

ADVICE

INTRODUCTION

1. We are asked to advise LawWorks in relation to various matters arising in respect of pro bono volunteering by solicitors who may have been furloughed under the Coronavirus Job Retention Scheme (“the Scheme”).

Instructions and summary of advice

2. We are asked to advise on the following specific questions, and in summary, our answers are as follows:

- (i) Is LawWorks considered to be a “connected” organisation to a firm which is a member of LawWorks? If so, what are the implications of this – e.g., does it prevent a solicitor from a member, placed on furlough, from continuing to volunteer with (or in pro bono work facilitated by) LawWorks?*

We consider that LawWorks is unlikely to be “connected” to its member firms within the scope of the Scheme.

- (ii) If a firm or organisation has previously provided pro bono advice to an organisation, which advice was brokered by LawWorks, are the firm and organisation considered “connected”?*

We consider that this is unlikely to cause the firm and organisation to be “connected”.

- (iii) Some of LawWorks’ projects have clients referred by other organisations, for example particular independent branches of the Citizens Advice network. For these projects LawWorks engages the client directly and solicitors volunteer for LawWorks. Would these particular independent*

branches of Citizens Advice and a law firm participating in the project be considered “connected”?

We consider that this is unlikely to cause the firm and the branch to be “connected”.

- (iv) *What, if anything, can a firm or organisation do to enable a furloughed member of staff to participate in pro bono work? For example, can they provide the staff member’s personal contact details to LawWorks? Can they contact furloughed members of staff in order to advertise pro bono work?*

We consider that the organisation can facilitate pro bono work insofar as it does not cause the employee to be doing work for the employer.

- (v) *Is a furloughed solicitor permitted to access any resources available through their firm for the purpose of pro bono volunteering?*

We consider that the Scheme does not preclude employees from using their employer’s resources for any purpose.

- (vi) *Who would insure the advice provided by the furloughed solicitor (see LawWorks insurance policy above)? Can, for example, the pro bono volunteer continue to be covered by a firm or employer’s professional indemnity insurance?*

We consider that the Scheme does not affect the insurance which would ordinarily cover a volunteer’s work. Coverage under the employer’s professional indemnity insurance would depend on the coverage provided under that particular policy.

- (vii) *If a firm and staff solicitor take part in LawWorks project A, can that staff member when furloughed take part in LawWorks project B?*

We consider that the answer to this question will depend on whether they are participating in project B as part of their duties of employment, or to indirectly provide a service to their employer. In principle however, participation by a solicitor alongside their firm in relation to project A, should not of itself mean that that individual is precluded from volunteering in relation to project B.

- (viii) *If a firm takes part in LawWorks projects A and B, can a staff member who has only taken part in Project A take part in project B when furloughed?*

As above, we consider that the answer to this question will depend on whether they are participating in project B as part of their duties of employment, or to indirectly provide a service to their employer. However, if the firm is taking part in both projects A and B and the staff member, having taken part in project A through the auspices of their firm, it will lend weight to an argument that involvement in project B is on the same basis.

- (ix) *How do the answers to any of the above questions vary if the solicitor works at a LawWorks member firm/organisation or not?*

As set out above, our view is that LawWorks membership is unlikely to lead to LawWorks and a firm being a connected organisation. We therefore consider that this fact is unlikely to lead to a different answer to any of the above questions.

- (x) *How can a furloughed solicitor be supervised?*

We consider that the Scheme does not affect the manner in which a furloughed solicitor should be supervised. However, in so far as this is possible (and we recognise that it might not be), supervision should come from outside the firm by which the individual is employed.

- (xi) *How can a furloughed solicitor engage clients?*

We consider that the Scheme does not affect the manner in which a furloughed solicitor may engage clients, save that they should not do so on behalf of their employer firm.

3. Our view is that the answers to these questions require consideration of the following areas:

- a. Whether provision of pro bono legal advice through projects facilitated by LawWorks or other organisations would cause an employee to fall outside the definition of a furloughed employee in paragraph 6 of the Direction (questions (i), (ii), (iii), (vii), (viii) and (ix)).

