VII. (Still) Too Little, Too Late? – Crisis Management in England[1]

Nikola Wilman

1. Introduction

In favourable terms, the UK government's handling of the corona pandemic could be described as hesitant: Initially, the strategy seemed to focus on protecting the economy, accompanied by isolation of the elderly and the clinically vulnerable (referred to as 'shielding'). Even the idea of 'herd immunisation' through the 'controlled' infection of the rest of the population was not initially considered to be out of the question.[2] It was not until mid-March 2020 that a new study conducted by the Imperial College London persuaded the government to change its strategy, as it was predicted that the number of deaths in the UK could reach hundreds of thousands if transmission continued unchecked.[3]

Meanwhile, public life in the country largely reached a standstill with a UK-wide mandatory lockdown announced on 23 March 2020: all schools[4] in the UK were closed, as well as most non-essential businesses[5], particu-

1 Measures in Wales, Scotland and Northern Ireland may partly deviate due to the devolution (transfer of legislative and executive competencies to the Regions).

2 Boseley, Herd Immunity: Will the UK's Coronavirus Strategy Work?, The Guardian, 13 March 2020. See also Hunter, Covid-19 and the Stiff Upper Lip – The Pandemic Response in the United Kingdom, The New England Journal of Medicine, 20 March 2020.

3 Grey/MacAskill, Special Report: Johnson Listened to his Scientists about Coronavirus – but They Are Slow to Sound the Alarm, Reuters, 7 April 2020. On the study itself see: Walker et al., Report 12: The Global Impact of COVID-19 and Strategies for Mitigation and Suppression, Imperial College COVID-19 Response Team, 26 March 2020.

4 With the exception of children of so-called 'critical workers' as well as particularly vulnerable children. See Department for Education/Cabinet Office, Critical Workers Who Can Access Schools or Educational Settings, updated 28 September 2020.

5 Ministry of Housing, Communities & Local Government/ Cabinet Office, Closing Certain Businesses and Venues, 23 March 2020.

larly in the retail, hospitality and leisure sectors.[6] Also, lockdown regulations made it an offence for any person to leave their house to go to work if their work could be reasonably done from home.[7] The government warned that up to one-fifth of employees might be absent from work during peak weeks of the pandemic.[8]

Despite the lockdown, the number of cases continued to rise.[9] Since the beginning of the crisis, particular attention has therefore been paid to the *National Health Service* (*NHS*). The *NHS* is considered chronically underfunded and ill-prepared for a pandemic[10]: "The UK Government's Contain-Delay-Mitigate-Research strategy failed. […] The UK now has a new plan – Suppress-Shield-Treat-Palliate. But this plan, agreed far too late in the course of the outbreak, has left the NHS wholly unprepared for the surge of severely and critically ill patients that will soon come." The UK has been hit hard: Between Monday 3 February 2020 and Sunday 18 April 2021, the total number of confirmed COVID-19 cases per 100,000 people was 6,740 for the EU-27 as a whole; in the UK it was 6,512. The total number of deaths per 100,000 people was 151 for the EU-27 versus 188 in the UK.[11]

In addition to the health crisis, the magnitude of the recession caused by the pandemic is unprecedented in modern times: Economic output as measured by GDP declined by 9.7% in 2020. This was the steepest drop since consistent records began in 1948 and equal to the decline in 1921

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6 For further details, see Department of Health & Social Care, Coronavirus Outbreak FAQs: What You Can and Can't Do, 1 May 2020. The Coronavirus Act 2020 passed on 25 March 2020 and the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 (SI 2020/350) ('lockdown regulations'), enacted on 26 March 2020, put the lockdown measures on a legal basis.

7 Health Protection Regulations 2020, reg. 6 (2) (f) (see fn. 6).

8 BBC News, Coronavirus: Up to Fifth of UK Workers 'Could Be off Sick at Same Time', 3 March 2020; Department of Health and Social Care, Coronavirus Action Plan: A Guide to What You Can Expect Across the UK, 3 March 2020.

9 On this see: Linton, When Will the Covid-19 Pandemic Peak? Cambridge-INET Working Paper Series, No. 2020/11.

10 Horton, COVID-19 and the NHS – "a National Scandal", The Lancet 2020, p. 1022.

11 Bradshaw/Bennet et al., ESPN Thematic Report on Social Protection and Inclusion Policy Responses to the Covid-19 Crisis, United Kingdom, 2021, p. 4.

on less precise estimates.[12] During the first lockdown, UK GDP was 25% lower in April 2020 than it was two months earlier in February.[13]

In an initial response, in Budget 2020 on 11 March 2020, the UK Chancellor of the Exchequer, *Rishi Sunak*, set out plans for a GBP 12 billion (around EUR 14 billion) package of "temporary, timely, and targeted measures" to support public services, individuals and businesses through the economic disruption caused by coronavirus.[14] On 17 March 2020 the Chancellor announced an additional extensive economic aid package worth a total of GBP 330 billion (around EUR 395 billion) ("equivalent to 15% of GDP") and promised "to do whatever it takes to support our economy through this crisis".[15]

