

EXCLUDED

Limited Company Directors Excluded from Meaningful Government Covid-19 Financial Support

Overview

Significant confusion exists around the status of limited company directors and this is also tied into the exclusion in government Covid-19 financial support schemes in relation to this category. Limited company directors are often bundled into the category of the self-employed, yet technically they are not. Those paid part of their salary as PAYE are employees of their own companies, and this is the standard setup for small limited company directors. Some have been entitled to furlough, but only in relation to their basic PAYE salaries, others have not, as elaborated below, while the Self-Employment Income Support Scheme does not apply.

While most have access to CJRS for their PAYE salary, 80% of this is typically £575/month. However, many simply cannot furlough themselves, for fear of losing their business, or can only furlough themselves in a limited capacity under the flexible furlough arrangements brought in as of 1 July 2020, thus receiving considerably less support. ExcludedUK therefore considers this group to be excluded, in line with the Treasury Committee report of 15 June 2020¹.

Misconceptions exist around limited company directors and those affected are not necessarily high earners – beauticians, creative professionals, electricians and plumbers, small boutique and independent stores, events companies, family run businesses, independent teachers and educators, IT professionals, travel companies, and some very unique and specialist companies. ExcludedUK's latest survey data from 5,006 respondents shows that 84% of those excluded from meaningful support across all categories of exclusions had pre-Covid incomes of £50,000 or less².

¹ <https://committees.parliament.uk/publications/1446/documents/13238/default/>

² This survey is still ongoing and final results will be published 24 February 2021. This figure is based on 5,006 responses received thus far. This survey has been targeted specifically at those affected by exclusions in the schemes rather than taking a section of society at large

These are people with entrepreneurial spirit serving their communities and beyond, people who took the plunge to start something new, to take a risk on an idea or follow a dream, part of the essential fabric of our communities and integral part of our economy.

As financial expert Martin Lewis (Money Saving Expert) pointed out in the Treasury Committee meeting of 9 December 2020:

“The one [category] that we need to focus on are the people who were able to support themselves before, who were perfectly financially independent without mainstream support from the State, who were in businesses and sectors like travel, events or entertainment or hospitality and who solely because of this pandemic are not able to support themselves, and my concern is it would be short-sighted of the State to provide them with no support at all so they continue to languish and they move into that category of people that will permanently be in financial trouble and will permanently need to be a burden on the State. And by providing short-term support to get them through to the end of this pandemic, and that includes limited company directors, it includes the newly self-employed, it includes the other excluded categories, all of whom were in viable work, to use the Chancellor’s term, is a short-sighted mistake that will cost us more in the long run. We need to get people over this hump, and then back to their jobs, back working, back paying taxes.”³

This does in fact apply to all the 3 million excluded across all employment statuses.

He went to state on the Money Saving Expert website:

“On those excluded from coronavirus support: ‘We may catastrophise people’s finances if we don’t give them support in the short term’. Martin pointed out that for some people who were excluded from other forms of help, such as SEISS and universal credit, bounce back loans were their only option to get financial support.”⁴

It should be emphasised that taking on debt or deferrals are not the solution. Many who took out Bounce Back Loans last year are starting to receive reminders that their first repayments are due in the next few months. For businesses that remain excluded, the question of how to be in a position to repay these loans is ever-present.

It should also be noted that many limited companies are set up as such for the following reasons:

- they are required to by their clients or to take on a new contract
- they do so on the advice of their accountants
- doing so shifts liability to the company rather than the individual
- to come across more professional to prospective clients
- they may be required to do so in order to be eligible for various industry funding opportunities (frequently not available to the self-employed)

It is also a myth that limited company directors have a tax advantage. Dividend income that falls within one’s Personal Allowance (£12,500) and dividend allowance (£2,000) is not taxed, but any amount beyond this is taxed (7.5% for basic rate taxpayers, 32.5% for high

³ <https://youtu.be/ZpMUD9TPSXI>

⁴ <https://www.moneysavingexpert.com/news/2020/12/martin-lewis-treasury-committee-coronavirus-economic-impact/>

rate taxpayers and 38.1% for additional rate taxpayers). This is in addition to Corporation Tax paid on profits (19%).