- b. Whether an employer may facilitate the provision of pro bono legal advice by its furloughed employees (questions (iv) and (v)).
 - c. How specific regulatory requirements relevant to the provision of pro bono legal advice (specifically, provision of insurance, supervision and engagement of clients) may be met whilst an employee is furloughed (questions (vi), (x) and (xi)).
- 4. We have therefore addressed these questions under appropriate headings below.
 - 5. Given the nature of our instructions it is only possible for us to advise in general terms as to the nature and effect of the Scheme in the hypothetical circumstances which we have been asked to consider. As will be seen below, our view is that whether pro bono work done by solicitors is permitted whilst that solicitor is furloughed requires an analysis of the formal links between the person for whom that work is done and the employer firm, and the nature of the work done itself. Our views should therefore not be relied on as formal advice without further consideration of these factors as they arise in each individual situation.

BACKGROUND

LawWorks

- 6. LawWorks is the operating name of the Solicitors Pro Bono Group, a charity with registration number 1064274. It operates to connect volunteer lawyers with pro bono projects by providing a variety of services to member firms. Firms and in-house legal teams may become members of LawWorks by payment of an annual membership fee.
- 7. We are instructed that membership creates no obligations on behalf of the firm, but enables the firm access to LawWorks services, including exclusive participation in various LawWorks pro bono projects, access to professional indemnity insurance to cover participation in projects supported by or registered with LawWorks, and training and support for solicitors undertaking pro bono projects. LawWorks aims to encourage and promote pro bono volunteering generally, not just through its own projects.

The Scheme

- 8. The Scheme was announced by the Chancellor, Rishi Sunak, on 20 March 2020. Guidance as to the operation of the Scheme was first published on 26 March 2020 and has been updated numerous times since.

9. The legislative basis of the Scheme is to be found in delegated legislation made under the Coronavirus Act 2020. Section 76 of the Coronavirus Act provides that “*Her Majesty’s Revenue and Customs are to have such functions as the Treasury may direct in relation to coronavirus or coronavirus disease.*”
10. On 15 April, Her Majesty’s Treasury (“HMT”) made a direction under section 76 of the Coronavirus Act: the Coronavirus Act 2020 Functions of Her Majesty’s Revenue and Customs (Coronavirus Job Retention Scheme) Direction (the “Direction”).
11. The Direction created the Scheme with effect from 1 March 2020 to 31 May 2020. On 17 April 2020 the Chancellor announced that the duration of the Scheme would be extended until the end of June. On 12 May 2020 the Chancellor announced that the Scheme would be further extended until the end of October. Given that extension, it is likely that further guidance will be issued, not least as the details of the Scheme going forward have not yet been determined. This advice is therefore written based on the Scheme and Guidance as it stands on 13 May 2020. Should the extension of the Scheme give rise to new legislation or guidance, it may be necessary to revisit the conclusions that we have set out below.

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Pro bono volunteering by furloughed solicitors

12. In this section we answer questions (i), (ii), (iii), (vii), (viii) and (ix) above.

Construing the Direction

13. The starting point is that the Direction is delegated legislation and is therefore to be construed in accordance with ordinary principles of statutory interpretation. It is the Direction which constitutes the Scheme, not the guidance, and therefore the Direction which determines eligibility for payment under the Scheme.
14. Although the guidance published by HMRC may nonetheless be admissible in construing the Direction. In *Ellis v Bristol City Council* [2007] 1 WLR 1407, at paragraph 27, Lloyd Jones J (as he then was) stated:

“It is, of course, for the courts and not the executive to interpret legislation. However, in general, official statements by government departments administering an Act, or by any other authority concerned with an Act, may be

taken into account as persuasive authority on the legal meaning of its provisions.”

