



EMPLOYMENT TRIBUNALS

Claimant: Mr I Kirby

Respondent: Lancaster University

Heard at: Manchester Employment Tribunal

On: 12 March 2021

Before: Employment Judge Dunlop (sitting alone)

Representation

Claimant: In person

Respondent: Mr T Kenwood (counsel)

RESERVED JUDGMENT

1. The claimant's claim of unauthorised deductions from wages succeeds in part, namely, the respondent made unauthorised deductions from the claimant's wages by failing to pay him in respect of shifts agreed for 17, 18, 20 and 25 March 2021. The respondent did not make any other unauthorised deductions and, specifically, was not under any obligation to offer to place the claimant on furlough.
2. Unless resolved between the parties, the remedy due in respect of the part of the claim that has succeeded will be determined at a later date.

REASONS

Introduction

1. This is a case about the requirement to pay wages where work did not take place due to the Covid-19 pandemic. The claimant has a history of working for the respondent university as a casual worker. The claimant was not put on furlough, and he says he should have been. His claim is in two parts. Firstly, for payment in respect of specific assignments which were cancelled at the start of the pandemic and, secondly, for furlough wages that he would have received in subsequent months if he had been placed on furlough.

The Hearing

2. This was a remote hearing which was been consented to by the parties. The form of remote hearing was a video hearing, using the tribunal's Cloud Video Platform (CVP). A face to face hearing was not held because it was not practicable in the circumstances of the covid-19 pandemic and all issues could be determined in a remote hearing.
3. I heard evidence on oath from Mr Kirby and, on behalf of the respondent, from Helen Crowther, manager of the respondent's Employment Recruitment Service. I was referred to documents contained in an agreed bundle of documents. References to page numbers below are reference to that agreed bundle.
4. There was discussion at the start of the hearing about various matters. I was told that certain documents had been disclosed late, although both sides agreed that the bundle now contained all the relevant documents. Mr Kirby had also indicated that he wished to call up to nine additional witnesses, who were managers for whom he had conducted casual work in the past. He had not taken steps to obtain statements for those individuals nor to ascertain if they would be willing to attend. It appeared that he expected the respondent to produce them as witnesses to confirm that he could have expected to repeat that work, had it not been for the pandemic and its effect on the university's operations. After some discussion, Mr Kirby decided that he was able to proceed and did not seek a postponement to enable further steps to be taken in respect of those witnesses.

The Issues

5. The parties agree that Mr Kirby is not an employee of the respondent. He was a 'limb (b) worker' and remains engaged as a casual worker on the same basis as he was in 2020. In those circumstances, I have treated this as a statutory claim of unlawful deductions from wages, rather than as a breach of contract claim.
6. The key issue in this case was whether the respondent was required to place the claimant on furlough in the period March 2020 - October 2020. As I explained to Mr Kirby, this is not the same as the question of whether Mr Kirby was eligible for furlough if the respondent had chosen to utilise the furlough scheme in respect of his employment.
7. Mr Kirby argued that the respondent was contractually obliged to place him on furlough, as a result of communications made by the university about which staff would be put on furlough. The respondent argues that there was no right for Mr Kirby (or any employee or worker) to be placed on furlough, that it was entitled to decline to do so, and that Mr Kirby received all the payments he was contractually entitled to.
8. Separately, Mr Kirby argued that even if he was not entitled to be put on furlough he should be paid for shifts which had been agreed for various dates in March 2020, but were cancelled due to the pandemic. There is

therefore an issue as to whether he was contractually entitled to be paid for these shifts.

