government's support package through the Coronavirus Job Retention Scheme (CJRS) we cannot currently recommend that our members consider furloughing their umbrella employees. This means that 625k umbrella employees will not currently be able to have their job and income retained, which in the current economic climate is unthinkable. We are very keen to work with you and the government to develop mechanisms so that the CJRS can be applicable to the umbrella employees who desperately want to benefit from this financial support. There are a number of questions all of which need urgent answers, following which we will be able to advise our members accordingly, and we hope will give financial certainty to the very workforce who the economy is so often reliant upon.

2. The financial impact of coronavirus on FCSA member businesses is significant, and ultimately they are all facing bankruptcy unless urgent action is taken to address this. By virtue of having disproportionately large payrolls (due to employing and paying contingent workers) then they are too large for the Coronavirus Business Interruption Loan, however they are

also not eligible for the government backed borrowing through the COVID19 Corporate Financing Facility because they are not investment grade businesses. However our members are now expected to fund Statutory Sick Pay (SSP) for qualifying workers, plus significant advance wages for furloughed workers on the job retention scheme, however there is **no income** that will offset these costs. We recognise the concessions already in place to delay VAT bill and potentially also payments to HMRC, but this is insufficient. It is critical that the government provides a funding solution for these stranded businesses who will otherwise go into liquidation.

3. The government's support for self-employed people must be equitable for all self-employed people, including those that have incorporated. Often the decision to incorporate is not related to tax, moreover it is a sensible decision to separate personal and business finance that any accountant might advise would be prudent. Furthermore, the decision to incorporate is often due to clients' requirement in order to limit liability. Therefore many self-employed people are now being denied access to equitable financial support purely due to a structural decision made in order to obtain work. It is fundamentally wrong and unfair to treat self-employed people differently purely on the basis of whether they are incorporated or not.

SSP from day 1

Our umbrella employer members are extremely concerned regarding the ongoing financial viability of their businesses following the government's announcement last week in relation to SSP being payable from day 1 of absence, and also being payable for those caring for people that self-isolate. Umbrellas have disproportionately high numbers of employees so are unlikely to be able to reclaim SSP from the government as most will have more than 250 employees. Our members estimate that should 10% of their employees be absent simultaneously their business will start to run at a financial loss.

Given the government estimates some 20% of the workforce being absent at any given time, should that be the reality then **our members will go out of business within 6 weeks**. The impact of this will be some 625,000 umbrella employees will lose their jobs. This is particularly concerning for the health and education sectors which are reliant on agency workers, who in turn are usually employed by an umbrella. (So that the recruitment agency doesn't have the liabilities and additional work associated with engaging these workers directly through their payroll.)

Given our concerns, we strongly urge the government to allow umbrella employer size to be judged purely on their head office staff (not their contingent workforce) and if under 250 head office employees these businesses should be able to reclaim SSP accordingly.

Coronavirus Job Retention Scheme

Whilst we are welcome the government's support package through the Coronavirus Job Retention Scheme (CJRS) we cannot currently recommend that our members consider furloughing their umbrella employees. Our first concern is regarding the amount of pay that would be reimbursed for furloughed workers, which we hope will be based on 80% of average earnings, however according to the guidance issued so far it could be based on 80% of national minimum wage. The difference is immense, 80% of £17k p.a. for those on minimum wage, compared to 80% of up to £30k p.a.

Umbrella employers guarantee to pay workers at least National Minimum Wage for hours worked even if the agency does not pay the umbrella. This is a contractual commitment which is intended to give umbrella employees additional stability and certainty. After overhead costs have been accounted for (such as employers NICs, apprenticeship levy), the balance of funds received from agencies is paid to the workers and is often referred to as a commission or bonus (although it is not related to performance).

We therefore believe that umbrella employees should be classified as "Employees whose pay varies" in the same way as agency workers are categorised. To classify umbrella employees differently would be unfair as they are also agency workers. We are very concerned that, in guaranteeing National Minimum Wage and simply referencing the balance of the pay as bonus or commission, it may be argued at a later date that the 80% payment should only be based on National Minimum Wage and that balance of the pay is misconstrued as a performance related bonus.