15. The guidance in the present case is likely to be given considerable weight in construing the Scheme for at least the following reasons:

- a. The present national emergency and the extraordinary nature of the legislative response to that situation and its timing.
- b. The fact that the Guidance was published before the Direction was issued with the clear intention that employers act on the basis of the Guidance by deciding to furlough employees at that time (see, for example, the discussion by Snowden J *In the Matter of Carluccio's Limited (in administration)* [2020] EWHC 886 (Ch) at paragraph 35).

Furloughed employees

16. Per paragraph 5(a)(iii) of the Direction, a firm may only make a claim under the scheme in relation to a furloughed employee. The Direction goes on to define furloughed employee in paragraph 6.

17. Paragraph 6.1 defines a furloughed employee as follows:

“An employee is a furloughed employee if –

- (a) the employee has been instructed by the employer to cease all work in relation to their employment,*
- (b) the period for which the employee has ceased (or will have ceased) all work for the employer is 21 calendar days or more, and*
- (c) the instruction is given by reason of circumstances arising as a result of coronavirus or coronavirus disease.”*

18. Paragraph 6.2 expands on the requirement under paragraph 6.1(a) that an employee cease all work:

“An employee has not ceased all work for an employer if the employee works for a person connected with the employer (see paragraph 13.4) or otherwise works indirectly for the employer.”

19. The two issues relevant to whether an employee who provides work for another person while furloughed contravenes paragraph 6.2 of the Direction are therefore (a) whether that work is for a person “*connected with the employer*” or (b) whether that work is done “*indirectly for the employer*”. We will consider each of these issues separately.

Working for a person “connected with” the employer

20. Paragraph 13.4 provides the mechanism for determining whether a person is connected to the employer of a furloughed employee and three potential routes are identified as follows:

“For the purposes of determining whether a person, company or charity is connected with an employer for the purposes of CJRS-

(a) whether a person is connected with an employer must be determined in accordance with section 993 of the Income Tax Act 2007;

(b) without prejudice to paragraphs 13.4(a) and 13.4(c), whether a company is connected with an employer (where the employer is a company) must be determined in accordance with section 1122 of CTA [referring to the Corporation Tax Act 2010];

(c) without prejudice to paragraphs 13.4(a) and 13.4(b), whether a charity is connected with an employer (where the employer is a charity) must be determined in accordance with section 5 of SCDA [referring to the Small Charitable Donations Act 2012] construed as if-

(i) references to a tax year in that section were omitted, and

(ii) subsection (7) of that section were omitted.”

Which definition of “connected with” applies?

21. The most likely route applicable to LawWorks and the law firms that comprise (at least part of) its membership is that set out at paragraph 13.4(a) – it is unlikely that such firms are companies within paragraph 13.4(b) and they are even less likely to be charities within paragraph 13.4(c). One is therefore directed to section 993 ITA in order to consider the question of whether LawWorks is “connected” with the employer of furloughed individuals.

Section 993 ITA

22. The relevant parts of section 993 ITA are as follows:

- (5) *A company is connected with another company if—*
 - (a) *the same person has control of both companies,*
 - (b) *a person (“A”) has control of one company and persons connected with A have control of the other company,*
 - (c) *A has control of one company and A together with persons connected with A have control of the other company, or*
 - (d) *a group of two or more persons has control of both companies and the groups either consist of the same persons or could be so regarded if (in one or more cases) a member of either group were replaced by a person with whom the member is connected.*
- (6) *A company is connected with another person (“A”) if—*
 - (a) *A has control of the company, or*
 - (b) *A together with persons connected with A have control of the company.*
- (7) *In relation to a company, any two or more persons acting together to secure or exercise control of the company are connected with—*
 - (a) *one another, and*
 - (b) *any person acting on the directions of any of them to secure or exercise control of the company.*

23. Subsection (5) applies to determine whether a company is connected to another company. Subsection (6) applies to determine whether a company is connected to a person. Both require determination of the locus of control of the company. “Connection” is founded on the basis of common control between the employer and the putative connected entity.