The considerable financial volume of the aid package is particularly surprising, as it seems to turn the previously neoliberal ideology of the conservative government, characterised by little state control, low debt and the free play of market forces, on its head.[16] In 2020/21 the budget deficit reached a peacetime record of GBP 323 billion (around EUR 387 billion), or 15% of GDP.[17] The measures in the rescue package were initially focused on providing financial support to businesses, in particular through interest-free loans, cash-flow-supporting measures such as emergency loans and deferrals of VAT payments, as well as sectoral support for the tourism and retail sectors[18]. Only after heavy criticism by a number of MPs[19] did the government focus on job preservation, and the aid package was accordingly expanded to include a wage compensation programme (*Coronavirus Job Retention Scheme*) of remarkable (financial) proportions: "We have been working round the clock so that we can today confirm an unprece-

12 Office for National Statistics (ONS), Coronavirus and the Effects on UK GDP, 6 May 2020.

13 ONS, Monthly GDP and Main Sectors to Four Decimal Places, 10 December 2021 release. To put this into some context, this is over three times the 7% decline in GDP recorded during the financial crisis in 2008/9. See ONS, Coronavirus and the Impact on Output in the UK Economy, April 2020, 12 June 2020.

14 HM Treasury, Budget 2020, HC 121, March 2020, Para 1.83.

15 HM Treasury, Chancellor of the Exchequer, Rishi Sunak on COVID19 Response, 17 March 2020.

16 See, inter alia Kettle, After Coronavirus, Boris Johnson`s Tories Will Be a Very Different Party, The Guardian, 16 April 2020.

17 ONS, Public Sector Finances – October 2021.

18 For a summary of measures: HM Revenue & Customs et al., Financial Support for Businesses During Coronavirus (Covid-19), 27 April 2020.

19 Urgent Question on Coronavirus Employment Support, HC Deb 19 March 2020, cc1137-1153.

dented package of support to protect people's jobs and wages. And we are strengthening our safety net at the same time."[20]

In spring 2020, the UK government published COVID-19 recovery strategies, setting out plans for the phased re-opening of the economy.[21] The summer of 2020 saw a strong rebound in economic activity with the easing of the strict lockdown restrictions[22], increases in consumer spending and the full impact of the government's support measures being felt. GDP grew by 6.6% in July 2020, following an 8.7% increase in June 2020.[23] Nevertheless, GDP was still 12% below its pre-pandemic level.[24]

However, in autumn 2020 new national restrictions[25] as well as tighter localised measures[26] in response to rising COVID-19 cases[27] cast a cloud over the economic outlook, particular in sectors like hospitality. Against this backdrop, on 24 September 2020, the Chancellor announced his *Winter Economy Plan*[28], including a further series of measures to support businesses and jobs. On 31 October 2020, the Prime Minister announced a second national lockdown across England from 5 November 2020 until

20 HM Treasury et al., Chancellor Announces Workers' Support Package, 20 March 2020.

21 Cabinet Office, Our Plan to Rebuild: The UK Government's COVID-19 Recovery Strategy, 11 May 2020, last updated 24 July 2020.

22 In England, the legal restrictions on going to work were removed entirely on 1 August 2020, putting it at the employer's discretion to ask people to return to work.

23 ONS, Coronavirus and the Impact on Output in the UK Economy: August 2020, 9 October 2020.

24 Ibid.

25 Cabinet Office, Coronavirus (COVID-19): What Has Changed – 22 September, 22 September 2020. There is now a government recommendation for office workers to work from home over the winter if they can effectively do so.

26 Department of Health & Social Care, Local Restrictions: Areas with an Outbreak of Coronavirus (COVID- 19), 27 July 2020, last updated 20 September 2020. On 12 October, the Prime Minister announced a new three-tier lockdown system for England of medium, high and very high alert areas, with the most severe restrictions on social contact and businesses coming in the last category. Department of Health & Social Care, Local COVID Alert Levels: what you need to know, 12 October 2020, last updated 27 October 2020.

27 As of 1 November 2020, there were 1,034,914, positive tests in total, 23,254 new cases that day and there had been 46,717 deaths in total (of those who had tested positive; 58,925 deaths with COVID-19 on the death certificate). See Government UK, Coronavirus in the UK, updated daily.

28 HM Treasury, Winter Economy Plan, 24 September 2020.

2 December 2020, confirming extensions to various support schemes.[29] After having initially described such a measure as "the height of absurdity" that would "turn lights out", the Prime Minister relented after warnings from the government's scientific advisers that the virus could kill 85,000 people over the winter, and that local measures were not sufficient.[30] These restrictions led to a 2.3% fall in GDP in November 2020, the first monthly decline since April 2020.[31]

By the beginning of January 2021, a surge in Covid-19 cases, driven by the new Alpha variant, led to the re-introduction of lockdowns across the nations of the UK.[32] As a result, the economy did see a downturn in economic activity, with UK GDP falling by 1.4% during the first quarter of 2021 compared with the previous quarter.[33] However, this was less of a decline than many economists had been expecting as consumers and businesses had adapted over the previous year.[34]

During the early 2021 lockdown, the government published on 22 February 2021 its 'roadmap' to easing restrictions in England which consisted of reopening the economy in stages over the subsequent months against the backdrop of a relatively fast vaccine rollout.[35] On 3 March 2021, the Chancellor presented the Budget, of which "setting the path for recovery" was the main theme.[36] Optimism over the economic outlook was boosted during the spring as virus caseloads fell, the vaccination rate rose, and strong economic data was published.[37] GDP grew by 5.5% in the second quarter (April to June) 2021, compared with the lockdown-affected first quarter.[38]

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29 Cabinet Office, New National Restrictions from 5 November, 31 October 2020, last updated 1 November 2020.