There are at least 625,000 umbrella employees who are affected by this guidance, and are rightly seeking clarity from their umbrellas and recruitment agencies as to the amount they will be paid during a period of furlough. **It is therefore critical to receive urgent clarity on this point.**

Without definitive clarity from the government, these workers will receive just 80% of NMW because the risk of paying more and subsequently not being reimbursed by the government is too great and would bankrupt our members.

Furthermore, we understand that the job retention scheme will be a reimbursement of PAYE that will be paid to employers of furloughed employees. We also understand that the earliest any such reimbursement will be paid is likely to be early May 2020. In the meantime, umbrella employers will be faced with paying their furloughed employees, however they will not be receiving any income whatsoever in order to offset their PAYE. This has a significant cashflow impact which places the umbrella employer at severe financial distress; **in short they will not have sufficient cash to be able to pay their furloughed employees.**

Umbrella employers will therefore **need to borrow funds** in order pay their furloughed workers. **The scale of borrowing required will be significant** as it will be the value of their usual payroll – in many cases several million pounds. In order to assist with this cashflow borrowing, can the government provide any sort of advance guarantee / pre-approval that the payroll costs will be reimbursed by the government? Government can easily verify the amount of government-backed borrowing by cross referencing to an employer's previous RTI submissions. In simple terms, without such government guarantees the jobs of 625k individuals will be at risk. **Until this point is resolved, we cannot support our members furloughing their workers, which in itself is causing significant problems as the workforce believes it is their right to be furloughed.**

There are additional urgent questions such as holiday pay, apprenticeship levy, margin that must be answered to enable our members to make decisions regarding the fate of their workforce. These are appended to this letter.

We appreciate the enormous pressure that the government is under currently, and we very much welcome the numerous support measures that have already been established. The UK economy is in a stronger position as a result of your swift and decisive action.

We very much want to work across the government on the detail of the Coronavirus Job Retention Scheme to ensure that as many eligible workers can benefit from this as possible. We look forward to hearing back from you and I cannot stress how urgent this now is.

Yours sincerely

Julia Kermode
Chief Executive, FCSA

APPENDIX 1: QUESTIONS SPECIFIC TO THE CORONAVIRUS JOB RETENTION SCHEME

1. **Clarify the amount of pay that can be reimbursed for furloughed umbrella employees as already outlined in this letter**

2. Allow a small margin to be paid to businesses in order to cover their costs of operating the coronavirus job retention scheme. Umbrella employers will be receiving no income for their furloughed workers by virtue of them not undertaking assignments for end-clients, and as such they will have no income to cover their overheads. Therefore we recommend that it should be acceptable for the umbrella employer to retain a small margin from the funds that are reimbursed by the government? The government could set a cap for such a margin to prevent abuse, by way of a guide we would suggest £20. Recruitment businesses will be in the same situation, so we would suggest that any such margin also be applicable to them.

   We note that the Cabinet Office has issued a Guidance Note on Payments to Suppliers for Contingent Workers Impacted by COVID-19, which you can view via the link below:

   https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/875619/PPN-02_20-Contingent-Workers-Impacted-by-COVID-19-1.pdf

   This guidance suggests that the public sector should continue to pay their contingent workers, including "agency margin payments" so it would be unfair not to extend the same ability for engagers of private sector contingent workers to have their costs covered. It is not sustainable for workers to be furloughed without the ability for umbrella employers and recruitment businesses to receive a margin.

3. Will the apprenticeship levy be reimbursed by the government in addition to ErNICs and basic pension? The vast majority of umbrella employers are required to pay the apprenticeship levy due to the size of their payroll, it is effectively an additional on-cost which we strongly believe should be reimbursed on top of the 80% salary. Without refunding this, umbrella employers will be in further financial distress than they are already.