Section 1122 CTA

24. In the unlikely event that one is considering the question of connection based on the employer being a “company” and therefore potentially falling within paragraph 13.4(b) of the Direction, the statutory route leads to section 1222 CTA. However, given that subsections 1222(2) to (4) CTA are identical to those contained within subsections 993(5) to (7) ITA, the end result of the analysis will be no different – one is still looking at common control across the two entities.

“Control”

25. Control as defined for ITA purposes is in section 995(2):

(2) In relation to a body corporate (“company A”), “control” means the power of a person (“P”) to secure–

(a) by means of the holding of shares or the possession of voting power in relation to that or any other body corporate, or

(b) as a result of any powers conferred by the articles of association or other document regulating that or any other body corporate,

that the affairs of company A are conducted in accordance with P's wishes.

26. Section 1124(2) CTA is in identical terms.

27. A general overview of section 1124 CTA was provided by Henderson LJ in *Farnborough Airport Properties Company v HMRC* [2019] EWCA Civ 118, [2019] STC 517:

“The definition is thus concerned with the power of a person to secure that the affairs of the subject company are conducted in accordance with that person's wishes. Such power must be exercisable in one or other of the specified ways, the first of which depends on the holding of shares or the possession of voting power, and the second of which depends on the exercise of any powers conferred by the articles of association or by any “other document” which regulates that or any other company. In very broad terms, it would seem that the former limb of the definition is looking at the ability to exert control at shareholder level, for example by taking steps to appoint or remove directors, while the second limb focuses on the exercise of powers conferred by the articles or any other document which regulates the company's affairs, typically at board level. In either case, however, the person exerting the control must

thereby be able to achieve the result that the company's affairs are conducted in accordance with his wishes.”

Working indirectly for an employer

28. The Direction does not define what constitutes work done “indirectly for” an employer. In our view it is clear that this broad term is intended to disallow claims made where the purpose of the Scheme has been circumvented. In short, the purpose can be stated to provide income from the state where the employer does not earn anything from the activities of the furloughed employee and is intended to apply in circumstances in which individuals were otherwise likely to lose their employment as a result of redundancy – again, it would be inconsistent with a potential redundancy situation if in fact employees were working indirectly for their employer whilst on furlough.
29. Working indirectly would, for example, be likely apply if a furloughed employee were to set up a separate corporate entity for the purpose of providing the same services to their employer which were formerly provided under a contract of employment. It may be possible to set up such an entity such that it is not “connected” with the employer in the manner outlined above. In such circumstances, we consider that the employee would likely be working indirectly for their employer within the meaning of the Direction. The employer would be profiting from the activities of the furloughed employee in circumstances in which that employee’s wages were heavily subsidised by the use of public money.
30. However, in cases which are not so obviously contrary to the purpose of the Scheme, our view is that the Guidance is likely to provide the starting point for a construction of this limb of paragraph 6.2 of the Direction.
31. The Guidance does not use the phrase “works indirectly for”. In its place, the Guidance makes consistent use of the phrase “*provide services to or generate revenue for, or on behalf of your organisation or a linked or associated organisation.*” This phrase appears intended to cover both ways in which the purpose of the Scheme may be undermined as set out in paragraph 6.2 of the Direction – working for a connected person or otherwise working indirectly for the employer. The phrase appears in the guidance for employers under the following headings:

“If your employee does volunteer work”

“If your employee undertakes training”

“Furloughed employees working as union or non-union representatives”

32. Similar phrasing is also used in the guidance for employees in relation to training and voluntary work, union or non-union representative duties.

33. As set out above, we consider that the guidance issued by HMRC as to the operation of the Scheme is likely to given persuasive weight in construing the Scheme where the Direction uses terms which are unclear in scope. We therefore consider that in most cases, the question as to whether an employee is indirectly working for their employer will be determined by whether that employee’s activities generate revenue for or provide services to their employer, notwithstanding the fact that those activities are not carried out for their employer or a connected person.

