

Guidance on the treatment, and corrective action necessary, in relation to errors and tax return reporting obligations regarding the coronavirus job retention scheme

This guidance has been drawn up to help members comply with their professional obligations under [Professional Conduct in Relation to Taxation \(PCRT\)](#)¹ where they advise clients who have, or may have, made claims under the coronavirus job retention scheme (CJRS), or have made claims on clients' behalf.

This guidance will be updated if the CJRS changes, or if we become aware of any aspects of HMRC's compliance activity or approach changing. This version is dated 26 November 2021.

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Introduction

This guidance is intended to provide assistance in relation to the steps to take in relation to the reporting of CJRS grants; in particular, where you have concerns regarding the accuracy of the claims, and may be in disagreement with your client's intentions.

An earlier version of this guidance, in relation to what constitutes an error, was reviewed by HMRC in January 2021 and addressed what we believe are likely to be the most common scenarios. These scenarios are included within this guidance, too. The illustrative examples have similarly been reviewed by HMRC.

This guidance is intended to recognise the unusual circumstances surrounding the CJRS, which include:

- It was introduced quickly and at a time of great uncertainty and confusion
- Published guidance was updated multiple times and often came quite late in the process, and it could be difficult to determine which version of the guidance applied to which claim periods
- Claimants were directed to follow the guidance issued by HMRC rather than the legislation (Treasury Directions)
- It is not easy to check claims by accessing historical guidance applying at the time a claim was made as much of this is now in National Archives rather than on gov.uk
- Errors will rarely come within the definition of being trivial (ie up to £200).²

¹ <https://ciotmktgprodeun.azureedge.net/professional-conduct-in-relation-to-taxation-pcrt>

² https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/f6d9968b-4882-4c80-b82e-69eacda5ee38/Errors_helpsheet_1_March_2019.pdf see paragraph 16

Whilst HMRC has said that “We will not be actively looking for innocent errors in our compliance approach” in relation to CJRS,³ this does not remove the requirement to advise clients to correct errors, and for those errors to be corrected.

Submission of returns

For the avoidance of any doubt, the CIOT consider that CJRS claims fall within the scope of PCRT. We understand that HMRC considers the standards required under [HMRC’s Standards for Agents](#)⁴ to relate to CJRS claims, too.

You should familiarise yourself with the contents of [PCRT help sheet A: Submission of tax information and ‘tax filings’](#)⁵. In particular:

- The taxpayer has primary responsibility to submit correct and complete filings to the best of their knowledge and belief. The final decision as to whether to disclose any issue is that of the client. (paragraph 8)
- A member should act in good faith in dealings with HMRC in accordance with the fundamental principle of integrity. In particular the member should take reasonable care and exercise appropriate professional scepticism when making statements or asserting facts on behalf of a client. (paragraph 12)
- Where acting as a tax agent, a member is not required to audit the figures in the books and records provided or verify information provided by a client or by a third party. However, a member should take care not to be associated with the presentation of facts they know or believe to be incorrect or misleading, nor to assert tax positions in a tax filing which they consider to have no sustainable basis. (paragraph 13)
- If a client is unwilling to include in a tax filing the minimum information required by law, the member should follow the guidance in [PCRT help sheet C: Dealing with Errors](#).

The member should also be mindful of the scope of their engagement terms, in particular the use of, and reliance on, information provided by the client, and the level of checking (if any) to be undertaken by the member.

Errors, incorrect claims, and tax return disclosure

Claims which were fraudulent must be repaid and, if not, the procedures in [PCRT help sheet C](#) would apply. Members are expected to follow the steps highlighted in [PCRT help sheet A](#) when submitting information. While agents are not expected to go looking for fraud, if they suspect fraudulent behaviour they are expected to exercise professional scepticism and make appropriate enquiries. If fraud is detected, then unless the taxpayer puts matter right the agent should cease to act.

Otherwise, **Table 1** is intended to provide assistance where an error is discovered or suspected.

Please note that it is not possible to provide prescriptive guidance due to the wide variety of potential circumstances, the complexities of the scheme, and because each client’s circumstances are unique.