4. We assume that furloughed workers will still accrue holiday. Many umbrella employees opt to be paid for their holiday rather than take time off. For such workers, should their holiday pay be included in the pay they receive whilst they are furloughed?

5. Establish financial support measures for umbrella employers who are in the "stranded middle" of being unable to access other financial support, and who will otherwise be unable to access the coronavirus job retention scheme.

6. Clarify how average pay should be calculated for weekly paid workers, see next appendix.

Until all of these points are resolved, we cannot support our members furloughing their workers, which in itself is causing significant problems as the workforce believes it is their right to be furloughed.

APPENDIX 2: HOW SHOULD AVERAGE PAY BE CALCULATED?

When attempting to calculate approximate furlough costs (NMW & Holiday Pay questions notwithstanding), we have used the following section from the guidance and in this example, we'll assume an employee has been employed for 18 months continuously.

Extract from the guidance:
Employees whose pay varies
If the employee has been employed (or engaged by an employment business) for a full twelve months prior to the claim, you can claim for the higher of either:

- *the same month's earning from the previous year*
- *average monthly earnings from the 2019-20 tax year*

Once you've worked out how much of an employee's salary you can claim for, you must then work out the amount of Employer National Insurance Contributions and minimum automatic enrolment employer pension contributions you are entitled to claim.

So let's assume the "same month's earning from the previous year" was **£1200**, which when paid weekly could have been split across 4 weekly payrolls. Let's also assume the "average monthly earnings from the 2019-20 tax year" was **£600**. This second figure is **much** lower than the first as the employee did not work every month of the year and when they did work in other months, they earned less than £1200. Following guidance, we should use the higher figure. But what is the Government's stance if the higher figure of £1200 is entirely non-representative compared to other months where the salaries were either £0.00 or far less than £1200. Essentially, the scheme could mean the employee earns more than they would have done if COVID-19 had not of happened. This doesn't seem right.

There is also a question around exactly how we should calculate the "average monthly earnings from the 2019-20 tax year". See following table:

Tax Month	Gross Salary
April	£300
May	£0.00
June	£300
July	£600
August	£0.00
September	£300
October	£0.00
November	£300
December	£300
January	£300
February	£600
March (to-date)	£1200
Total	**£4200**

We need clarity here. Should the £4200 be divided by 12 tax months which gives an average monthly income of £350.00? Or should the £4200 only be divided by the number of months where there was income (9 months), which gives an average monthly income of £466.66? The former is more attractive to the Government but the latter is more attractive to the worker.

If a school employee was already paid weekly salaries on 06th, 13th & 20th March 2020, but then the schools closed from Monday 23rd March 2020, the guidance gives no advice on how to calculate the furlough payment for part of the month. We assume that it would need to be pro-rated. If the weekly salaries that were paid in March total more than £2500, does it mean that no furlough payment would be due? Or do we simply ignore that they were paid salary in March and use a version of the above-mentioned averaging to pay them for example £1200? This would mean they would receive a furlough payment of £1200 for a week where they may usually only receive say £300. This doesn't seem right.

There is another scenario where a furloughed school worker could be paid more than is necessary under the scheme. In April 2020, the schools were due to close for Easter for two weeks. During this period, the employee would not earn any money. However, under the furlough scheme, as we are being asked to use the "*higher of either, the same month's earning from the previous year or average monthly earnings from the 2019-20 tax year*" there is **every chance** that the worker would receive far more money for April as a furloughed worker than they would have as an employee if the schools had not been closed due the virus. There is no logic here but the guidance allows for it.

These concerns are not Umbrella-specific; many recruitment agencies operate a weekly pay-cycle where they pay workers directly on PAYE and they will encounter the same issues when they start to work out furlough pay for their workers.

Our overriding concern is to ensure that workers receive fair pay which is consistently calculated across all sectors and engagers. We therefore strongly request that the guidance should include clear examples of how employers should calculate furlough payments for weekly paid employees. This approach of outlining calculations for weekly and monthly paid workers is consistent with other payroll based guidance which requires previous income to be ascertained.