Findings of Fact

9. The University's Employment Recruitment Service ("ERS") is an administrative department through which the University engages casual workers for various roles within the university. The ERS works with both university students and non-students (like Mr Kirby). Some roles can only be held by students. Some roles (like exam invigilator roles) can only be held by non-students. Some roles can be held by either class of worker.
10. The terms of engagement for assignments are set out over two principal documents. The first is entitled "Terms of Engagement" and sets out the general terms applicable to all casual working arrangements. The second is an Assignment Agreement, which will be sent by email and relates to a specific assignment. There is an example in the bundle relating to work that Mr Kirby carried out as a delivery driver for the university's medical school between mid-January and early March 2020. The Assignment Agreement specifies details such as job title and pay rate. Neither document contains a clause stipulating that the entirety of the contract terms are contained in that document (or in any combination of documents) nor otherwise seeking to preclude the incorporation of terms from other sources.
11. As is usual with casual worker arrangement, the Terms of Engagement provide that there is no obligation on the University to offer any work, and no obligation on the worker to accept work that is offered. The contractual documents themselves are silent on what obligation the University has to pay workers for assignments that are offered and then cancelled. However, I was shown a University policy document entitled "Fixed-term contracts and Casual Working Policy and Procedure". This provides (paragraph 7.4.2) that where ad hoc work is agreed and then cancelled with less than 48 hours' notice, the worker will still receive payment. The policy itself is silent as to whether or not its provisions are intended to have contractual force.
12. Mr Kirby has worked for the University on a casual basis since 2018. He took on roles such as exam invigilation (the University has a requirement for exam and test invigilators throughout the year, but particularly during the early summer exam season), driving for the medical school, acting as a 'practice patient' for medical students, assisting with the smooth-running of graduation ceremonies and checking student accommodation before new students move in.
13. In a normal year, the University's need for these roles would arise on a predictable basis throughout the academic year. Mr Kirby gave evidence that his assignments were usually booked "*around a week or a couple of weeks*" beforehand, although it could be as close as the day before. Although all the assignments would be administered through ERS, I accept Mr Kirby's evidence that he would often be contacted directly by managers in the relevant university departments about work they had available. He had, for at least some of these roles, become known as a reliable worker who could be called upon in the expectation that he would want to take the

work and would do it well. In respect of exam invigilation, he had been appointed as a lead or senior invigilator on some occasions which came with additional responsibilities, such as taking responsibility for safeguarding exam papers and securely transferring them after the exam. From these varied roles, Mr Kirby derived an income. Although this fluctuated from month to month, I find that he could expect to receive some income from the University in each month of the year, ranging from a couple of hundred pounds to over one thousand pounds.

14. In early spring 2020 it became clear that Covid-19 was going to result in restrictions to the University's operations, the University set about making arrangements for its students and staff. Mr Kirby was booked for invigilation duties on 17, 18 and 20 March 2021 (emails at 65 and 67) and for a paid senior invigilator interview/training session on 25 March 2020 ahead of the summer exam season (email at 66). These engagements were each cancelled by emails sent on Friday 13 March 2021, in line with a decision that all teaching events for the following week would be cancelled. Mr Kirby did not receive any payment for these assignments as the cancellation fell outside the 48-hour period specified by the respondent's policy.
15. Prior to 13 March 2021 there is email evidence of Mr Kirby being notified of, or invited to express interest in, work that was expected to take place later in the year (for example, an email at page 64 of the bundle in relation to practice patients being required on dates in June and July). However, no assignments had actually been booked for Mr Kirby other than the four mentioned above.
16. The University issued an 'FAQ' document to staff on 31 March 2020 setting out its stance on various issues arising from and related to the pandemic. This included the following statements:

I have a casual contract; will I still get paid if any scheduled work is cancelled for reasons relating to Covid-19?

The University recognises and appreciates the significant contribution that our casual staff make to the success and performance of our University. We acknowledge that for casual staff members in particular, the impact of COVID-19, will understandably create anxiety.

Where there is a reasonable expectation of work based on previous agreements or commitments and this work is then disrupted or cancelled for reasons relating to Covid-19 all payments for this work will be honoured.

We are continuing to explore ways of minimising any impact on workers who have recently undertaken regular activity for the University and will be in touch with casual workers and heads of departments with guidance as soon as we can.

17. In relation to furlough, the document said:

Will the University be able to access the Government Furloughed Workers/Coronavirus Job Retention Scheme?

We are exploring how the Government Furloughed workers / Coronavirus Job Retention Scheme applies to our different groups of staff.

The detail on this is emerging so we do not have definitive answers yet. As soon as information is available, we will provide clarity about Government schemes, and support for colleagues.