HMRC has also confirmed that they consider claims are made per individual, per period. However, HMRC have now updated their [guidance](#) to confirm that where errors have resulted in both under-claims on some employees and over-claims on others *within a given claim period* it is possible to net those errors off. Only any resulting

³ <https://www.gov.uk/guidance/pay-coronavirus-job-retention-scheme-grants-back>

⁴ <https://www.gov.uk/government/publications/hmrc-the-standard-for-agents>

⁵ https://assets-eu-01.kc-usercontent.com/220a4c02-94bf-019b-9bac-51cdc7bf0d99/1a89d664-e3ae-47a6-9159-c80aa38d11e3/A_Tax_Filings_helpsheet_1_March_2019.pdf

over-claim needs to be repaid. It is important to appreciate that no such offsetting is permitted if the errors arose in different claim periods. Similarly, if the scheme rules or guidance changed, a claim made on a particular basis might be correct for one period, but incorrect for another.

In some instances published guidance may not have been entirely consistent with the relevant Treasury Direction. It was not necessary to review the Treasury Direction prior to making a claim, and it was sufficient to follow the guidance. What to do in relation to particular inconsistencies will be specifically addressed by HMRC and so is outside the scope of this guidance.

Where a client is unwilling to take corrective action in relation to errors, again the procedures in [PCRT help sheet C](#) would apply.

In cases of fraud and deliberate error, or where clients refuse to correct innocent or careless errors in relation to claims, members must consider whether they need to make an AML Suspicious Activity Report to the National Crime Agency. Please note that a member's AML obligations are not met by making a report to the [Coronavirus fraud helpline](#).

Further information regarding overclaimed CJRS grants, including penalties applicable, can be found at [Pay Coronavirus Job Retention Scheme grants back](#),⁶ in [compliance check fact sheet 48](#),⁷ and in [compliance check fact sheet 11a](#).⁸

Table 2 addresses the reporting of receipt of the grant on the tax return.

Employee impact

If the employee has not been paid the minimum of 80% of a reasonable interpretation of pay for the time furloughed, this would invalidate the claim in respect of those employees affected and could result in an income tax charge arising under paragraph 8, Schedule 16 of the Finance Act 2020 on the employer. This is the case even if the entirety of the grant is paid to the employee (ie if the grant had been under claimed).

However, the claim will not be invalidated if the employer makes good any shortfall to their employees within a reasonable period. For these purposes, HMRC consider a 'reasonable period' as ending, for companies, on the expiry of 12 months from the end of the accounting period in which the grant was received, and for other businesses on 31 January after the end of the relevant tax year; or the date when an assessment is issued under paragraph 9, Schedule 16, if earlier.

HMRC has confirmed that, when calculating whether an employee has been paid the minimum of 80% of their pay, this can be done over the entire period covered by the CJRS. So, if there are over and underpayments across different pay periods, but over the duration of the CJRS the individual has been paid at least 80% of their pay, the 80% requirement has been met and there is no shortfall to make good to the employee.

Note that action may be necessary by the employer if the employee is paid otherwise than in accordance with their furlough agreement / employment contract (this is outside the scope of this guidance).

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⁶ <https://www.gov.uk/guidance/pay-coronavirus-job-retention-scheme-grants-back>

⁷ <https://www.gov.uk/government/publications/penalties-for-not-telling-hmrc-about-coronavirus-job-retention-scheme-grant-overpayments-ccfs48>

⁸ <https://www.gov.uk/government/publications/penalties-for-not-telling-hmrc-about-coronavirus-covid-19-support-scheme-overpayments-ccfs11a>

