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To:
1 - Minister Whittingdale
2 - Secretary of State
Cc Minister Dinenage, Minister Warman, Minister
Huddleston, Baroness Barran

From: COVID-19 Economic
Response Directorate
Approving DD: Nick Russell
Date: 16 April 2020

Update on the Government's Self-employment Income Support Scheme and DCMS sectors

Issue

1. Concerns raised by DCMS stakeholders regarding the Government's economic support packages for self-employed workers.

Recommendations

2. That you agree with our proposed prioritisation of issues and that officials continue to liaise with stakeholders, explaining rationale and options.

Overview

3. You are receiving advice on the DCMS overall priorities in interaction with the Treasury. It notes the issues highlighted in this submission as areas where Ministerial intervention may be required in the future if official level discussions don't succeed.
4. Feedback from DCMS sectors to the self employed income support scheme remains broadly positive. However, stakeholders have raised a number of issues related to the scheme in both public statements and conversations with DCMS officials. The then Shadow Culture Secretary Tracy Brabin MP wrote to the Chancellor on 31 March outlining a number of concerns with the scheme (letter at annex A) and Julian Knight has written to the Commercial Secretary (letter at annex B).

Pay As You Earn contracts

5. Within DCMS sectors there is a prevalence of freelancers who operate on short term Pay As You Earn contracts and who are not eligible for either the Self-employment Income Support Scheme or the Job Retention Scheme. You have received a letter on this from media organisations (Annex C).
6. Under the changes made to the job retention scheme yesterday (15 April), the furloughing scheme cut off date has been extended from 28 February to 19 March. This could benefit a further 200,000 employees. However, the impact for individuals in our sectors may be more limited. It doesn't appear to help freelancers whose job was terminated when the original job retention scheme was initially announced, or who

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were already looking for their next contract by 28th February. We are seeking clarification from HMT and from our sectors on this point.

7. A satisfactory resolution of this problem is essential for the creative industries sector, where the structure of employment is of short term contracts. According to British Film Institute figures, there are 31,589 freelancers working in the Film Industry alone on Pay As You Earn contracts.
8. In recent surveys of its members, the Broadcasting, Entertainment, Communications and Theatre Union found that 47% of Pay As You Earn freelancers were not in employment on 28th February, and the Creative Industries Federation found that 22% of self-employed respondents are concerned by the gap in support for short-term, fixed contracts.

Do you agree that this should be the priority issue for DCMS engagement on the self-employed scheme with the Treasury?

The recently self-employed

9. The Self-Employed Income Support Scheme is only open to those who were self-employed in the financial year 2018-19 to ensure the scheme is not open for fraud. However, as the 2019-20 tax year has closed since the scheme was opened, it may be possible to extend the scheme whilst minimising the fraud risk.
10. Across all sectors of the UK economy, 10% of people who are self-employed became so in the last 12 months, and are therefore not able to apply to SEISS. This is an issue across the economy, but impacts DCMS sectors, in particular the creative industries and the arts, acutely. Well over 70,000 freelancers in DCMS sectors fall into this category.
11. In a recent survey by the Creative Industries Federation, 23% of respondents indicated that they are concerned about not being able to access schemes because of being newly self-employed. Within the music sector, it is reasonable to assume that at least 30,000 recently self-employed, possibly many more. **Do you agree that this should be the next priority for DCMS discussions with the Treasury?**

Taking account of maternity/paternity leave

12. Stakeholders across DCMS sectors have requested that allowances are made for freelancers who have suffered reduced incomes due to maternity or paternity leave. We have requested that Treasury officials clarify the position and its rationale.

Do you agree that officials should seek to ensure that the Treasury provides clarification on this issue?

Owner-Managers

13. The scheme does not cover people who are owner-managers of their companies, and pay themselves mostly through dividends. While comprehensive figures are not available, adding together the anecdotal figures we have for sectors, it is clear that this issue will affect a few hundred thousand individuals working in DCMS sectors. It is the most commonly raised issue amongst DCMS stakeholders; tech sector stakeholders highlighted it as an issue in a call with the Minister for Digital and Culture. Owner-manager arrangements are prevalent in the tourism and creative sectors.
14. Treasury have said they are unable to differentiate whether the dividends came from an individual's work or from passive investments. **This means - despite the prevalence of the issue across our sectors - we have almost no chance of moving the Treasury on this issue.** A possible work around suggested by the sector is the establishment of a portal, through which individuals could submit their dividend certification as evidence. To date the Treasury have shown no interest in this option.