30 Sample, Covid: Ministers Ignored Sage Advice to Impose Lockdown or Face Catastrophe, The Guardian, 13 October 2020.

31 ONS series ECYX, 10 December 2021 update.

32 HM Government press release, Prime Minister Announces National Lockdown, 4 January 2021.

33 ONS series IHYQ; ONS, GDP First Quarterly Estimate, UK: January to March 12, 12 May 2021.

34 For example, the Bank of England's February forecast of a 4% decline. See Bank of England, Monetary Policy Report, February 2021, p. 2.

35 HM Government, COVID-19 Response – Spring 2021, CP 398, 22 February 2021.

36 HM Treasury, Budget 2021: Protecting the Jobs and Livelihoods of the British People, HC 1226, 3 March 2021.

37 For example, BBC News, UK Set for Stronger Post-Covid Recovery, Says OECD, 31 May 2021.

38 ONS, GDP First Quarterly Estimate, UK: July to September 2021, 11 November 2021.

During June and July 2021, the rising case numbers due to the Delta variant led to the final stage of the reopening roadmap for England to be delayed by a month from 21 June to 19 July.[39] Many firms reported staff shortages due to the increasing number of workers having to self-isolate (which was dubbed a 'pingdemic').[40] As of October 2021, GDP was still 0.5% lower than before the pandemic.[41]

2. *Job Retention*

At the beginning of the year 2020, the UK labour market had its highest employment rate of 76.5% since comparable records began in 1971.[42] The UK unemployment rate was 4% in in the three months to February 2020[43] before coronavirus social distancing measures began.

However, behind this initially positive figure lies a highly fragmented labour market with an increasing number of atypical employment relationships which for many people are no longer a transitional phenomenon. This is characterised by the significant increase in the number of self-employed persons (approx. 15% of all workers[44]) and temporary agency workers (approx. 5% of all workers[45]) in recent years, as well as the sharp decline in the number of jobs in the public sector due to privatisation[46]. Labour market policy measures tend to concentrate on placement and counselling measures as well as financial (tax) incentives to promote the taking up of low-paid employment in the sense of a "make work pay" approach.[47]

39 *HM Government* press release, Vaccination Programme Accelerated as Step 4 is Paused, 14 June 2021.
40 For example, BBC News, Government Pingdemic Response Chaotic, Say Food Supply Firms, 25 July 2021.
41 ONS series EXYX, 10 December 2021 update.
42 ONS, Employment in the UK: March 2020, 17 March 2020.
43 ONS, Unemployment Rate (aged 16 and over, seasonally adjusted). At the end of 2011 the unemployment rate was still at 8.5%.
44 See ONS, Labour Market Economic Commentary: March 2020, 17 March 2020.
45 See ONS, EMP01 SA: Full-Time, Part-Time and Temporary Workers (seasonally adjusted), 17 March 2020.
46 See, inter alia, Meager, Self-Employment: Independent 'Enterprise', or Precarious Low-Skilled Work? The Case of the UK, in: Conen/Schippers, Self-Employment as Precarious Work, 2019, p. 64.
47 Hick/Lanau, Tax-Credits and In-Work Poverty in the UK, Social Policy & Society, 2019, p. 220 ff.

It is therefore not surprising that since the first lockdown, young workers and those in precarious employment have been disproportionately affected by wage losses and unemployment.[48]

According to the British Chamber of Commerce, around 37% of companies intended to lay off at least two-thirds of their staff.[49] In order to counteract these mass redundancies and to preserve jobs in companies whose operations have been severely restricted due to the corona crisis, on 20 March 2020 the government announced a temporary wage compensation programme, the so-called *Coronavirus Job Retention Scheme (CJRS)*.[50] The scheme was initially intended to run from 1 March to 30 June 2020, but was revised several times. It did not close until 30 September 2021.

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48 See Adams-Prassl et al., Inequality in the Impact of the Coronavirus Shock, Cambridge-INET Working Paper Series, No. 2020/18. 58% of workers below age 30 earned less than the week before, as compared to 36% of workers between 40 and 55 years. 10% of workers below the age of 30, who had still been gainfully active a month ago, were already unemployed, as compared to 6% of persons between 40 and 55 years old. Furthermore, 15% of persons engaged in flexible or, respectively, zero-hour contracts stated that they were unemployed due to the corona crisis, as compared to 4% of persons engaged in gainful activity with unlimited contracts.