18. On 23 April 2020 Ms Crowther wrote an email to casual workers registered with ERS, including Mr Kirby. This was essentially a 'holding' email informing them that ERS were working to identify those workers who would be eligible to be placed on furlough and that those eligible would be notified by separate email. The email records (and it is also evident from other documents) that the University had committed to 'topping up' furlough pay, so that any worker placed on furlough would receive 100% of the relevant pay amount, and not simply the 80% that the University expected to be able to reclaim from the government's job retention scheme.
19. Miss Crowther and her team did then go through a process of identifying which workers would be offered furlough payments. She details that in her witness statement noting that the key principles being applied were whether there was a "*clear commitment*" in terms of work which would have been done, but was then not required due to the pandemic.
20. I find that Ms Crowther and her department then did seek, in good faith, to identify which casual workers would be placed on furlough using the "clear commitment" test. There has been a suggestion by Mr Kirby that student workers were given preferential treatment in this respect, perhaps as a result of pressure from the student union, but I do not find that to have been the case.
21. Supporting this exercise was a paper, produced by Ms Crowther and the HR department headed "ERS – Furloughing – April 2020". The document notes that put of 1081 individuals "active" on the ERS payroll on 19 March 2020 approximately 550 of them were working in University venues that subsequently closed e.g. sports centre, retail and catering outlets and conference facilities with "*an expectation (verbal or contractual) that work would have continued*" but for the pandemic. In respect of the other 530 ERS staff, the paper notes that some will have engagements which they can continue to fill, some are working reduced hours (I pause to observe that splitting an employee's time between paid work and furlough was not an option under the CJRS scheme at this time) and some "*have also had their work ended prematurely*". The paper notes the University's commitment to "*honour payments where there is a reasonable expectation of agreed work*". It goes on to summarise the requirements for eligibility to recover money under the job retention scheme and concludes that the University would be eligible to recover furlough money (at 80%) for ERS workers whose work had ceased due to Covid.
22. The paper concludes by outlining the financial impact for the University of furloughing these workers. Although some of the figures are redacted, it is apparent that there is a precise calculation available for the venue staff, in respect of whom it is proposed to proceed on the basis that they had a

reasonable expectation of work up until the end of the academic year. In respect of non-venue staff, the report states *“It is difficult to accurately determine the exact costs of this population given individual discussions need to happen with Managers.”* There is then a calculation set out assuming that all of these individuals will also continue to be paid until the end of the academic year. This is described as a “worst case scenario”. A more realistic scenario is likely to be that only half of the group would be furloughed until the end of the academic year as the remainder would have completed any work they would reasonably have expected to have undertaken prior to that.

23. The paper ends with some worked examples, including one involving an employee whose engagement terminated due to the pandemic. It is suggested that they will be eligible for furlough if there was three or more weeks left of the engagement at the time of termination, although the three-week period is not mentioned in the body of the paper. This reference appears to have come from governmental guidance issued in respect of the CJRS on 31 March 2020 which states (bundle page 250). *“You can only submit one claim at least every 3 weeks, which is the minimum length an employee can be furloughed for.”* This part of the guidance was expanded in the 30 April 2020 version to state *“Any employees you place on furlough must be furloughed for a minimum of 3 consecutive weeks. When they return to work, they must be taken off furlough. Employees can be furloughed multiple time, but each separate instance must be for a minimum of 3 consecutive weeks. Each period of furlough can be extended by any amount of time whilst the employee is on furlough.”*
24. The 31 March 2021 guidance also confirms, and it has not been in dispute in this case, that employers could claim under the scheme for ‘employees’ on flexible contracts, including zero-hours contracts. Later versions of the guidance clarify that, despite the consistent reference to employees, furlough is also available for limb (b) workers, provided they are paid (as Mr Kirby is) through a PAYE system.
25. Finally, the paper notes that the budget to pay the furloughed staff (which would include the top-up element of pay, as well as possibly costs such as pension contributions) will have to come from the department utilising the worker and that if a particular department does not want to incur that cost they have a contractual right to end the assignment with one week’s notice. The paper suggests a “University position” is therefore needed to ensure that the proposal is actioned.
26. ERS then set about contacting relevant managers in respect of casual workers who may be eligible for furlough. The emails (there are examples in the bundle related to Mr Kirby) asked the department to identify the start date and expected length of the assignment. It was noted that the length had to be a minimum of three weeks. It is also clear from the emails that the University recognised that where an employee was furloughed from one casual role, they could not do any work for the University in any capacity. This meant, on the one hand, that furlough might not be offered to some workers who had other on-going work, but also meant that furlough would be offered, as an exception, in respect of some casual roles simply because

the worker was furloughed from another role. The task of putting together the pieces of this jigsaw cannot have been an easy one for Ms Crowther and her department.

