

4,500 Furlough Fraud Claims is Just The Tip Of The Iceberg

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4,500 Furlough Fraud Claims is Just The Tip Of The Iceberg

- **4,500 cases of furlough fraud reported to HMRC already**
- **New legislation to investigate and prosecute abuse of coronavirus support schemes**
- **Over a third of 9.3 Million employees have been asked to commit some kind of furlough fraud.**

A commercial lawyer is warning that business owners run the risk of being prosecuted by HMRC and having to pay tax and penalties because of Furlough Fraud and Business Bounceback Loan Fraud and that the 4,500 reported cases to date are just the tip of the iceberg.

[Steven Mather](#), a Consultant Solicitor with National law firm Nexa Law, has conducted a report into the serious issue of coronavirus support fraud and believes that HMRC will be hot on the heels of greedy business owners who fall foul of current and new legislation aimed at ensuring coronavirus support schemes are not abused.

It comes off the back of the recent news that HMRC arrested a West Midlands businessman as part of an investigation into a suspected £495,000 Coronavirus Job Retention Scheme fraud.

While the Government's financial schemes have been a real help to many businesses during the coronavirus outbreak, fraudsters are quick to find ways to take advantage. The Coronavirus Job Retention Scheme (CJRS), known as the Furlough Scheme, is no exception and along with other financial support such as the Business BounceBack Loan Scheme (BBLs), they are opening up a whole new risk of prosecution to business owners.

What kind of furlough fraud is happening?

Mr Mather has highlighted a number of issues which he has seen recently and which may amount to furlough fraud.

- Furloughing staff and not paying them the full 80% under the scheme. For example, only agreeing to pay 60-70% of usual pay and pocketing the extra.
- Employers making backdated claims that include periods in which the employee was not working.
- Pretending to hire staff (ghosting) in order to take advantage of the support payments;
- Asking the employees to work, either as a "Volunteer" or "paid on the side" or as a "self-employed contractor".
- Furloughing employees (without their knowledge) and they continue to work as normal
- Using the payments to fund notice pay when terminating an employees employment
- Using the payments to pay for redundancy pay.

Indeed, whistleblowing charity Protect has revealed that 36% of its Covid-19 associated calls involved furlough fraud.

Mr Mather says "I've also seen employees being told they will be furloughed but only paid 60 or 70% of their usual salary, with the employer pocketing the difference".

"Another unlawful tactic is to furlough an employee and then ask the employee to do some work either as a volunteer or in some cases via a different company or on a self-employed basis".

"Whichever way you look at it, it is fraud – it's a complete misuse of public funds to benefit the greedy business owners".

Gary Petitt, a Licenced Insolvency Practitioner with [PBC Business Recovery and Insolvency](#) in Northampton has already seen a number of frauds which have been reported. Petit said "I have had a number of cases where the bounce back loans were being used inappropriately, including:

- A restaurant where they received £50K, promptly repaid family loans (leaving other suppliers and

HMRC behind) and have decided not to re-open.

- A director received the £50K and has purchased a luxury car for his personal use.
- One director has a group of 5 companies and applied for the loan on each company. Upon receipt of the loan funds, he withdrew the lot (ie £250K) and redeemed his residential mortgage."

James Blacklaws, a [finance broker in Leicestershire](#) with JB Commercial Finance, said "Well over 1 million Bounce Back Loans have now been approved and drawn down with the total loan balance over £30 billion with CBILS loans (the larger loan scheme for £50k+) now at 50k+ approvals with loan balances totalling over £11 billion.

Blacklaws said: "There are several ways in which the information under the application process or using the funds granted under the bounce back loan scheme could potentially be seen as fraudulent:

- Falsifying trading turnover when applying to borrow more than you would otherwise be entitled to.
- Not declaring the business was in trading difficulties on December 31st 2019 – a key point of the facility, which is to support otherwise viable businesses struggling with COVID 19, not prop up already failing ones.
- Using the funds for a purpose other than for the benefit of the business. This may be for a personal asset or for a property purchase. This is a technique actively encouraged by several property 'gurus'."