49 British Chambers of Commerce, BCC Coronavirus Business Impact Tracker, 8 April 2020.

50 The statutory basis for the Scheme is s. 76 of the Coronavirus Act 2020. On 15 April, the government published the first Treasury Direction under this power: The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Coronavirus Job Retention Scheme) Direction (CJRS Treasury Direction No. 1). The government has published five further Directions: on 22 May CJRS Treasury Direction No. 2 (which replaced the CJRS Treasury Direction No. 1, extended the Scheme and set out the rules that applied from 1 April to 30 June 2020); on 25 June CJRS Treasury Direction No. 3 (which set out new rules that applied from 1 July to 30 October 2020); on 12 November CJRS Treasury Direction No. 5 (which set out the rules that applied from 1 November 2020 to 31 January 2021; (Treasury Direction No. 4 did not concern the CJRS); on 26 January CJRS Treasury Direction No. 6 (extending the CJRS until 30 April 2021; the rules under the CJRS Treasury Direction No. 5 will continue to apply with some modifications); on 15 April 2021 CJRS Treasury Direction No. 7 (which set out the rules that applied from 1 May 2021 to 31 September 2021). In addition, there is also a range of Government Guidance which has been updated multiple times. The Treasury Directions are not subject to parliamentary approval, though they are a form of legislation and are subject to the ordinary rules of statutory interpretation. The power of HM Treasury to make these Directions is one of the temporary powers under the Coronavirus Act 2020 due to expire on 24 March 2022. (See: HM Government, Covid-19 Response: Autumn and Winter Plan 2021, 14 September 2021, Para. 104).

Under the initial *CJRS*, employers in the UK could apply for compensation of 80% of monthly salary costs for furloughed employees, up to a maximum of GBP 2,500 (EUR 2,995).[51] In addition, employers could claim *Employer National Insurance Contributions (NICs)* and auto-enrolment pension contributions that were payable on the reduced rate of pay, so that a maximum grant of GBP 2,804 (EUR 3,359) could be received per employee.[52]

Employers could only make a claim for employees that were designated as 'furloughed', a new concept in UK employment law: Employees remained technically employed but had to be instructed by their employer to cease paid work for at least three weeks (by mutual agreement[53]).[54] Initially, a partial reduction of working hours was not possible. In this respect, the measure was not comparable with, for example, the German short-time work model.[55] However, on 12 June 2020, the government published details of a *flexible furlough scheme*[56], running from 1 July 2020 to 31 October 2020.[57] Under the revised rules, employees could carry out part-time work for their employer with the government continuing to pay 80% of salaries for any usual hours they did not work.[58] Only employees who had been furloughed for a full three weeks before 30 June 2020 could be furloughed under the revised scheme[59], unless they were returning

51 CJRS Treasury Direction No. 1 (fn. 50) Para. 8.2.
52 CJRS Treasury Direction No. 1 (fn. 50), Para. 8.1 (b) (c).
53 This requires a furlough agreement between employer and employee agreeing the relevant terms and conditions incorporated into the employee's employment contract (also possible in electronic form). See CJRS Treasury Direction No. 1 (fn. 50), Para. 6.7.
54 CJRS Treasury Direction No. 1 (fn. 50), Para. 6.1.
55 The UK has no history of state-led, short-time working or furlough support. The so-called Statutory Guarantee Pay scheme, regulated in Chapter III, Part XI of the Employment Rights Act 1996 (ERA), applies only to contracts that foresee the possibility of temporary lay-offs without pay, which are common in volatile sectors such as construction. According to this, employees are only entitled to a "statutory guarantee pay" if their wages have been reduced by at least 50 percent. The entitlement exists for up to 5 days within a three-month period. Amount of the guarantee payment: GBP 29 (from 6 April 2020: GBP 30); maximum amount: GBP 145 (GBP 150 from 6 April 2020). See also here.
56 HM Revenue & Customs (HMRC), Policy Paper: Changes to the Coronavirus Job Retention Scheme, up-dated 1 July 2020; CJRS Treasury Direction No. 3 (fn. 50).
57 CJRS Treasury Direction No. 3 (fn. 50), Para. 40 (a).
58 CJRS Treasury Direction No. 3 (fn. 50), Para. 10.1.
59 CJRS Treasury Direction No. 3 (fn. 50), Paras. 10.2 (a) and 10.3.

from family-related leave[60]. Also, from 1 August 2020, employers were required to make steadily increasing contributions towards the costs of furloughed employees.[61]

On 24 September 2020, the *Winter Economy Plan*[62] confirmed that the *CJRS* would close by the end of October 2020, to be replaced by a significantly less generous wage support programme, the *Job Support Scheme (JSS)*: Under the initial proposal, employers could furlough employees who worked at least 33% of their hours. For hours not worked, employers would cover one-third and *HMRC* (*HM Revenue & Customs*) would cover one-third up to GBP 698 per month (EUR 836). In practice this meant that employers would have covered at least 55% of the total wage bill and *HMRC* would have covered not more than 22%. Organisations like the Resolution Foundation noted that employers would have financial incentives to cut jobs instead of using the *JSS*.[63]