27. On 28 May, Mr Kirby emailed Ms Crowther noting that he had been in touch with colleagues and had heard that there was no proposal to place invigilators on furlough. He said that he believed he did qualify for furlough and would be claiming £3,359.41, adding that he was happy to come onto campus for a discussion if required.
28. This was followed up by a further email on 2 June 2020 where Mr Kirby indicates that he is under the impression that invigilation roles now will be eligible for furlough and points out that he had also carried out other roles, in respect of which he hopes he will also be eligible for furlough.
29. There are a series of emails from early June by which Ms Crowther contacted individuals in various departments to ask if they had offered work to Mr Kirby, either verbally or in writing, which would now not be going ahead. This reply from Steve Thomas, a manager in the Design, Print and Photography department, is typical:

Ian has worked for us several times on the graduation both in July and December and has always been a great asset to the team. He helped with the packing in December and asked about the possibility of a similar role in July. I said I would be happy to consider him for the role in July but no formal commitment was made verbally or otherwise.

30. In respect of Mr Kirby's work as a driver for the Medical School, Ms Crowther emailed an Assessment Officer called Emma Shaw. Ms Shaw responded in these terms:

The last time I saw him I said I'd be in touch with the exact Summer dates and then everything obviously went into chaos.

Usually we draft the delivery plan and check it with the hospitals and then when finalised I give Ian the dates. I can't remember when he started with us but he knows our exam periods and that he is our driver so I just set him up a contract before each period. It requires a lot of trust which he has proven so I wouldn't use anyone else. It's definitely more guaranteed than perhaps other types of temporary work. He has to take extreme care with the materials, not leave them unattended and deliver them to where they need to be on time. He also collects them after each exam.

31. On the basis of that response, Ms Crowther decided that it was appropriate to offer Mr Kirby furlough for the driver work which he would have undertaken throughout the period of the medical exams. None of the other responses, in her view, indicated a firm enough commitment to engaging Mr Kirby to justify placing him on furlough.
32. An email to Mr Kirby from a generic ERS address dated 9 June 2020 explains that he will be furloughed from 1 – 30 June 2020 due to the work commitment made by the Medical School. It confirms that *"It is our understanding that you have not been explicitly committed to under any*

other work for the University” and goes on to note that the University does not intend to furlough exam invigilators. There is a reference to the ability to claim payment for specific shifts which were cancelled with less than 48 hours’ notice. There was a form for Mr Kirby to sign to indicate that he agreed he was eligible for furlough and an indication that he would be sent a formal furlough agreement.

33. Although the 9 June 2020 email had indicated that Mr Kirby’s pay for June 2020 would be calculated using his average daily rate for the previous financial year, by a further email dated 1 July 2020 Ms Crowther informed him that he would instead receive the daily average rate for the equivalent period in the previous financial year (i.e. June 2019) as that was higher. That was in line with the what the University understood it would be able to recover from the CJRS. The income Mr Kirby had earned in June 2019 included money from invigilation (and possibly other engagements). Therefore, because of the way that the scheme worked, he was in fact compensated in full for the lost income in June, but not in any other month. The total he received for June 2020 was £916.94 and he agrees, for the purposes of this claim, that he is entitled to no further amounts in respect of June 2020.

Relevant Legal Principles

34. The legislation underpinning the CJRS is s.76 of the Coronavirus Act 2020, which came into force on 25 March 202 and confers on HMRC the power to make Treasury directions in respect of the scheme. The first such direction was issued on 15 April with further directions being issued on 22 May and 30 June 2020. Later changes to the scheme are not relevant to this case.
35. Mr Kenwood submitted that the legal effect of those directions is properly summarised in the governmental guidance referred to above, which was included in the bundle. He did not provide copies of the underlying material, nor cite it in argument. Mr Kirby did not dispute the accuracy of the Guidance documents.
36. It is axiomatic that the CJRS itself offers no employee the “right” to be furloughed or to receive payment under the scheme. Rather, it entitles an eligible employer to receive payments from the state in respect of an eligible employee who has agreed to be placed on furlough. The relationship between the employer and the employee, including the obligation to pay wages, continues to be governed by the contract of employment. If an agreement is reached for an employee to be placed on furlough then this may temporarily amend the contract in various ways (for example, by altering the basis on which the employee is entitled to be paid and/or the level of pay which he is entitled to). It remains the case, however, that the entitlement to wages is still governed by the underlying contract.
37. Contractual terms are, for the most part, set out in documents agreed between the parties. However, on occasion terms may be incorporated from other sources, including an employer’s policies or handbooks. Whether such a term can be incorporated will depend partly on whether the document is stated to be contractual (or, conversely, expressly stated not

to be), but also on whether any particular provision is ‘apt’ to be incorporated as a contractual terms, depending on matters such as whether it is precise and certain and how it interacts with the existing contractual terms. Some provisions, read in context, may be no more than ‘declarations of an aspiration or policy falling short of a contractual undertaking’ (see Keely v Fosroc International Ltd [2006] IRLR 961, CA).