Table 1 – where an error is discovered or suspected

Ref	Scenario:	Results in too little grant claimed – necessary action	Results in too much grant claimed – necessary action	Client refuses to take the necessary action ⁹
1	Client claimed the grant (or part), but was clearly ineligible on the objective criteria. For example, the employee was not on an RTI submission at the relevant date, or was working whilst being on full furlough or the non-working part of flexible furlough.	N/A	The grant (or part) must be repaid to HMRC. The overclaimed amount would need repaying in accordance with the time limits and procedures set out on GOV.UK . ¹⁰ If this action has not been taken prior to submission of the relevant tax return, the amount of the incorrectly claimed grant must be declared on the relevant boxes on the return (see below).	You should follow the process in the flowchart in PCRT help sheet C . This will include ceasing to act for the client if they remain unwilling to take the necessary action.
2	Correct underlying facts used to prepare the claim, reasonable interpretation adopted of the <u>guidance in force at the time of the claim and applicable to the claim period</u> .	N/A - No further action is necessary as the claim would be considered to be correct. ¹¹	N/A - No further action is necessary as the claim would be considered to be correct.	N/A

⁹ This aspect of the guidance focuses on the results where amounts are owed to HMRC, or should be disclosed to HMRC, rather than the potential to claim additional monies from HMRC.

¹⁰ Page entitled 'Pay Coronavirus Job Retention Scheme grants back', section 'If you've overclaimed'.

¹¹ However, if another interpretation of the guidance is reasonable, which would result in a higher claim, it may be possible to increase the claim in accordance with the time limits and procedures set out on [GOV.UK](https://www.gov.uk) - page entitled 'Claim for wages through the Coronavirus Job Retention Scheme', section 'If you have not claimed enough'.

Ref	Scenario:	Results in too little grant claimed – necessary action	Results in too much grant claimed – necessary action	Client refuses to take the necessary action ⁹
3	<p>Correct underlying facts used to prepare the claim, unreasonable interpretation adopted of the guidance <u>in force at the time of the claim and applicable to the claim period</u>.</p>	<p>The grant claim is incorrect. It may be possible to increase the claim, to correct it, in accordance with the time limits and procedures set out on GOV.UK.¹²</p> <p>If the employee has not been paid the minimum of 80% of a reasonable interpretation of pay for the time furloughed, and has not made up the shortfall in the reasonable period outlined above, the grant has been overclaimed and must be repaid in accordance with the box to the right.</p>	<p>The grant claim is incorrect. The overclaimed amount would need repaying in accordance with the time limits and procedures set out on GOV.UK.¹³</p> <p>If this action has not been taken prior to submission of the relevant tax return, the amount of the incorrectly claimed grant must be declared on the relevant boxes on the return (see below).</p>	<p>You should follow the process in the flowchart in PCRT help sheet C. This will include ceasing to act for the client if they remain unwilling to take the necessary action.</p>
4	<p>Incorrect underlying facts used to prepare the claim, reasonable interpretation adopted of the guidance <u>in force at the time of the claim and applicable to the claim period</u>.</p>	<p>The grant claim is incorrect. It may be possible to increase the claim, to correct it, in accordance with the time limits and procedures set out on GOV.UK.¹⁴</p> <p>If the employee has not been paid the minimum of 80% of a reasonable interpretation of pay for the time furloughed, and has not made up the shortfall in the reasonable period outlined above, the grant has been overclaimed and must be repaid in accordance with the box to the right.</p>	<p>The grant claim is incorrect. The overclaimed amount would need repaying in accordance with the time limits and procedures set out on GOV.UK.¹⁵</p> <p>If this action has not been taken prior to submission of the relevant tax return, the amount of the incorrectly claimed grant must be declared on the relevant boxes on the return (see below).</p>	<p>You should follow the process in the flowchart in PCRT help sheet C. This will include ceasing to act for the client if they remain unwilling to take the necessary action.</p>

¹² Page entitled ‘Claim for wages through the Coronavirus Job Retention Scheme’, section ‘If you have not claimed enough’.

¹³ Page entitled ‘Pay Coronavirus Job Retention Scheme grants back’, section ‘If you’ve overclaimed’.

¹⁴ Page entitled ‘Claim for wages through the Coronavirus Job Retention Scheme’, section ‘If you have not claimed enough’.

¹⁵ Page entitled ‘Pay Coronavirus Job Retention Scheme grants back’, section ‘If you’ve overclaimed’.