However, announcing the second national lockdown on 31 October (see above, *1.*), the Prime Minister declared that the original furlough scheme, the *CJRS*, would remain open, initially until December 2020. In order to give businesses certainty over the winter months, a last-minute U-turn by the Chancellor led to the scheme being extended until 30 April 2021, with the level of the grant mirroring levels available under the *CJRS* in August 2020: Under the extended *CJRS*, employees could be flexibly furloughed with the government paying 80% of wages for any usual hours not worked up to a cap of GBP 2,500 (EUR 2,995). Employers were required to pay *NICs* and pension contributions only for the hours the employee did not work.[64]

In the Spring Budget 2021[65] the Chancellor announced that the *CJRS* would be extended until 30 September 2021. The grant continued to cover 80% of an employee's wages (up to GBP 2,500 per month/ EUR 2,995) un-

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60 CJRS Treasury Direction No. 3 (fn. 50), Paras. 10.2(b) and 11.

61 From August 2020 the grant no longer covered employer NICs and pension contributions; from September 2020, employers were required to pay 10% of a furloughed employee's salary, from October 2020 it was 20%. See CJRS Treasury Direction No. 3 (fn. 50), Paras. 33.1, 31.3 and 31.4.

62 See above fn. 28.

63 Bell et al., The Winter (Economy Plan) is Coming, Resolution Foundation, 25 September 2020.

64 HMRC, Check if You Can Claim for Your Employees' Wages through the Coronavirus Job Retention Scheme, 26 March 2020, last updated 15 October 2021.

65 HM Treasury, Budget 2021: Protecting the Jobs and Livelihoods of the British People, March 2021.

til 30 June 2021.[66] From 1 July, the grant covered 70% of wages and employers were required to top up an additional 10%. From 1 August 2021, the grant covered 60% of wages and employers were required to top up 20%. The *CJRS* closed on 30 September 2021.[67]

Under the *CJRS*, the term 'employee' was defined expansively by reference to UK tax law[68], i.e. all those employees could be furloughed who were registered for payroll accounting via the *Pay As You Earn Scheme, PAYE*, on or before 19 March 2020/30 October 2020 and whose income amounts were reported to *HMRC* (no later than the date of salary payment (so-called *Real Time Information*, *RTI*). It therefore covered many workers who would not normally be 'employees' for the purposes of UK employment law.[69] Yet, it excluded those who were not paid through *PAYE* even if they would be found by an Employment Tribunal to be 'limb (b) workers'[70] or even 'employees'[71] for the purposes of employment law.[72] This excluded many atypical workers who are falsely classified as 'self-employed' for tax purposes.[73] The *Independent Workers' Union of Great Britain* (*IWGB*) brought a judicial review of the decision to limit the *CJRS* to those who are paid through *PAYE*. They argued that this violated Article 14 (prohibition of discrimination) of the European Convention on Human Rights read with Article 1 of Protocol 1 (protection of property). Specifically, they argued that limb (b) workers who are not paid through *PAYE* are analogous to those who are and that the differential treatment was unjustified. The High Court accepted that limb (b) workers who are and are not paid through *PAYE* are analogous. However, the court dismissed the claim on the basis that the different treatment was justified, accepting the government's argument that a key feature of the *CJRS* is preserving employer/employee links. Moreover, it accepted that in order to

66 CJRS Treasury Direction No. 5 (fn. 50), Para. 10.
67 HMRC, Changes to the Coronavirus Job Retention Scheme from July 2021, 3 March 2021 (withdrawn on 29 October 2021); CJRS Treasury Direction No. 7 (fn. 50).
68 See CJRS Treasury Direction No. 1 (fn. 50), Paras. 13.1, 13.2 and 13.3; CJRS Treasury Direction No. 5, (fn. 50), Para. 35.1 (h).
69 Commons Library Briefing Paper, Employment Status, CBP-8045, 28 March 2018.
70 HM Government, Employment Status.
71 Ibid.
72 See e.g. Autoclenz Ltd v Belcher [2011] UKSC 41.
73 Cabrelli/D'alton, Furlough and Common Law Rights and Remedies, UK Labour Law Blog, 8 June 2020.

set up the *CJRS* at pace while also protecting against the risk of fraud, the government had been justified in using bright line rules.[74]

The government emphasised that the programme included not only full-time and part-time employees but also employees with flexible or zero-hour contracts who are on *PAYE*.[75] However, for workers on flexible or zero-hour contracts, the right to pay is contingent on work being provided and generally the employer is not under a contractual obligation to provide them with work. As the decision to furlough rested fully with the employer, the employer or agency could therefore simply reduce the working time of these employees to zero hours without designating them as furloughed.[76] Also, the employer still had the option for the sake of convenience to dismiss an employee or initiate redundancies, which exposes the limitations of UK dismissal law.[77] A number of companies, particularly in the aviation industry, had already announced significant mass redundancies.[78]

Also, it was often unclear how the programme related to other labour law provisions, in particular concerning the payment of statutory sick pay[79], protection against dismissal[80] and taking annual leave. In the context of dismissal, one of the key questions was whether it was 'fair'[81] for an employer to dismiss employees as redundant when the *CJRS* was available to provide employers with financial support to retain staff. In the case of annual leave, one of the issues under discussion was whether the employer could require workers to take annual leave before or while they were on furlough. This question arose in particular due to an amendment of the

74 R. (Adiatu) v HM Treasury [2020] EHWC 1544 (Admin.).

75 HMRC, Check Which Employees You Can Put On Furlough to Use the Coronavirus Job Retention Scheme, 14 May 2020, last updated 2 October.