Voluntary work

34. The Direction is silent as to whether a furloughed employee may provide voluntary work to any organisation. However, guidance is provided in the guidance for employees and guidance for employers. As at the date of this advice, the guidance to employees states as follows:

“Once you are on furlough you will not be able to work for your employer. You can undertake training or volunteer subject to public health guidance, as long as you’re not:

- *Making money for your employer or a company linked or associated to your employer*
- *Providing services to your employer or a company linked or associated to your employer”*

35. The guidance for employers states as follows:

“If your employee does volunteer work

A furloughed employee can take part in volunteer work, if it does not provide services to or generate revenue for, or on behalf of your organisation or a linked or associated organisation. Your organisation can agree to find furloughed employees new work or volunteering opportunities whilst on furlough if this is in line with public health guidance.”

Is LawWorks considered to be a “connected” organisation to a firm which is a member of LawWorks?

36. As set out above, determination of whether an employee is connected depends on whether there is a relationship of control between the employer and the other person.
37. In our view, the mere fact that a firm is a member of LawWorks is highly unlikely to give rise to the necessary relationship of control. We are instructed that the membership agreement between LawWorks and its member firms brings no obligation and creates no contractual relationship between the firm and LawWorks. On that basis, neither LawWorks nor the member firm have any power to ensure that the other’s affairs are conducted in any manner, let alone in accordance with their wishes.
38. However, even if the membership agreement is a contract between the member firm and LawWorks, this contract is unlikely to be considered to give either party the power to ensure that the affairs of LawWorks are conducted in accordance with the member firm’s wishes.
39. It follows that our view is that LawWorks are unlikely to be considered ‘connected’ to their member firms.
40. We are also of the view that the provision of voluntary work through LawWorks is unlikely to be regarded as making money or providing services to an employer. It does not appear to us that undertaking such work does anything to offend against the principles of the Scheme or the guidance issued alongside it. We would add that further protection from any suggestion of abuse would be provided if employers ensured that furloughed solicitors truly were volunteers – in other words, they were not in any way directed by their employers to undertake such work.

If a firm or organisation has previously provided pro bono advice to an organisation, which advice was brokered by LawWorks, are the firm and organisation considered “connected”?

41. Our view is that where the only contact that exists between a firm and another organisation is that employees of the firm have previously provided pro bono advice to an organisation, this is very unlikely to cause the firm to be connected to that organisation. There may be some form of quasi-client relationship but not one of ‘control’.

Are independent branches of Citizens Advice and a law firm participating in LawWorks’ projects considered “connected”?

42. Similarly, in this scenario there is no document which provides the firm or the organisation with any right to compel the other to carry out any actions whatsoever. As above, we consider that where a firm or organisation cannot compel the other to carry out any specific action then the two cannot be considered connected with one another.

If a firm and staff solicitor take part in LawWorks project A, can that staff member when furloughed take part in LawWorks project B?

43. Our view is that the answer to this question depends on whether, in taking part in project B, the member of staff is either working directly for their employer or working indirectly for their employer. The mere fact that a solicitor may, through their firm, have taken part in project A does not of itself an answer to the question of whether they can or cannot take part in Project B.

44. If the member of staff participates in project B as part of “work in relation to their employment” (per paragraph 6.1(a) of the Direction) then they will not be a furloughed employee. For example, where an employer requires its employees to carry out a specified number of hours’ participation in pro bono projects, and their participation in project B is a means by which they meet that requirement, then in our view the member of staff is likely to be participating in project B in relation to their employment.

45. If, in participating in project B the member of staff provides a service to their employer then we consider that they would not be a furloughed employee by virtue of the second limb of paragraph 6.2. Our view is that this is not a question that can be answered in the abstract. The issue of whether a service is provided to the employer is likely to be a question of fact in each individual case. However, we consider that it is likely that there must be some identifiable benefit to the employer derived from the work done by the furloughed employee for that employee to be providing a service to their employer.

If a firm takes part in LawWorks projects A and B, can a staff member who has only taken part in Project A take part in project B when furloughed?