To furlough or not to furlough?

While a small limited company director can furlough themselves on their basic PAYE salary, they cannot continue to work and therefore cannot maintain contact with any clients (so cannot respond to any quote requests, for example) and cannot engage in marketing activities (such as websites updates, social media, newsletter mailings). Essentially, it means abandoning one's business exactly at a time when one needs to do all one can to survive. So this has left small limited company directors in a quandary as to whether to furlough and leave their businesses hanging or forego the small amount of furlough to try to save their businesses. This is not in line with the Self-Employment Income Support Scheme (SEISS) whereby the self-employed who qualify can continue working.

It is also important to recognise the wider impacts on families, households and indeed employees and supply chains. A director of a small limited company may be able to furlough their staff, but if they are not receiving meaningful support themselves, their employees' jobs are in fact at risk, contrary to the Chancellor's assertion that the schemes were all about saving jobs. Those freelancers, sole traders and other limited companies in the supply chain are all also at risk. Some of those limited companies that are clients of other limited companies may have already folded.

In addition, issues of competition and late payment also come into play (equally affecting the self-employed). In some cases, pandemic budgets have decreased, pushing limited companies providing services to others to lower their rates to their clients, setting a precarious precedent for their future growth. A self-employed contractor providing the same work as a limited company director benefitting from SEISS can continue to work, while a limited company director faces the serious dilemma of whether to continue to work on minimal furlough but then being unable to work, or not to receive any support and try and secure work by making themselves available. Issues of late payment have also come to the fore. Late payment is already an eternal obstacle for small businesses' cashflow. The pandemic has only exacerbated this.

It is important to recognise that those limited company directors who have furloughed themselves will be included in statistics of those who have benefitted from CJRS. However, we would stress that this support is not meaningful and it is therefore important to be mindful that being included in the figures of those who have received support is not accurate in relation to this category.

How many are affected?

According to the Association of Independent Professionals and the Self-Employed (IPSE), there were 710,000 sole limited company directors in 2019, based on ONS figures, and this figure was adopted by in the Treasury Committee report of 15 June 2020⁵. However, BEIS Business Population Estimates 2020 state there are 946,000 solely owned companies. There are a total of 2 million small limited companies in the UK. However, not all

⁵ <https://committees.parliament.uk/publications/1446/documents/13238/default/>

will have been affected, the majority of those affected being those that are solely owned as well as some other small limited companies such as small family businesses⁶.

More broadly, ExcludedUK estimates that at least 3 million individuals and businesses across all employment statuses have been excluded from meaningful government support⁷. This was reinforced by the figure of 2.9 million concluded by the National Audit Office in their report of 23 October 2020⁸. Standard Life Foundation's report from 25 June 2020 assessed that 3 million households were 'unprotected'⁹, while a recent YouGov survey conducted for Standard Life Foundation (January 2021) pointed to 3.8 million having lost earnings as a direct result of the pandemic, either not having been furloughed or been eligible for SEISS, nor having been able to claim Universal Credit¹⁰.

ExcludedUK's data is based on readily available statistics from HMRC, ONS, BEIS Business Population Estimates, IFS and the Treasury Committee report of 15 June 2020.

Business Grants

Support for limited companies through business grants has also largely excluded limited companies that are home-based, mobile, use co-working spaces or rent from a landlord who pays the rates – essentially businesses without rateable premises.

Only in certain cases have some businesses benefitted from the initial discretionary grants disbursed through local councils, the Local Restrictions Support Grant (LRG). Criteria have not been applied uniformly from one council to the next, resulting in a postcode lottery.

More recently, more businesses have been able to access the Additional Restrictions Grant (ARG) implemented due to recent lockdowns. However, again this has resulted in a postcode lottery, despite the fact that these grants were intended for businesses thus far not in receipt of support. The resulting disparities across councils has been unfair.