76 Likewise, Hendy, The Gaps in the Government's Coronavirus Income Protection Plans, Institute of Employment Rights, 2020, p. 8 ff. See also Ford/Bogg, Not Legislating in a Crisis? The Coronavirus Job Retention Scheme, Part 2, UK Labour Law Blog, 31 March 2020: "Unless it happens to be motivated by altruism, it is easier for it [the agency] to rely on its contractual provisions and do nothing at all."

77 On this problem see in detail: Ford/Bogg (fn. 76).

78 Partington/Partridge, Airline Job Losses Could be On Scale of 1980s Mining Industry, Report Warns, the Guardian, 10 June 2020.

79 See CJRS Treasury Direction No. 1 (fn. 50), Para. 6.3.

80 See on this: Practical Law Employment, COVID-19: Coronavirus Job Retention Scheme (furlough), Thomson Reuters.

81 Office for Budget Responsibility (OBR), Fiscal Sustainability Report, July 2020, (fn.), Para. 3.12.

working time regulations[82], according to which under certain conditions a carry-over of the holiday entitlement to the following two years can be granted.[83]

Nevertheless, in the UK, where working age social protection is traditionally dominated by social assistance, the *CJRS* can be considered a rather unusual policy measure. Previously, those temporarily laid off would have had to rely on *Jobseeker's Allowance (JSA)* at the same rate as their unemployed counterparts[84], so that through the *CJRS* their maximum allowance had increased.[85]

Furlough levels largely rose and fell with changes in lockdown restrictions and changes to the *CJRS* scheme. By midnight on 14 October 2021, 11.7 million jobs had been furloughed since the start of the scheme, costing the government GBP 70 billion (around EUR 84 billion).[86] The use of the scheme peaked during the first lockdown in early May 2020, when 8.9 million were furloughed at one time – around one third of private sector employees.[87] Levels have fallen steadily since April 2021, when public health restrictions had been gradually lifted across the UK. According to preliminary *HMRC* estimates, 1.1 million jobs were still on furlough on 30 September 2021 (approx. 5% of eligible jobs), the last day of the *CJRS* before it ended.[88]

The *CJRS* is widely perceived to have been effective in reducing redundancy during the pandemic. Likely largely due to the government support schemes[89] the labour market has "proved more resilient"[90] than one might have expected given the scale of the recession. Unemployment levels rose by around 400,000 to 1.8 million by the end of 2020, with the unemployment rate rising from 4% to 5.2%. During 2021, unemployment fell and stood at 1.4 million during August-October 2021, with an unemployment

82 Working Time (Coronavirus) (Amendment) Regulations 2020 (SI 2020/365).
83 Bogg /Ford, Furloughing and Fundamental Rights: The Case of Paid Annual Leave, UK Labour Law Blog, 6 April 2020. They argue that under lockdown circumstances, furlough is more akin to sick leave as it "is subject to extensive physical and psychological constraints".
84 Equivalent to GBP 322 (EUR 382) per month, albeit with the option of claiming UC on top of that depending on savings and total household income.
85 Harris et al., Coronavirus and Social Security Entitlement in the UK, Journal of Social Security Law 2020, p. 55, 73.
86 HMRC, Coronavirus Job Retention Scheme Statistics, 4 November 2021.
87 HMRC, Coronavirus Job Retention Scheme Statistics, 4 November 2021.
88 HMRC, Coronavirus Job Retention Scheme Statistics, 4 November 2021.
89 OBR, Economic and Fiscal Outlook, 27 October 2021, pp. 61-64.
90 OBR, Economic and Fiscal Outlook, 27 October 2021, Para. 1.8.

rate of 4.2%.[91] However, it should be noted that furloughed workers are classed as employed in official statistics. Also, there were other notable impacts from the pandemic such as an initial big fall in total hours worked in the economy with a peak decline of 20% in April-June 2020.[92] And, the *CJRS* did not protect all jobs. According to the Institute for Fiscal Studies (IFS), around 1 million people were made redundant between April 2020 and June 2021, comparing with 550,000 for the same period in 2019.[93] From the beginning of the scheme, there had been concerns about significant numbers of workers being "excluded", either because they were not eligible or they were eligible but did not receive adequate support. These "excluded" workers included those who were not paid through *PAYE* (e.g. gig workers), those eligible but whose employers had refused to furlough them (e.g. zero-hours and agency workers as well as workers on maternity leave) and those eligible who receive a significant portion of their pay in the form of dividends (e.g. directors of limited companies).[94] It has also been observed that while the *CJRS* preserved jobs, it may have prevented workers from being allocated to growing sectors.[95]

3. Supporting the Economy

a) The Self-Employment Income Support Scheme (SEISS)