Do you agree that this issue should not be a priority for DCMS discussions with the Treasury, even though this will have widespread impact across our sectors?

The £50,000 earnings cap on the scheme

15. The Self-Employed Income Support Scheme is capped at an annual profit of £50,000. This creates an inequality with the Job Retention Scheme, which does not have a cap, although the Treasury argue that individuals can continue working under the income support scheme - a significant difference with the job retention scheme. The West End and Orchestral Performers have written to the Chancellor about this and it is a problem throughout the sport and media and creative industries sectors.
16. The scheme creates a clear cliff-edge for anyone earning just over £50,000. However, rectifying this policy requires advocating for a group in the top 12% of earners in the UK; this is difficult against a backdrop in which nearly one million people applied for universal credit in two weeks.

Do you agree that this issue should not be a priority for DCMS discussions with the Treasury, accepting that lobbying is unlikely to be successful?

Clearance

17. Nick Russell, Deputy Director C-19 Economic Response

Copy list

[NR] PS John Whittingdale Mailbox, PS Caroline Dinenage Mailbox, PS Nigel Huddleston Mailbox, DCMS Lords Minister Mailbox, Special Advisors, Permanent Secretary, Director General DMG, Director General PSG, Scott McPherson, Rhys Bowen, Emma Squire, Chris Heaton, [NR] DCMS Coronavirus Mailbox, Covid-19 briefing team, [NR], Lucy Pedrick, Jennifer Tyldesley, Nick Russell, Duncan Parish, [NR]
[NR] Euan
Macmillan, [NR]

Annex A - 31 March: Former Shadow Culture Secretary letter to the Chancellor



HOUSE OF COMMONS
LONDON SW1A 0AA

Tracy Brabin MP, Batley & Spen

Constituency Office: 286 Oxford Road, Gomersal, West Yorkshire, BD19 4PY

Rt Hon Rishi Sunak MP
Chancellor of the Exchequer
HM Treasury
1 Horse Guards Road
Westminster
London
SW1A 2HQ

Dear Rishi,

I am writing to ask you to provide urgent clarity on the Self-Employed Income Support Scheme announced last week. Whilst I and many others welcome the much-needed support for self-employed workers, there are concerns that this support will not bring parity with the Job Retention Scheme for employed workers and will not sufficiently cover all of the self-employed workforce.

In the days following your announcement, thousands of self-employed workers have expressed fears and frustrations that the support they are due to receive is not representative of the income they will lose to the COVID-19 pandemic. There are also concerns that many self-employed workers are left out of the scheme entirely. I must therefore ask – on behalf of the following groups – whether any further clarity can be provided and whether any changes to the scheme can be considered?

- Those who became self-employed after April 2019

Given that support will not become available until after the start of the 2020-21 financial year (in June of this year), why is the most recent and relevant financial year – 2019-20 – not factored into the average earnings equation? This would allow for a more accurate calculation of the income lost to COVID-19 in 2020. Crucially, it would also allow for people who began self-employed work in the 2019-20 financial year to be eligible for this scheme, upon completion of a tax return in either April or May. Currently, an estimated 250,000 of the almost 5 million self-employed workers in Britain are left out of this scheme. This is unacceptable and unfair.

- People who are part employed and part self-employed

Why is it not possible to qualify for both the Job Retention Scheme and the Self-Employed Income Support Scheme? This would allow for all workers to receive 80% of their overall earnings, rather than just some. The disparity between a self-employment grant worth up to £2,500 and a Universal Credit instalment of either £251.77 or £317.82 is cruel and arbitrary.

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- Self-employed workers on maternity leave or with caring responsibilities

If people have recently taken time off work for care or childcare responsibilities, will they be eligible for this scheme? If people have lost income over the last three years due to maternity reasons or caregiving obligations, will this bring their average earnings – and, by extension, their self-employment grants – down? If, due to COVID-19, people are unable to work for the 26/66 weeks required to claim for Maternity Allowance, will they still be entitled to this benefit?

- Those whose work has been reduced, but not ended, by COVID-19

If a self-employed person can still earn some, but not all, of their usual income during the COVID-19 pandemic, will they be able to receive any support under this scheme? Those who have lost almost all of their income to COVID-19 should surely have access to this scheme.

- Those who operate as limited companies and pay themselves in dividends

Many self-employed workers and freelancers operate as limited companies and draw their income in dividends rather than through PAYE. Will these workers qualify for either scheme?