Ref	Scenario:	Results in too little grant claimed – necessary action	Results in too much grant claimed – necessary action	Client refuses to take the necessary action ⁹
5	<p>Incorrect underlying facts used to prepare the claim, unreasonable interpretation adopted of the guidance <u>in force at the time of the claim and applicable to the claim period.</u></p>	<p>The grant claim is incorrect. It may be possible to increase the claim, to correct it, in accordance with the time limits and procedures set out on GOV.UK.¹⁶</p> <p>If the employee has not been paid the minimum of 80% of a reasonable interpretation of pay for the time furloughed, and has not made up the shortfall in the reasonable period outlined above, the grant has been overclaimed and must be repaid in accordance with the box to the right.</p>	<p>The grant claim is incorrect. The overclaimed amount would need repaying in accordance with the time limits and procedures set out on GOV.UK.¹⁷</p> <p>If this action has not been taken prior to submission of the relevant tax return, the amount of the incorrectly claimed grant must be declared on the relevant boxes on the return (see below).</p>	<p>You should follow the process in the flowchart in PCRT help sheet C. This will include ceasing to act for the client if they remain unwilling to take the necessary action.</p>
6	<p>Notwithstanding the factual or interpretation aspects, <u>the claim simply contained calculation or other errors.</u></p>	<p>The grant claim is incorrect. It may be possible to increase the claim, to correct it, in accordance with the time limits and procedures set out on GOV.UK.¹⁸</p> <p>If the employee has not been paid the minimum of 80% of a reasonable interpretation of pay for the time furloughed, and has not made up the shortfall in the reasonable period outlined above, the grant has been overclaimed and must be repaid in accordance with the box to the right.</p>	<p>The grant claim is incorrect. The overclaimed amount would need repaying in accordance with the time limits and procedures set out on GOV.UK.¹⁹</p> <p>If this action has not been taken prior to submission of the relevant tax return, the amount of the incorrectly claimed grant must be declared on the relevant boxes on the return (see below).</p>	<p>You should follow the process in the flowchart in PCRT help sheet C. This will include ceasing to act for the client if they remain unwilling to take the necessary action.</p>

¹⁶ Page entitled ‘Claim for wages through the Coronavirus Job Retention Scheme’, section ‘If you have not claimed enough’.

¹⁷ Page entitled ‘Pay Coronavirus Job Retention Scheme grants back’, section ‘If you’ve overclaimed’.

¹⁸ Page entitled ‘Claim for wages through the Coronavirus Job Retention Scheme’, section ‘If you have not claimed enough’.

¹⁹ Page entitled ‘Pay Coronavirus Job Retention Scheme grants back’, section ‘If you’ve overclaimed’.

Ref	Scenario:	Results in too little grant claimed – necessary action	Results in too much grant claimed – necessary action	Client refuses to take the necessary action ⁹
7	Client claimed the grant, but there is a lack of supporting evidence to corroborate the claim (or part).	<p>The member should discuss the claim with the client, and explain the types of evidence the client should retain to demonstrate eligibility and the calculation methodology.²⁰</p> <p>You should keep a note of the client’s explanations.</p> <p>See 7 below if there is doubt about whether the claim meets the eligibility criteria. If there is no doubt no corrective action is required.</p>		<p>You should consider whether it is appropriate to continue to act for the client.</p> <p>If you conclude that it is appropriate to continue to act (for example, because you cannot conclude that amounts have been over or incorrectly claimed) you should monitor the situation carefully and should it later become apparent that there is in fact an irregularity, despite the client’s previous assurances to the contrary, you should follow the process in the flowchart in PCRT help sheet C.</p> <p>This will include ceasing to act for the client if they remain unwilling to take the necessary action.</p>
8	Client has claimed the grant, but it is not possible for the member to reach the conclusions in 2-5 above (perhaps because the client has not requested / undertaken a detailed check of previous claims).	<p>The member should discuss the claim with the client, ensuring the client understands the eligibility criteria and requisite methodology.</p> <p>If the client maintains the claims were correct, and after using your professional judgment you are willing to accept this position, no corrective action is necessary. However, you should document these discussions.</p> <p>You may wish to take specialist advice if you are unclear as to whether the eligibility criteria are met, or the requisite methodology used, in the particular circumstances.</p>		

²⁰ The records which HMRC says employers must retain can be found at <https://www.gov.uk/guidance/claim-for-wages-through-the-coronavirus-job-retention-scheme#after-youve-claimed>.