46. Our view is that it is more likely that a member of staff will be considered to be carrying out work in relation to their employment where they participate in a project in which their firm has previously participated. However, as with the circumstance above, we consider that this is not a question to which a definitive answer can be given in the abstract. It is likely to be a matter of fact and degree whether an employee is doing work in relation to their employment or working indirectly for their employer in any individual case.

47. As a general principle though, it does seem to us that where an individual has previously provided services through their firm in relation to project A, if the same firm then takes part in project B, it lends support to an argument that the same individual working on both projects is working on the same basis – that is, they are working ‘in relation to their employment.’

How do the answers to any of the above questions vary if the solicitor works at a LawWorks member firm/organisation or not?

48. Our view is that the fact that a furloughed employee works at a LawWorks member firm is likely to be relevant in determining whether the employee is carrying out that work in relation to their employment or whether the employee works indirectly for their employer. However, for the reasons set out above, we do not consider that an employer organisation would be considered to be connected to either LawWorks or any other organisation because that employer is a LawWorks member.

What can an employer do to facilitate its employees providing pro bono legal advice?

49. In this section we answer the following questions

- a. *What, if anything, can a firm or organisation do to enable a furloughed member of staff to participate in pro bono work? For example, can they provide the staff member’s personal contact details to LawWorks? Can they contact furloughed members of staff in order to advertise pro bono work?*
- b. *Is a furloughed solicitor permitted to access any resources available through their firm for the purpose of pro bono volunteering?*

Contact

50. The Direction is silent as to the nature and extent to which an employer may remain in contact with its employees while those employees are furloughed. The Direction defines whether an employee as furloughed by the person for whom any work is directly or indirectly carried out.

51. However, the Direction does not prohibit furloughed employees from carrying out other work whilst furloughed, so long as that work does not cause the employee to fall outside the definition in paragraph 6. Further, the Guidance expressly allows for firms to facilitate volunteering by their employees by finding them opportunities for voluntary work.

52. We therefore consider that if a firm were to provide contact details to LawWorks or contact furloughed staff to advertise pro bono work, that would not prevent those employees from being furloughed employees within the meaning of the Scheme or from undertaking voluntary work based on details passed on to them by their employer. The nature of a firm's contact with furloughed employees is likely to be a relevant factor in considering whether it has instructed its employees to carry out work, or whether the work constitutes the indirect provision of services, but we do not consider that employers are unable to contact their employees about such matters when those employees are furloughed. We also think it important to ensure that volunteering is exactly that – employers should avoid doing anything which creates a sense of obligation on the part of the volunteer. To that end, the employer should avoid as far as possible, keeping a record of volunteer hours worked unless this is for entirely non-work-related reasons.

Resources

53. Similarly, our view is that employees are permitted to access resources available through their firm for the purpose of pro bono volunteering.

54. Provided that an employee is entitled to use company property for pro bono work carried out for third parties, we consider that there would be no reason that doing so would cause the employee to be considered to be carrying out work for their employer, either directly or indirectly. However, as above, our view is that use of company property may be a relevant factor in determining whether an employee in fact carries out work in relation to their employment, or works indirectly for their employer. It may therefore be prudent for employers to make express provision for employees who wish to access resources to enable them to carry out voluntary work to do so in a way which makes clear that the access is being provided specifically for volunteering purposes connected with that person's voluntary work – perhaps by using separate log-in details. Again, it would help if such access were not monitored in so far as the employer can avoid this.

Regulatory requirements

55. In this section we answer the following questions

- a. *Who would insure the advice provided by the furloughed solicitor (see LawWorks insurance policy above)? Can, for example, the pro bono volunteer continue to be covered by a firm or employer's professional indemnity insurance? (Question (vi))*

b. How can a furloughed solicitor be supervised? (Question (x))

c. How can a furloughed solicitor engage clients? (Question (xi))

General views

56. The Direction is silent as to how an employee in a regulated industry may continue to comply with any requirements imposed as a result. Our view is therefore that the Direction does not affect the need to comply with such requirements, or the manner in which compliance may be achieved.