A possible safety net for those in precarious employment not covered by the *CJRS* (see above) was the *Self-Employment Income Support Scheme (SEISS)*[96] which was intended to be formally comparable to the furlough

91 ONS, Labour Market Overview, UK: December 2021, 14 December 2021.
92 ONS, Employment in the UK: December 2021, 14 December 2021.
93 Institute for Fiscal Studies, Employment and the End of the Furlough Scheme, October 2021.
94 House of Commons Treasury Committee, Economic Impact of Coronavirus: Gaps in Support, 15 June 2020; National Audit Office, Implementing Employment Support Schemes in Response to the COVID-19 Pandemic, 23 October 2020.
95 Financial Times, The Mixed Success of Furlough Schemes, 1 October 2021.
96 On 30 April, the government published The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Self-Employment Income Support Scheme) Direction (SEISS Treasury Direction) the statutory guidelines for HMRC to administer SEISS. HMRC have also published guidance on SEISS:

scheme. The scheme initially paid taxable[97] grants amounting to 80% of past profits for a three month period, limited to GBP 2,500 (approx. EUR 2,995) per month.[98] In order to be eligible, the past[99] profits were not to exceed GBP 50,000 (approx. 59,900 Euro). Also, the eligibility criteria excluded those who became recently self-employed (i.e. after April 2019) and those whose trading profit from self-employment constituted less than 50% of their total annual income.[100] According to calculations, the programme therefore covered at most 62% of all self-employed persons.[101] Also, to make a claim, the self-employed had to carry on trade that had been "adversely affected" by the pandemic[102], a requirement deviating from the *CJRS* where the guidance seemed to expand the scope beyond employers directly affected by coronavirus.[103]

The payment was made as a one-off payment at the end of June 2020 for March to June. Thus, self-employed persons on low incomes and without savings were disproportionately affected by the lack of payment for three months.[104] The then Shadow Chancellor John McDonnel suggested that there was "a real risk that without support until June the self-employed will feel they have to keep working, putting their own and others' health at risk."[105]

SEISS was opened for applications on 13 May 2020 and was to close initially on 13 July 2020.

On 29 May 2020, the government announced a second round of *SEISS*, with those eligible able to claim a second grant, worth 70% of their average monthly trading profit, for a further three months, capped at GBP

HM Revenue & Customs, Check if You Can Claim a Grant through the Coronavirus (COVID-19) Self-Employment Income Support Scheme, 26 March 2020, last updated 1 October 2021.

97 The grants are subject to income tax and self-employed NIC (Finance Act 2020, s. 106 and Sch. 16).

98 SEISS Treasury Direction (fn. 96), Para. 6.1.

99 Either in the previous year or averaged over three years.

100 SEISS Treasury Direction (fn. 96), Para. 4.2.

101 Adam et al., Fast Choices by Government Provide Generous Income Support to Most Workers, but Leave Some with Nothing and Others with Too Much, Institute for Fiscal Studies, 2 April 2020.

102 SEISS Treasury Direction (fn. 96), Para. 4.2(a).

103 Mangan, COVID-19 and Labour Law in the United Kingdom, European Labour Law Journal, 2020, p. 341.

104 Hendy, 2020 (fn.76), p. 13 ff.

105 BBC News, Coronavirus: UK Government Unveils Aid for Self-Employed, 26 March 2020.

6,570 (EUR 7,871) in total and again paid out in a single instalment.[106] The online service for applications for the second grant was opened on 17 August, and closed on 19 October 2020.[107]

On 24 September 2020, the Chancellor announced a six-month extension to the *SEISS*, to apply from November 2020 to April 2021.[108] The extension would be in the form of two taxable grants, paid in two lump sum instalments. Initially, the first grant (covering three months' worth of trading profits from 1 November 2020 to 31 January 2021) was proposed to cover 20% of average monthly trading profits, capped at GBP 1,875 (EUR 2,246), but this figure was revised three times: On 22 October 2020, the Chancellor announced the grant would cover 40% of average monthly trading profits, capped at GBP 3,750 (EUR 4,493) in total.[109] After announcing a second national lockdown on 31 October 2020, the Prime Minister stated on 2 November 2020 that the payment for the first month of the grant (November) would be set at 80% – increasing the total level of this grant to 55% of trading profits, capped at GBP 5,160 (EUR 6,182).[110] Subsequently, on 5 November 2020, the Chancellor announced that all three months of the grant would be based on 80% of average trading profits, up to a maximum of GBP 7,500 (EUR 8,985).[111]

On 24 November, the government published a further Treasury Direction to cover this third *SEISS* grant.[112] Applications for the third *SEISS* grant opened on 29 November 2020 and closed on 29 January 2021.