38. In Fosroc the Court of Appeal noted that provisions in respect remuneration are of particular importance to the over-all bargain between the parties and held that “a provision of that sort, even if couched in terms of information or explanation, or expressed in discretionary terms, may be still apt for construction as a term of his contract (providing it is not in conflict with other contractual provisions)”.

Submissions

1. Mr Kenwood made brief oral submissions. He did not provide a skeleton argument nor did he cite any authorities. The respondent’s position was that Mr Kirby had not been paid for the initial cancelled shifts because these were of less than three weeks’ duration and so he could not be placed on furlough for that period. The normal 48-hour rule applied. In relation to the more extensive furlough claim, based on Mr Kirby’s “reasonable expectation” of future work, he said that no obligation to make payments under the furlough scheme could arise without an agreement between worker and employer that the worker would be placed on furlough. An employer could not be forced to enter into such an agreement. Such an agreement did exist in relation to June 2020, and Mr Kirby had been paid fully for that period. As there was no agreement for the other periods, that was the end of the matter.
2. Mr Kirby’s submissions rested heavily on the wording of the March FAQs. He said that the university had expressly committed to put casual workers on furlough where there was a “*reasonable expectation of work based on previous agreements*”. He said that he did have a reasonable expectation of work and that by restricting access to furlough to cases where there was a “clear commitment” to work Ms Crowther was acting in a more restrictive way than had been committed to by the University through the FAQ document. He was eligible for furlough under the rules of the scheme and the University should be held to the commitment they had made.

Discussion and conclusions

3. As a starting point, I consider that the University’s commitment to pay for work cancelled with less than 48 hours’ notice is incorporated into Mr Kirby’s terms of engagement. It is apt for incorporation, being both specific and certain. It complements the existing provisions of the contract, to the extent that it is at least helpful for both workers and hiring managers to know where they stand with cancellation, and may even be considered to be necessary. The parties have conducted themselves in accordance with it as if it is a contractual term – I note the University’s reliance on it in their evidence and submissions in this case.

4. Moving on from that, I have considered the contractual status of the March FAQ document. I consider that in many respects its provisions are not apt for incorporation into staff contracts – they reflect the University’s aspirations or intentions in a situation which was unprecedented and rapidly changing. However, contained within the document are some specific commitments that the University will act in a particular way in relation to certain situations that staff (I use that term to encompass both employees and workers) might find themselves in as a result of the pandemic. That includes commitments that, in certain circumstances, the University will treat its staff more generously than they would be entitled to expect under their existing contractual terms.
5. It is always open to an employer to treat its staff more generously than might be dictated by the contract. I consider that I should be circumspect in finding that an indication it will do so is something that it should be held to as a matter of contract. However, where that indication is explicit and certain, with no reservation made as to its status or anything to inform staff that they cannot rely on it, then it may be apt for incorporation into the contract.
6. I consider that the wording relating to casual contracts set out at paragraph 16 above is apt for incorporation into Mr Kirby’s contract. In my view, it contains an explicit commitment to vary the 48-hour cut-off in respect of work cancelled due to circumstances arising from the pandemic. It was a commitment made with the intent of reassuring and supporting casual workers in a panicked and difficult time. I consider that if either party had been asked, at the time, whether it was a commitment which the University could expect to be held to, the answer would have been ‘yes’. I consider that this goes beyond a non-binding aspiration or indication that the 48-hour limit would be waived. The fact that the obligation undertaken by the University in this document is more generous than the existing contractual obligation does not prevent it from being apt for incorporation, this is a variation to the contract which deals with a specific, previously unprecedented circumstance. It is not inconsistent with the continued application of the 48-hour cut-off in normal circumstances, particularly where that provision was itself introduced via a policy rather than set out in the underlying contractual material.
7. It flows from that finding that the University was obliged to honour payments for the invigilation work in respect of which Mr Kirby had confirmed bookings on 17, 18 and 20 March 2020, and the training event of 25 March 2020. I did not hear evidence during the hearing of the amount that Mr Kirby would have earned had he undertaken that work. I would hope it would be something that can be easily agreed between the parties, but I will make case management directions to provide for resolution of the matter if needed.
8. Mr Kirby’s view is that the terms of the FAQ also entitled him to be placed on furlough and, therefore, to receive as damages the amounts that he would have received as furlough payments over subsequent months. He relies on the key phrase “*reasonable expectation of work based on previous agreements or commitments*” and says that this is a lower threshold than