57. We consider that where employees carry on regulated work whilst furloughed, the manner in which they ensure compliance with their regulatory obligations is likely to be a factor relevant to compliance with paragraph 6.2 of the Direction. However, the Direction itself does not prohibit these regulatory requirements from being met in any particular manner so long as that does not cause the employee to contravene paragraph 6.2.

58. Our advice in this section can therefore only be given in the most general terms. We consider that the fact an employee is furloughed does not affect the obligations to which they would ordinarily be subject. However, the manner in which they comply with those obligations may be relevant to determining whether the employee is carrying out work in relation to their employment or working indirectly for their employer.

Who would insure the advice provided by a furloughed solicitor?

59. Our view is that the answer to this question depends on the scope of a firm's insurance policy. If the nature of the work that is done means that it falls outside a firm's professional indemnity insurance then appropriate alternative insurance must be in place. Conversely, if voluntary work by one of the firm's solicitors does fall within the scope of such policy then, whilst this may provide some evidence that in volunteering, they are working indirectly for their employer and/or have not been 'instructed to cease all work in relation to their employment, we do not think that the insurance cover should change what would otherwise be the answer to those questions.

60. Although we consider that there is nothing in the Direction which precludes an employee from continuing to benefit from a Professional Indemnity Insurance policy provided by their employer which provides cover for work which that employee does which is not work for their employer, we recognise that this situation is unlikely to occur in practice.

61. It may therefore be more likely that work done by furloughed solicitors will need to be insured under policies taken out by the organisations for whom they provide pro bono services.

How can a furloughed solicitor be supervised?

62. Unsurprisingly, the Direction does not specifically address the manner in which work which can be done by furloughed employees may be supervised where that is required. However, we consider that the manner in which any required supervision is provided may be a relevant factor in determining whether that work is done directly or indirectly for the employer.

63. If a furloughed solicitor was to be supervised by an individual from within their own firm, it does provide some indication that they are carrying out work in relation to their employment. However, as with the insurance question, we do not think that this should be a 'game changer' where supervision is for regulatory purposes and is carried out in the context of genuine volunteering by the individual concerned.

64. Again, in terms of risk management, if regulatory supervision could be carried out by an individual from another firm, this would further reduce the prospect of any conclusion that the volunteer was carrying out work in relation to their employment. We would however put this into the category of 'nice to have' and we recognise that the practicalities of such arrangements may mean that this cannot happen in practice.

How can a furloughed solicitor engage clients?

65. Clearly a furloughed solicitor could not engage clients on behalf of their employing firm, as to do so would be to do work on behalf of their employing firm and hence would cause the employee not to be a furloughed employee within the meaning of paragraph 6.1(a) of the Direction.

66. However, we consider that the Direction does not prohibit a furloughed solicitor engaging clients on behalf of another organisation, or even on their own behalf where that would otherwise be allowed by Regulation 10 of the SRA Authorisation of Individuals Regulations.

67. In such circumstances, we consider that the employee would be providing work for that other organisation or for their client directly, rather than for their employer. Provided that the organisation is not connected with the employer as outlined above, we consider that engaging clients on behalf of an organisation that is not their employer would not

prevent an employee from being a furloughed employee within the meaning of the Direction.

CONCLUSION

68. If we can be of any further assistance, please do not hesitate to contact us in Chambers. We recognise that the advice that we have given may be regarded as rather different from that which was received by LawWorks via the HMRC webchat. That advice will no doubt hold good where there is evidence of a strong pre-existing relationship between employer and pro-bono organisation. However, it is also right that that advice is somewhat generic in nature and not given in the knowledge of how LawWorks operates. We also take comfort from the fact that where solicitors who are furloughed genuinely volunteer to undertake pro-bono work, it would be very unattractive for HMRC then to seek to say that that such public-spirited gestures mean that their employers have abused the Scheme.

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13 May 2020