ExcludedUK would like to see a uniform approach to enable all affected small businesses to be eligible for these grants across all councils. Lobbying work is ongoing on this matter.

Categories of Excluded Small Limited Company Directors

Limited Company Directors have been excluded from the government Covid-19 support schemes due to four particular scenarios, identified as follows:

1. Directors Paid in Dividends

The exclusion concerning dividends and limited company directors has been widely reported and is the situation that is most commonly associated with limited company directors who typically pay themselves in dividends alongside a basic PAYE salary. This setup is standard

⁶ <https://www.gov.uk/government/publications/business-population-estimates-2020/business-population-estimates-for-the-uk-and-regions-2020-statistical-release-html>

⁷ <https://www.excludeduk.org/three-million-breakdown>

⁸ <https://www.nao.org.uk/wp-content/uploads/2020/07/Implementing-employment-support-schemes-in-response-to-the-COVID-19-pandemic.pdf>

⁹ www.aberdeenstandard.com/docs?documentId=GB-280920-130078-1

¹⁰ www.standardlifefoundation.org.uk/en/our-work/publications/people-excluded-from-governments-income-replacement-schemes

and is widely advised by accountants. While in the past this may have been seen to confer a tax advantage, this is no longer the case with changes in tax in more recent years. Profit from which dividends are drawn is subject to Corporation Tax, and dividends are taxable income for a director.

A basic PAYE salary is typically around £720 per month. A director can only pay themselves dividends when their company is in profit. It is therefore down to the hard work of a company director in generating revenue that enables them to draw dividends. Revenue will always fluctuate and thus dividends will fluctuate and can only be drawn when in profit.

While it is possible for directors to furlough themselves, they can only do so on their PAYE income and cannot continue to work, bar fulfilling statutory duties.

Flexible furlough was introduced on 1 July 2020 which has offered some minimal help. So for instance, a director could work two days a week and furlough for the rest of the time, and be paid approximately £400 per month. However, in practice, this is not so straightforward as for many it is unpredictable as and when a request for a quote may come through or any other matter that would require a director to come off furlough, and it requires far more flexibility on the part of the director than an employee on flexible furlough.

Most importantly, however, £575 per month cannot be considered to be meaningful support, hence furloughed directors are still considered to be within the categories of those excluded from meaningful government support.

Some limited company directors only pay themselves in dividends, for example if they have other employment whereby they do not need to draw a basic salary. In such situations, there is no support available at all in relation to their salary from dividends.

2. Directors Paid PAYE annually

Some directors opt to be paid annually, often due to seasonal fluctuations in revenue. As such, they were not even eligible for furlough due to the RTI cut-off date of 19 March 2020. That has since changed with the latest extension to the scheme, but these directors remained excluded from the schemes prior to November 2020.

3. Directors of New Businesses

Just as the newly self-employed have been excluded from SEISS, so are new limited companies excluded from even being able to access CJRS. PAYE employees needed to be on RTI by 19 March 2020 to be able to qualify for furlough. New businesses would also not have been able to benefit from Bounce Back Loans since these were determined on the basis of the previous year's turnover. And while the Government launched the Future Fund for start-ups, this requires a minimum of £250,000 equity investment. In the case of excluded new businesses, we are looking at non-investment start-ups. Many new businesses will start up on the basis of hard-earned income on the part of its owner-director(s).

4. Directors of Companies Not in Profit

This category overlaps with new businesses while also including businesses going through a growth phase - many companies may start or be boosted at a later stage through personal investment of one's own hard-earned savings, for example. In such cases, limited company directors will see their income through what are technically repayments to a director's loan. However, this is still income based on the revenue generated by the business and these directors must equally be supported. Many small limited companies may not have been in profit for a number of years, but remain completely viable trading entities.

5. PAYE Freelancers/IR35 and Limited Companies

Some who operate as limited companies have been forced to work as PAYE freelancers, often told that this falls under IR35 requirements. This has been the case for some working for the BBC, for example. In this situation, these limited company directors have had to work on a fixed term contract as PAYE, taxed at source, and therefore could not be furloughed from their own companies.