the “clear commitment” test which was wrongly used by Ms Crowther to identify who should get furlough.

9. I agree, as a matter of fact, that Mr Kirby had a reasonable expectation of undertaking a similar amount of casual work for the University in 2020 as he had done in 2019. (It would transpire that Mr Kirby’s reasonable expectations of what 2020 would bring were, like everyone else’s, entirely overturned by the pandemic.) Mr Kirby’s own evidence about his expectations and the basis for them was supported by both the various emails pre-dating 13 March which showed the University beginning to make arrangements for the normal activities which would happen further ahead in the academic year and also by the later emails elicited by Ms Crowther’s enquiries.
10. However, in looking at the FAQ document, it is important to consider not just the wording of the answer relied on by Mr Kirby, but also the wording of the question. The question, in this case was not “will the university put me on furlough?” it was rather a much narrower question: *“I have a casual contract; will I still get paid if any scheduled work is cancelled for reasons relating to Covid-19?”* (emphasis added)
11. The context, therefore, for the University’s assurance that workers would be paid where they had a reasonable expectation of work based on previous agreements or commitments, is that it is addressing a worker who has had scheduled work cancelled for reasons relating to Covid-19, not a worker who loses the prospect of future work before it is scheduled. In particular, in my view the reference to ‘previous agreements or commitments’ is intended to refer to agreements made before 13 March 2020 in respect of work to take place after that date and not, more broadly, to previous agreements in respect of work which had been undertaken in earlier months or years.
12. There is nothing in this FAQ document which represents a commitment to Mr Kirby, or others in his position, that they will be compensated for work which has not yet been scheduled or agreed, but which could reasonably have been expected to take place but for the pandemic.
13. Had the University made such a commitment, then the likelihood is that it would have sought to access the CJRS in order to assist in meeting the financial obligations inherent in that commitment. It is worth noting, however, that at the time that the FAQ document was published, no commitment could have been made to placing any particular worker on furlough, as the details of the proposed scheme remained unknown (as stated in the answer to the furlough question, also reproduced at 16 above). That makes the idea that the University would have committed to paying for all work that could reasonably have been expected to have taken place even more unlikely, as such a commitment would have potentially have had to be met from the University’s own resources, depending on what the eligibility for the CJRS turned out to be.
14. As things transpired, I agree with Mr Kirby that would, in fact, have been eligible to be placed on the CJR Scheme. In particular, I do not accept that

the fact that his engagements were of shorter duration than three weeks meant that the scheme could not be used. It simply meant that the University could not have furloughed him from a day's engagement and then brought him back to do another day within the three-week minimum period. It seems to me that confusion over the interpretation of the three-week rule caused the University to lose sight of its original commitment to pay Mr Kirby for his shifts which had been booked and then cancelled (an obligation which actually had nothing to do with the furlough scheme).

15. Unfortunately for Mr Kirby, the fact that he was *eligible* to be placed on furlough does not mean he was *entitled* to be placed on furlough. It was entirely a matter for the university as to whether they chose to access the furlough scheme at all, and, if so, which staff they chose to offer furlough to. As Ms Crowther points out in her statement, furlough was not a 'cost-neutral' action for the respondent and there may be a host of reasons, financial and non-financial, why the University might choose to offer furlough to particular groups of staff but not to others. That was a decision for the University and nothing in the FAQ document, nor any of the other documents in the bundle changes that position.
16. In those circumstances, the inevitable conclusion is that Mr Kirby's claims for unauthorised deductions of wages based on an entitlement to be placed on furlough from March 2020 onward must fail.

Employment Judge Dunlop

Date: 26 March 2021

RESERVED JUDGMENT & REASONS SENT TO THE PARTIES ON

1 April 2021

FOR EMPLOYMENT TRIBUNALS