



Government Legal Department

Howard League for Penal Reform
Legal Team

Litigation Group
102 Petty France
London
SW1H 9GL

T [REDACTED]

By email: [REDACTED]

DX 123243 Westminster 12 www.gov.uk/gld

Your ref: TBC

Our ref: [REDACTED]

9 June 2020

Dear Sirs

Furlough pay – [REDACTED]

We write on behalf of the Secretary of State for Justice (“SSJ”) in response to your letter of 5 June 2020, which seeks to challenge the finding by [REDACTED] that [REDACTED] is not an “employee” for the purposes of the Coronavirus Job Retention Scheme (“CJRS”).

This matter has been considered and all the circumstances of this case have been noted.

The Model Memorandum of Understanding – Paid Placement (“MoU”) makes clear that it does not create a contract of service nor any legally enforceable rights between companies / organisations which provide paid work placements and prisoners who take up those placements. The SSJ therefore does not anticipate that a formal employer/employee relationship will exist in such cases. However, it is agreed that the MoU does not of itself prevent [REDACTED] and [REDACTED] from entering into a lawful contract of employment. Based on the documents

Gilad Segal - Head of Division
Nic Newling - Deputy Director, Team Leader MOJ, Public Law



and information provided it does appear that, notwithstanding the provisions of the MoU, [REDACTED] has chosen to enter into a contract of employment with [REDACTED].

On this basis, the SSJ accepts that it is open to [REDACTED] to apply to register [REDACTED] for the CJRS furlough scheme. Whether a grant (furlough payment) is payable under the CJRS is, of course, a matter for HM Revenue & Customs to decide.

In relation to the remedies sought we confirm that:

- Any furlough payments received by [REDACTED] in respect of [REDACTED] will be released to [REDACTED] (subject to any relevant deductions);
- In this case, no objection is raised by the SSJ in respect of [REDACTED] being registered to receive furlough pay under the CJRS;
- If necessary, a member of staff at [REDACTED] will contact [REDACTED] to inform them that they make no objection to [REDACTED] being registered for furlough pay under the CJRS in these circumstances.

It is not considered that the SSJ should have any further involvement in the issue of [REDACTED]'s registration for the CJRS, which now concerns [REDACTED], [REDACTED] and HMRC. This matter is considered to be concluded as far as it concerns the SSJ, and we anticipate that no proceedings will be required to be issued.

HMPPS will undertake further work, separately to this case, regarding the correct interpretation and application of the MoU, to ensure that it is correctly understood and applied in all cases and by all parties going forward.

Yours faithfully

[REDACTED]

[REDACTED]
For the Treasury Solicitor

D [REDACTED]
F [REDACTED]
E [REDACTED]