6. Maternity/Parental Rights

Pregnant women and new parents who are limited company directors have been disproportionately affected by lack of support. For those whose businesses have suffered detrimental damage as a result of Covid-19, they have not been in a position to pay themselves Maternity Pay from their own businesses or build up reserves to cover their maternity period since the pandemic hit.

The only support they can receive is the limited furlough on the basic PAYE portion of their income; for those who are annually paid PAYE, they have been unable to receive any furlough, until the extension of CJRS in November 2020. However, as is the case for many limited company directors as stated above, they have often found themselves in the position of having to choose between working to save their businesses, whilst they can still work, in order to have a business to return to after their maternity period, or abandoning their businesses to receive what little support they can. This situation was only slightly improved with the introduction of flexible furlough in July 2020, enabling directors to work partially but then lose that from their furlough calculations.

Moreover, new parents in this position cannot simply look for other work, being in their maternity, parental or adoption leave period. Nor are they entitled to Statutory Maternity Allowance as is the case for the self-employed.

Entrepreneurs should not be discriminated against for becoming new parents and losing their incomes as a result of the pandemic. Nor is it reasonable to expect women to put off having a family due to the lack of support from the Government more broadly.

Case Study Examples

- Limited Company Director paid PAYE annually:
A sole limited company director paid annual PAYE so has been unable to access anything from CJRS until December and now able to claim £575 per month. As a human performance coach in sport, work is down by ~70%. His wife works part-time as a hairdresser and has therefore been unable to work much since the pandemic

hit. They are surviving on the back of a bank loan, a loan from her family, kindness of friends, and half of his mother's pension every month. With three children and his elderly mother living with them, their outgoings are high, yet was left with no support until December, and since then only minimal support

- Limited Company Director paid in dividends and basic PAYE salary:
A limited company director working in automotive engineering saw contracts stopped by the end of March and no work since then since the automotive industry has been hit hard. He is only able to access £550/month by furloughing himself. He does not have premises and therefore cannot access any business grants. He took a Bounce Back Loan and his company carries debt for the first time since it started ten years ago. He is not eligible for Universal Credit as his wife works putting them over the £16,000 limit. He is surviving by using inheritance from his mother which was intended for further education of his three children
- Limited Company Director of a new business:
Left stable employment of several years to set up an IT business from hard-earned savings so as not to start a business in debt, but unfortunately this was just before Covid hit. Within a few days all business had gone, over time savings and a Bounce Back Loan were depleted. The outcome was being forced to sell business assets, personal possessions, and the business is at serious risk
- Limited Company Director surviving on Universal Credit and food bank:
Working in the events industry, with no PAYE as a sole director, single parent claiming Universal Credit but no other support except. The tiny bit of work she had has dried up and is now using a food bank and having to rely on her father's pension to cover her mortgage. HMRC state one is not self-employed as a limited company director, yet Universal Credit treat small limited company directors as self-employed
- Limited Company Directors (husband and wife) paid PAYE annually, extremely clinically vulnerable:
A husband and wife run an electrical contracting company. They are also both self-employed. She is extremely clinically vulnerable. They both took the decision to leave full-time employment ten years ago when her health began to deteriorate and thus be able to work around her disability. Paid PAYE annually, they could not access the furlough scheme until December which would have given them around £575/month. In addition, their self-employment trading profits are less than 50% and therefore cannot access SEISS. They could not access Universal Credit. As a shielder, she should have been able to access Statutory Sick Pay, but since this is paid by the employer, their business had no reserves due to Covid from which to cover this. They have three employees and two sub-contractors which are all affected. They have two young children to support

Potential Solutions

1. Extend SEISS to Small Limited Company Directors

While small limited company directors are effectively employees of their own company, drawing a basic PAYE salary, the manner in which they work is akin to being self-employed, able to draw dividends only when the company is in profit, and therefore with fluctuations in salary dependent on the revenue generated by the work of the director.