Table 2 – disclosure of receipt of the grant on the tax return

Ref	Scenario:	Necessary action	Client refuses to take the necessary action
1	The member <u>knows</u> a grant was received, but the client does not wish to report receipt of the grant on the return.	If a grant has been received, it must be included in the relevant box on the relevant tax return (see below). You should remind your client of these obligations, the fact that HMRC know who has claimed the grant and is publishing their names, ²¹ and the consequences of failure to report the grant. You should document these discussions.	You should follow the process in the flowchart in PCRT help sheet C . This will include ceasing to act for the client if they remain unwilling to take the necessary action.
2	The member <u>suspects</u> a grant might have been claimed but the client will not confirm receipt of the grant (and therefore appears unwilling to report it).	If a grant has been received, it must be included in the relevant box on the relevant tax return (see below). You should remind your client of these obligations, the fact that HMRC know who has claimed the grant and is publishing their names, ²² and the consequences of failure to report the grant. You should document these discussions.	You should consider whether it is appropriate to continue to act for the client. If you conclude that it is appropriate to continue to act (for example, because the client states that no claim was made, and after using your professional judgment you are willing to accept this) you should monitor the situation carefully and should it later become apparent that a grant was indeed claimed, despite the client’s previous assurances to the contrary, you should follow the process in the flowchart in PCRT help sheet C . This will include ceasing to act for the client if they remain unwilling to take the necessary action.
3	The member completes the return based on information provided by the client.	Consider the scope of your engagement, any representations or assurances made by your client, and the contents of any review or similar letters used to finalise returns. If your engagement does not extend to checking the figures contained within the return, and you have no reason to doubt their integrity, you may report them on the return as instructed.	No further action is necessary. However, if later it becomes apparent that there might have been errors in those figures, you should follow the process in the flowchart in PCRT help sheet C .

²¹ See <https://www.gov.uk/government/publications/employers-who-have-claimed-through-the-coronavirus-job-retention-scheme> - although information only started being published in January 2021, and the employer name might not correlate exactly with the business name.

²² See <https://www.gov.uk/government/publications/employers-who-have-claimed-through-the-coronavirus-job-retention-scheme> - although information only started being published in January 2021, and the employer name might not correlate exactly with the business name.

Illustrative examples

The following examples are intended to help illustrate the above PCRT guidance in relation to the treatment, and corrective action necessary, for errors relating to the coronavirus job retention scheme (CJRS). They are not intended to be exhaustive.

Key to examples:

1. Use of fixed or variable pay to calculate CJRS grants for employees with overtime
2. Calculation of usual hours where furlough ends during a period
3. Use of 1/12 of annual salary for a fixed pay employee
4. Short-cuts to calculating reference pay for variable pay employees
5. Reductions in, or deductions from, salary

Although this is referenced in the above guidance, we should highlight that in circumstances which are not considered to be a reasonable interpretation of the guidance, and result in the employee not receiving 80% of their reference / usual pay, corrective action is necessary to ensure that the entire grant in relation to that individual employee is not repayable.

These examples have been reviewed by HMRC.

Example 1 – use of fixed or variable pay to calculate CJRS grants for employees with overtime

Issue

The choice between fixed and variable pay could have a significant impact for a person who works a lot of overtime.

Prior to 7 August 2020, and recognising that there would be some ‘borderline’ cases, HMRC’s published guidance allowed the employer to choose whichever method best reflected how the employee was paid. As such an employer could take multiple factors in to account when making this choice and HMRC confirmed that provided employers acted reasonably they would not decline or seek repayment of any grant based solely on the particular choice of pay calculation.

On 7 August further guidance was published, confirming that employers should use the variable pay method so any fluctuations due to overtime would be averaged out over the year.

Impact

For claims made before 7 August, HMRC accept that it was a reasonable interpretation for employers to have treated such employees as having had fixed pay. No amendment is necessary to any previous claims.