Richard Las, acting director of the fraud investigation service at HMRC, said: "The CJRS is part of the collective national effort to protect jobs. The vast majority of employers will have used the CJRS responsibly, but we will not hesitate to act on reports of abuse of the scheme.

"This is taxpayer's money and any claim that proves to be fraudulent limits our ability to support people and deprives public services of essential funding."

A recap of the furlough scheme and business bounceback loans

The furlough scheme was introduced by the government to reimburse 80% of an employee's regular salary or £2,500 per month. It was originally available until 30th June 2020 but has since been extended on "flexible" terms until the end of October 2020.

To date, over 9.3 million people have been furloughed with claims made of £25.5 Billion.

Mr Mather says: "There are a number of provisions to be eligible for the scheme, but the ones that are interesting in respect of furlough fraud are as follows:

- the employee is unable to do any work for the employer
- the employer should pay the employee and claim reimbursement under the scheme
- the funds should not be used for other reasons, such as making up redundancy pay."

"Meanwhile, the Business Bounceback Loan scheme permitted small businesses to seek a loan from their bank of 25% of their annual turnover – without proof of affordability or any evidence being given, and they are 100% guaranteed by the government if the business default. The government also pays the first year of interest."

Is coronavirus support scheme fraud a criminal offence?

The Government is [bringing forward](#) legislation specifically to address inspection, investigation and prosecutions for misuse of the various coronavirus support schemes. The new legislation aims to give HMRC rights such as:

- ensuring HMRC can use its information and inspection powers to check coronavirus support claims have not been overpaid and that a CJRS payment has been used to pay furloughed employee costs
- giving HMRC powers to raise an Income Tax assessment on anyone who has received a SEISS or CJRS payment to which they are not entitled, or anyone who has not used a CJRS payment to pay furloughed employee costs. Penalties will be 100% of the sums incorrectly claimed.
- giving HMRC powers to charge a penalty where a person deliberately makes an incorrect claim for a SEISS or CJRS payment. It also gives HMRC powers to charge a penalty where a person who has claimed a CJRS payment deliberately does not use it for the costs it was intended to reimburse. The penalty will only apply if the person fails to notify HMRC about the situation within 30 days, or 30 days after the Finance Bill receives Royal Assent if it arose before that (currently this looks like it might become a 90-day window).

- giving HMRC powers to make a company officer jointly and severally personally liable for the Income Tax charge raised in relation to any CJRS payment to which the company was not entitled or any CJRS payment which was never intended to be used to pay furloughed employee costs in certain circumstances. Those circumstances are where the officer is culpable for making a deliberate CJRS claim to which the company was not entitled.

The legislation could be passed as early as July as part of the Finance Bill 2020 currently progressing through parliament. The 90-day period to report any mistakes on claiming coronavirus support grants is expected to start after the bill is passed.

Indeed under existing legislation, such fraud could be framed as a fraud upon the HMRC and prosecuted criminally as well.

Potential Criminal Offences?

Conspiracy to defraud; a common law offence - Maximum: 10 years' custody. Sentencing range: Low level community order – 8 years' custody.

Fraud Act 2006 (section 1) statutory offence - Maximum: 10 years' custody. Sentencing range: Low level community order – 8 years' custody.

Cheat the public revenue; a common law offence - Maximum: Life imprisonment. Sentencing range: 3 – 17 years' custody.

Criminal Finances Act 2017 – liability for corporates for the offence of failing to prevent tax evasion.

To date there have been almost 4,500 claims to HMRC of abuse of the furlough scheme and of those reviewed two-thirds have had action brought against them already.

What to do now?

If your employer has committed furlough fraud (or any other coronavirus support scheme fraud) then you can safely and confidentially report them to HMRC and let them investigate. You should not raise the issue of suspected fraud with your employer – leave it to HMRC.

If you are an employer and think you might have, perhaps mistakenly, committed furlough fraud then contact HMRC now and remedy the situation.

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