- Those whose average earnings are higher than £50,000

While focusing assistance on lower earners is welcome, this crude dividing line fails to bring parity with the Job Retention Scheme for employed workers – where no equivalent cap exists – and means households in which a sole breadwinner earns £50,000 are now left without support.

- Self-employed workers with ongoing expenses

Many self-employed workers have ongoing expenses – workspace rent, software, equipment etc – that are not factored into the current equation. Where appropriate, could Gross Takings – rather than just Trading Profit – be taken into consideration?

Thank you for taking the time to read this letter. I, along with thousands of self-employed workers across the UK, look forward to your response to the urgent points and questions raised here.

Yours,

Tracy

Personal Data

MP for Batley and Spen and Shadow Secretary of State for Digital, Culture, Media and Sport

**Annex B - 1 April: Julian Knight MP Chair of the Digital, Culture, Media and Sport Committee
letter to Chief Secretary of the Treasury**

Rt Hon Steve Barclay MP Chief
Secretary to the Treasury HM
Treasury 1 Horse Guards Road
London SW1A 2HQ

By email

1 April 2020

Dear Steve,

Government support for creative industry professionals

I am writing to seek urgent clarification regarding apparent loopholes in the packages the Government has put in place to support workers during the ongoing COVID-19 crisis.

Whilst the Committee welcomes the Government's commitment to support those whose employment has been affected by COVID-19, we have received a significant number of representations from freelancers and other professionals within the television and film industry, and other creative industries, who do not qualify for any of the support schemes. These people are facing months with no income and no source of financial support. A summary of the main issues which have been raised with the Committee are noted below:

Self-Employment Scheme - Many freelancers, although technically self-employed, are on PAYE fixed term contracts because they are employed for a fixed period to work on one particular show and then move on to the next job at the end of the production period. It is rarely through choice and usually because broadcasters and/or production companies prefer freelancers to be on PAYE. This means that these individuals are registered by HMRC as being technically 'employed' and thus do not qualify for the Self-Employment Scheme.

Job Retention (Furlough) Scheme - As mentioned above, freelancers often move from job to job, sometimes with gaps of days or even weeks between employment. This means that there is a large number of people who, although on PAYE, were not on a payroll on 28 February 2020 and thus do not qualify for the Job Retention Scheme. Many people who contacted the Committee in this very situation have missed out on qualifying by only one or two days.

Personal Service Companies - Many other freelancers are in a position where, upon advice, they set up their own Personal Service Company and, for a number of years, have operated by invoicing for their services through the PSC and pay themselves through dividends. As a result, they do not qualify for either of the aforementioned schemes as they are neither self-employed

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nor employed.

Universal Credit - In addition, many freelancers do not qualify for Universal Credit. Several have stated that they have money put aside in the expectation of paying tax in April but that this will be held against them. If an applicant or their partner has more than £16,000 in savings (regardless of whether it is held aside to pay tax), they will not qualify for Universal Credit at all. There currently is no way to explain to HMRC what these 'savings' are for, and if people have to start using them to support themselves, they may be unable to pay their tax in future.

I would be grateful if you could outline to the Committee what steps the Government will take to ensure that freelancers within the creative industries set out in this letter are supported. I would also appreciate clarification on how professionals in creative industries (such as music, theatre, etc) might best contact Treasury officials to bring Government attention to these outlier cases in future.

Whilst we acknowledge that HM Treasury is incredibly busy, we request an expedited response on this urgent issue by Wednesday 8 April so those affected can be informed as soon as possible.

Yours sincerely,

Julian Knight MP
Chair, Digital,
Culture, Media and
Sport Committee

cc. Rt Hon Oliver Dowden MP, Secretary of State for Digital, Culture, Media and Sport
Rt Hon Mel Stride MP, Chair, Treasury Committee

Annex C - 3 April: ITV, BBC, SKY, C5, C4, PACT - Letter to Secretary of State Oliver Dowden

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The Rt Hon Oliver Dowden CBE MP Secretary of State for
Digital, Culture, Media and Sport 100 Parliament Street
London SW1A 2BQ

3 April 2020

Dear Secretary of State,

Assistance for Freelance workers paid by PAYE

Thank you for hosting the CEO round table for TV and radio earlier this week and for giving us the opportunity to feed perspectives from our sector into government.

We wanted to put on record our gratitude for the swift and decisive action the government is taking on a number of fronts to try to mitigate as much of the economic impact of the coronavirus pandemic as possible.

The furloughing and the freelance schemes are particularly important for our organisations as they give us the best chance of restarting our activities at pace when the lockdown is relaxed, helping to maintain the UK's world leading position in the creative industries.