For claims made after 7 August, employers should have used the variable pay method. HMRC do NOT accept that claims made on the fixed pay basis are a reasonable interpretation of the guidance. These should be corrected in accordance with the above guidance.

Example 2 – calculation of usual hours where furlough ends during a period

Issue

The Direction and the guidance set out clear rules for calculating the usual hours of employees with regular hours and variable hours.

However, initial iterations of the guidance could be read to imply that:

- usual hours should be calculated for the entire claim period
- the claim period includes days on which any of the business’ employees are furloughed

- employers can claim CJRS for employees' annual leave taken during the claim period

Therefore, some employers considered that they should include all unworked hours in their calculation and claim, even where those hours fell after the end of the employee's furlough agreement. This could lead to increased claims if the employee was off work for some other reason after ending furlough. The guidance did not explicitly state that days the employee was not subject to a furlough agreement must be excluded from the usual hours calculation.

On 11 September 2020 the guidance was updated to include a new subsection 'Work out your employee's usual hours and furloughed hours' to tell employers how to calculate the number of working and furloughed hours for an employee that comes off furlough or flexible furlough partway through a claim period.

Impact

For claims made before 11 September, HMRC accept that it was a reasonable interpretation for employers to have calculated claims in the manner set out above. No amendment is necessary to any previous claims.

For claims made after 11 September, employers should have used the revised method. HMRC do NOT accept that claims made in the manner set out above are a reasonable interpretation of the guidance. These should be corrected in accordance with the above guidance.

Example 3 - Use of 1/12 of annual salary for a fixed pay employee

Issue

The guidance in relation to fixed pay employees has remained largely consistent throughout – requiring the employer to identify the employee's reference period and to use the wages payable during that reference period as the basis for the claim.

Instead of doing the above, some employers have simply used 1/12 of the employee's current annual salary as the basis for the claim. This can result in discrepancies, for example if there have been changes to the employee's pay, irregular pay periods etc.

Impact

Because the guidance has been clear throughout, any differences between the amount of the claim calculated by the employer, and that if claimed on the correct basis, should be corrected in accordance with the above guidance.

Example 4 – Short-cuts to calculating reference pay for variable pay employees

Issue

The guidance in relation to employees whose pay varies has remained largely consistent throughout – requiring (for pre 31 October 2020 claims) the employer to calculate the higher of

- wages earned in the corresponding calendar period in a previous year
- average wages payable in the tax year 2019 to 2020

We are aware of a number of 'short-cuts' that employers have used to calculate reference pay for variable pay employees, such as:

- Calculating usual wages and / or usual hours
 - By reference to the corresponding calendar period in a previous year but without comparing to averages wages payable in 2019-20
 - By reference to averages wages payable in 2019-20 but without comparing to the corresponding calendar period in a previous year

- Calculations undertaken based on weeks rather than days
- Working days used rather than calendar days

Impact

Because the guidance has been clear throughout, any differences between the amount of the claim calculated by the employer on the 'short-cut' basis, and that if claimed on the correct basis, should be corrected in accordance with the above guidance.

Note – HMRC have confirmed that when considering the 'corresponding calendar period', it is acceptable to use the same calendar days (i.e. the same dates in a previous year) or the corresponding pay period, provided it is used consistently.

Example 5 – Reductions in, or deductions from, salary

Issue

In some instances employees have agreed to accept a reduction in salary in order to remain employed. Some employers have then used this reduced salary as the basis for calculating the CJRS claim; rather than being based on their reference salary or usual pay for the reference period.

Further, some employers with employees on salary sacrifice arrangements have used the pre-sacrifice amount of salary when calculating the CJRS claim rather than the post-sacrifice salary.

Both of these processes have resulted in excessive CJRS claims.

Impact

Whilst the guidance in relation to deductions from salary was not published until 21 May 2020, this simply stated that employee-authorized salary deductions can be made from grant payments. It did not alter the calculation of the grant itself, and the guidance on this has been clear throughout.

Any differences between the amount of the claim calculated by the employer based on the reduced / post-salary sacrifice salary, and that if claimed on the correct basis, should be corrected in accordance with the above guidance.