

## Written evidence submitted by Protect

This is a short submission from the Whistleblowing Charity Protect. This briefing will focus on the question *'is the Government doing enough to ensure that businesses and individuals are claiming appropriately and that fraudulent claims are detected?'*. We will be examining this question from the point of view of whistleblowing, and the experience of whistleblowers who have been trying to raise concerns about fraudulent activity within the Coronavirus Job Retention Scheme.

### A short introduction to Protect

Protect is the UK's leading authority on whistleblowing. For over 25 years the charity has run a legal advice service for whistleblowers from all sectors and industries and today receive over 3000 calls a year where the worker is unsure how or who to raise their concerns with. We use these experiences to inform the other activities of Protect namely offering consultation and training to assist organisations with their own internal whistleblowing arrangements. We are campaigning for better legal protection and improved arrangements for whistleblowers both in the UK and abroad.

### Furlough Fraud and Whistleblowing

Whistleblowers have been contacting us in large numbers for advice on furlough fraud - we have received 216 furlough abuse cases to date, which is 54% of our total calls received on Covid-19 issues. A third of calls to our Advice Line in May and June have been about furlough fraud. Below is a quick summary of some key themes of the calls we've received:

- Typically cases we are seeing on the Advice Line are situations where a worker has been furloughed by their employer only to be asked, told or threatened with dismissal unless they come back to work.
- Anecdotally, many whistleblowers contacting us are concerned about their own liability in relation to the fraudulent activities. This is despite the fact they have no control, power or agency on the decision being made to place them on the scheme – they are not in a position to “agree” to be furloughed – they are given no options. They are then left in an incredibly vulnerable position if they refuse to work.
- Top three industries for furlough fraud cases are: Hospitality (20%), Manufacturing (12%), Retail (12%). 92% of cases come from the private sector with only 6% coming from the charitable sector (which compares with a usual 26% of total cases from the charitable sector).
- Most of our calls on this issue have come from organisations with less than 50 members of staff (66%), - much higher than our normal call numbers (where 42% come from small employers). Only 5% of Furlough cases come from large organisations with 10,000 or more staff, whereas normally 25% of our cases are from people working in organisations this size.
- Very few of these workers have any other sources of support: 98% of furlough cases contacting us lack trade union representation (compared with 62% when looking at total calls). This is important as it means the 200 plus whistleblowers contacting us have knowledge of where to get expert advice – many others may be unsure how or where to report concerns about furlough fraud. A lack of union support also means challenging victimisation, dismissal or redundancy in response to raising concerns about furlough fraud is much harder for the whistleblower.

### Workers being asked to work, volunteer or help-out while furloughed

Typically, cases tend to be focused on the whistleblower being asked to work, volunteer or assist their employer while being placed on the Furlough scheme. Other cases tend to be where the whistleblower discovers through their role in the organisation that other staff have been furloughed without their knowledge and while they are still working for the company. In some cases, workers

have continued in their roles, only to discover at the end of the month when they receive only 80% of their pay that they have been furloughed. We have had some cases where the worker has not received their payment in full – for example their pay has been reduced to 65%.

Many of our clients are concerned about the backlash if they raise their concerns. Some have been moved sideways, threatened with dismissal if they refuse to work while furloughed, while others have been made redundant once they raise their objection to being forced to work. [Below are two case studies](#)<sup>1</sup> from our advice line and has been taken from a blog post we have written on the issues:

*Eloise is a senior manager working in financial services. The Chief Executive sent an email to all directors saying that staff will be furloughed (this is around 30 people) despite the fact that all staff are working from home and that as the staff work mainly from sales commission which falls outside of the scheme. Eloise raised her concerns with the Chief Executive who threatened her with dismissal if she objected to the plan.*

*Mohammad was furloughed by his employer but was then asked to carry on working. When Mohammad refused to work as it went against the Government guidelines his employer threatened him with dismissal. A few days later Mohammad received a letter making him redundant as the company lacked the cash flow to pay his wages.*

In conclusion we have found that the whistleblowers contacting us for advice on furlough fraud work overwhelmingly in the private sector, for small employers and often asked quite brazenly to continue to work even though it is quite clear they are being furloughed.

We continue to have concerns with HMRC that without the telephone service, or online facility to discuss about the issues (they currently have an online form), many whistleblowers may decide not to come forward as some will want to ask questions around confidentiality or how their concerns will be investigated before raising their concerns, all of which are not easily answered in an online form.

The Government have committed to examine these things and open the line when it's safe.<sup>2</sup> We would like to see more detail on these plans published, and in the meantime for some sort of secure chat function to be provided for whistleblowers.

### **Enforcement- using the information provided**

Given the scale of the concerns being reported to us on the Advice Line, and [the 1900 concerns raised with HMRC reported in the media over the last few weeks](#) we welcome the new powers to recover fraudulent payments being made under the scheme being considered in the Finance Bill.

However, we are seeking assurances that such powers will not be used against whistleblowers who, though they have reported such fraud, have received these payments under the scheme. Whistleblowers who speak out on furlough fraud should not be penalised with having to pay back monies which have been fraudulently claimed by their employer. We would like to see a similar commitment that whistleblowers will not be pursued for repayment of furlough money that HMRC have issued in relation to [company directors who make "genuine mistakes" but instead focus penalties against directors who commit "deliberate non-compliance"](#).

### **In summary**

We believe that HMRC need to put in place the following things:

<sup>1</sup>The names of the whistleblowers have been changed.

<sup>2</sup> <https://www.theyworkforyou.com/wrans/?id=2020-06-15.HL5737.h&s=speaker%3A10642#gHL5737.q0>

- Need to publish plans to reopen the telephone reporting session
- If the telephone reporting service can not be reopened then a chat replacement needs to be found
- We would like HMRC to give assurances to whistleblowers that those who report concerns to them will not be pursued for fraud or repayment of Furlough Leave money.

*June 2020*