However, as you know at the round table meeting a number of attendees raised the serious issue of how to ensure that freelancers who are paid through PAYE do not unintentionally fall through the cracks of these two assistance schemes.

This is a particular issue in our industry which, whilst not colossal in scale, is too big and too fragmented for any business to be able to deal with. As with the other worker schemes, only the government is realistically able to help this group and we think that there is a way that this could be done relatively easily without creating any new scheme. We set out the problem in more detail below together with what seems to us to be the most effective potential solution.

The problem

There is a category of TV workers who will not qualify for any of the current government assistance schemes. They are people who are freelancers but who have been paid continuously (or just occasionally) via PAYE and:

- Will not meet the furloughing requirements -- for instance because they weren't on the PAYE payroll on 28 February, or their contracts did not have long enough to run after 1 March.
- Will not qualify as self-employed as they aren't making profits via the tax system which can be compensated (as they are paid in whole or part through PAYE).

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- Will not qualify for the corporate support scheme as they aren't trading through a limited company.

The issue is impossible for any one employer to track as this category of freelancers won't necessarily always be paid through PAYE and most will have a number of different employers. By way of example, we know that ITV pays circa 400 freelancers through PAYE each month and Sky a little over 1000 but these are not always the same people each month and we do not have visibility of what those people we do pay through PAYE are doing or who they are working for when not engaged with us. Even when they are engaged with us they may sometimes be paid through PAYE and sometimes as sole traders, depending on the project and the terms of engagement.

The Solution

Only HMRC has a complete record of PAYE and tax for any individual from all employments, via unique NI numbers. Accordingly, HMRC could therefore establish whether, and up to what level, these individuals might be entitled to some sort of furlough assistance.

In order for this to be possible, it would make sense to amend the self-employed assistance scheme rules so that those PAYE and tax records could be used to establish eligibility for the same assistance as other freelancers who trade in different ways.

This approach would have the following advantages:

- It would ensure equitable treatment between people in very similar circumstances but with technically different ways of being paid and goes with the grain of existing assistance programmes.
- It would overcome the problem that no single employer necessarily even has a full PAYE record for any freelancer or should be entirely responsible for that freelancer
- It would avoid any single engaging company having to cash flow furlough, effectively on behalf of all of those engaging companies in TV which might have engaged an individual.
- It radically reduces the risk of abuse by individuals submitting multiple claims through multiple engaging companies (which could be a risk under an engaging company led scheme).

Next Steps

Clearly in the current circumstances there is no time to be lost and we are keen to do everything we can to work with government and HMRC to try to implement this sort of solution

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to the problem. Our teams stand ready to deliver what assistance we can to help this important group of workers in our world leading creative economy and we propose to pick this up with senior officials in your department in the coming days. We look forward to working with government on this issue; we are copying the Chancellor of the Exchequer, Rishi Sunak MP.

Yours sincerely,

Carolyn McCall - CEO, ITV

Tony Hall - Director General, BBC

Stephen Van Rooyen - CEO, Sky UK and Europe

Maria Kyriacou - CEO, ViacomCBS / Channel 5

John McVay - CEO, Pact

Alex Mahon - CEO, Channel 4

Annex D - 6 April: Letter from Directors UK CEO Andrew Chowns to Chancellor of the Exchequer

Dear Chancellor,

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I am writing to draw your attention to issues affecting Directors UK members (over 7,000 freelance television and film directors) arising from the recently announced Self-Employed Income Support Scheme (SEISS), and to propose possible solutions to help address these.

Whilst we welcome the introduction of the SEISS to support freelance and self-employed workers, the current proposals have created considerable concern for a large number of those working in the creative industries who operate as freelancers under Ltd/Personal Service Companies (PSC), and who currently fall outside the scope of both the SEISS and the CJRS.