If SEISS had been extended to include Small Limited Company Directors (who are frequently referred to as self-employed directors, although technically not quite correct), they would have been able to access support based on their total income, which would have been a fair implementation of the scheme to support those who fall within this category.

2. 'Pay Now, Claw Back Later' proposal

IPSE, the Association of Independent Professionals and the Self-Employed put forward this proposal which would be accompanied by self-certification. This proposal was adopted by the Treasury Committee in their report of 15 June 2020¹¹, based on the fact that a high degree of compliance would be expected of limited company directors who already have legal obligations. However, this was rejected by the Chancellor based on his assertion that this would carry the risk of fraud and would be too "resource-intensive" to implement, while reiterating that it would carry greater complexity "while HMRC 'could not efficiently or consistently verify to ensure payments were made to eligible companies for eligible activity' since HMRC cannot distinguish between such dividends and those from other sources, nor between dividends relating to employment income as opposed to returns from other corporate activity."¹²

3. Director's Income Support Scheme (DISS) proposal

The proposed Director's Income Support Scheme (DISS) was designed by Rebecca Seeley Harris of ACCA and is supported by Forgotten Ltd, Federation of Small Businesses and ACCA. While ExcludedUK supports any measures that will bring help to any individuals who have been entirely or largely excluded from support during the pandemic, a few key points must be noted.

The scheme is modelled on SEISS and therefore does facilitate implementation by mirroring an existing scheme. However, there are concerns that this may carry an implicit suggestion that would suit the Treasury, to the effect that SEISS was fit purpose, which could potentially compromise any further proposals to fix the gaps in SEISS. This also means that some exclusions relating to SEISS will also apply to DISS. A director must earn at least 50% of their income in this role and they must be a person of significant control (PSC). As the scheme was proposed in an open manner, there is concern that being modelled on SEISS, the Treasury could impose the same £50,000 cap that applies to SEISS which would exclude some limited company directors.

Whilst the scheme removes any focus on dividends, it is essentially those directors who were excluded because of dividends who would be helped. New businesses and those not in profit would remain excluded and those with other income eg. other PAYE employment, pensions, Carer's Allowance, bereavement payments and rental income.

¹¹ <https://committees.parliament.uk/publications/1446/documents/13238/default/>

¹² www.ipse.co.uk/ipse-news/news-listing/government-treasury-committee-disappointing.html

The concern that has been expressed by many affected individuals must be taken on board such that any scope for the Treasury to impose further restrictive eligibility criteria in line with SEISS is minimised and other proposals for other excluded groups are not dismissed.

4. Limited Company Director's Support Scheme in Northern Ireland (LCDSS)

After much lobbying, the Limited Company Director's Support Scheme in Northern Ireland came into effect on 21 January 2021. The scheme provided an initial one-off taxable grant of £3,500 to company directors meeting the following criteria:

- resident of Northern Ireland work in the company/companies named in the application
- a Person with Significant Control (PSC - ie. holding more than 25% of shares in the company)
- at 31 March 2020, a director must have been paid remuneration (salary via PAYE) or dividends exceeding £4,375 per annum from the company/companies listed in the application
- at 31 March 2020 at least 50% of income had to come from director's remuneration (salary) and dividends.
- If a director of more than one company then salary and dividends from all companies had to represent at least 50% of total income
- projected salary and dividends from the company (including any furloughed income received) for 2020-2021 financial year had to be 40% lower than it would have been had Covid-19 not happened
- total projected taxable income for 2020/21 had to be less than £50k
- the company/companies have to be currently trading but impacted by reduced demand due to Covid-19, or previously trading but temporarily unable to due to Covid-19 and intend to continue trading

Conclusion

The outcome is that small limited companies (and other businesses operated through sole traders or other self-employed businesses) are in peril more than ever and the lack of support for limited company directors is completely at odds with the need for economic recovery and future growth. Small limited companies and their directors need vital assistance in order to emerge from this crisis in the best shape possible.

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