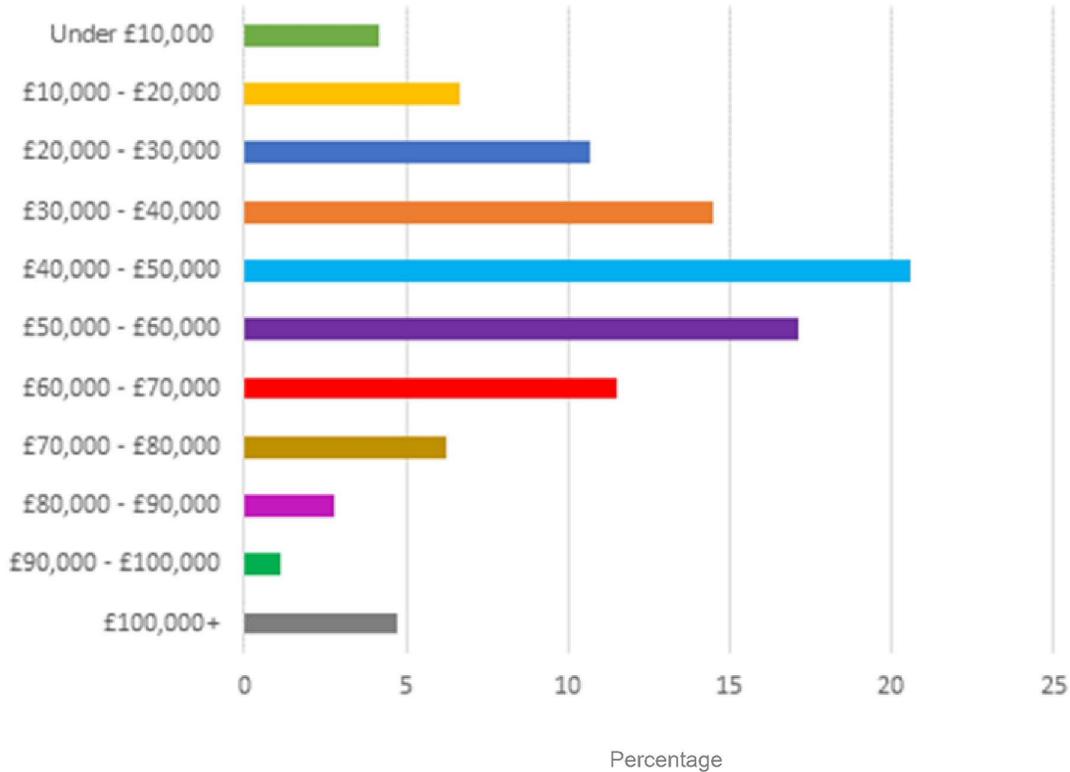
We understand from our discussions last week with your advisors in the Treasury, that the Government has concerns about how to support those freelancers operating as a Ltd/PSC due to the difficulty of distinguishing PSC-derived dividends from other dividend income, but you would be open to solutions as to how to easily identify these dividends. We have sought advice from specialist advisors in our sector, who have suggested a means of addressing this for your consideration:

As all dividends should come with a dividend certificate, a portal could be set up, connected to the HMRC online self-assessment portal, which asks directors of a Ltd/PSC to upload their confirmation paperwork (e.g. share registers of the company, dividend certificate and possibly the corporate accounts to support the dividend). It would then be possible for HMRC to review these as they currently do for self-assessment (e.g. on a risk and sample basis). Alternatively, a requirement could be for the dividend from the PSC to be independently verified by an accountant, so that HMRC can be assured there is an independent tier of review to fall back on, in case of an error/fraud by the individual.

We have also conducted a survey among our working membership to determine how many of our freelancers are affected. As you will note from the findings, the payment of income as dividends affects a large proportion of our members.

- 95% of respondents fall into two working categories: those who operate as a limited/personal services company (47%), and those who operate as individual freelancers/sole traders (48%).
- 85% of members operating as a Ltd/PSC pay themselves in dividends.
- 92% of those who pay themselves in dividends are able to separate them out from any other dividends they receive.
- Of those operating as a Ltd/PSC the split between those having profits of over and under £50,000 is virtually equal.
- The spread of profit/earnings for all those working as Ltd/PSCs and sole traders combined, ranges predominantly from £20,000-£70,000 as shown below. With the largest number (21%) falling into the £40-50,000 grouping, closely followed by £50-60k (17%) and then £30-40k (14.5%) and £60-£70k (11.5%).

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These survey findings indicate that a large number (43%) of respondents find themselves without work but falling over the £50,000 cut off for support. This is causing considerable concern among freelance workers in the creative industries, who are facing the prospect of months without work but are not eligible for support from the SEISS. We urge you to consider removing the cap for the self-employed to create parity with employed workers. Since the amount of relief that any individual can claim is capped (as is the case for the CJRS) we urge you to consider removing the £50,000 cut-off for the self-employed to create parity with employed workers and to bring all members of our profession within the scope of this relief.

We would be happy to talk to you or your advisors further regarding any of the above, or to provide you with further evidence and insights from our survey.

We thank you in advance for your support.

Yours sincerely,

Andrew Chowns

CEO, Directors UK