On 3 March 2021, the Chancellor presented the 2021 Budget in which he set out the details of the fourth *SEISS* grant, to cover the period February to April 2021, and announced a fifth grant to cover up to the end of September 2021.[113] The fourth grant was set at 80% of three months' average trading profits, paid out in a single instalment, capped at GBP 7,500 (EUR 8,985). Unlike earlier *SEISS* grants, the grant took into account the

106 The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Self-Employment Income Support Scheme Extension) Direction.

107 HM Treasury, Millions of Self-Employed to Benefit from Second Stage of Support Scheme, 17 August 2020.

108 HM Treasury, Winter Economy Plan, 24 September 2020, (fn. 28), Para. 2.5.

109 HC Deb 22 October 2020 c1250.

110 HM Treasury, Government Increases Support for the Self-Employed Across UK, 2 November 2020.

111 HM Treasury, Government Extends Furlough to March and Increases Self-Employed Support, 5 November 2020.

112 The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Self-Employment Income Support Scheme Grant Extension 3) Direction.

113 HC Deb 3 March 2021 c252.

2019/20 tax returns and was open to those who became self-employed in the 2019/20 tax year.[114] Applicants were required to declare that they "reasonably believe there will be a significant reduction" in their trading profits.[115] The online claims service for this grant was launched on 21 April 2021, and closed on 1 June 2021.

The fifth and final grant covered May to September 2021. The size of the grant was determined, in part, by the amount a claimant's turnover had reduced in the year April 2020 to April 2021: "[…] as the economy reopens over summer, it is fair to target our support towards those most affected by the pandemic [….]"[116]. The grant was worth 80% of three months' average trading profits, capped at GBP 7,500 (EUR 8,985) for those with a turnover reduction of 30% and more and worth 30% of three months' trading profits, capped at GBP 2,850 (EUR 3414) for those with a turnover reduction of less than 30%.[117] Applications opened on 29 July 2021 and closed on 30 September 2021.[118]

Over the history of the *SEISS* – the first four *SEISS* grants, and claims paid under the fifth grant up to 15 August 2021 – 9.9 million claims have been paid to 2.9 million people. The value of these payments has been GBP 27.1 billion (around EUR 32 billion). The average value of claims made has been GBP 2,700 (EUR 3235).[119]

To compensate for the cost of the programme, the Chancellor announced an adjustment of social security contributions for the self-employed and employees: "But I must be honest and point out that in devising this scheme […] it is now much harder to justify the inconsistent contributions between people of different employment statuses. If we all want to benefit equally from state support, we must all pay in equally in the future."[120] Currently, the self-employed pay an income-related social security contribution of 9% (compared to 12% for employees); also, they

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114 The Coronavirus Act 2020 Functions of Her Majesty's Revenue and Customs (Self-Employment Income Support Scheme Grant Extension 4) Direction.

115 HMRC, Claim a Grant through the Self-Employment Income Support Scheme, 13 May 2021.

116 HC Debate 3 March 2021 c252.

117 The Coronavirus Act 2020 Function of Her Majesty's Revenue and Customs (Self-Employment Income Support Scheme Extension 5) Direction.

118 HMRC, Claim a Grant through the Self-Employment Income Support Scheme, 28 July 2021 [now withdrawn].

119 HMRC, Self-Employment Income Support Scheme Statistics: September 2021, 9 September 2021.

120 HM Treasury, Chancellor Outlines New Coronavirus Support Measures for the Self-Employed, 26 March 2020.

do not pay any equivalent of the current 13.8% employer's contribution. Reporting on the announcement, BBC economics editor Faisal Islam described this as the "sting in the tail" for the support scheme.[121] However, the government's recently announced new tax, the *Health and Social Care Levy*[122], will rather increase the tax differential between employment and self-employment, given there is no equivalent to employer *NICs* for the self-employed. According to the IFS, "today's NICs increases increase the gap and therefore move the tax system further in the wrong direction."[123]

Although *SEISS* seemed to have been widely welcomed when it was first announced[124], there had been concerns that some groups were excluded from its scope: directors of smaller limited companies[125], the recently self-employed, those whose profits exceeded the GBP 50,000 (EUR 59,901) cap and freelancers who did not make over 50% of their income from self-employment.[126]

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121 Islam, Coronavirus: UK Government Unveils Aid for Self-Employed, BBC News, 26 March 2020.

122 In a statement on 7 September 2021 (HC Deb 7 September 2021 cc153-4) the Prime Minister announced the new Health and Social Care Levy, based on NICs, to raise an estimated GBP 11.4 billion (EUR 14 billion) a year over the next three years, for health and social care. The tax would be introduced in two stages: In 2022/23 the rate of primary Class 1 NICs for employees and the rate of secondary Class 1 NICs for employers and the rate of Class 4 NICs for the self-employed, will be increased by 1.25 percentage points. In 2021/24 a separate levy set at 1.25% will be introduced, replacing this temporary increase in NICs rates, liability to which will be extended to individuals in employment who are over State Pension age (at present pensioners are not liable to pay NICs on any earnings they receive from employment). For further details see the Health and Social Care Levy Bill 2021/22.

123 Institute for Fiscal Studies, An Initial Response to the Prime Minister's Announcement on Health, Social Care and National Insurance, 7 September 2021.

124 See, e.g. The Times, Sunak Reveals Coronavirus Bailout for Self-Employed, but They Must Wait until June, 27 March 2020.

125 So-called company owner-managers (i.e. people running their own company as opposed to an incorporated business, i.e. self-employment) were not eligible for the SEISS. They were eligible for CJRS in relation to their salary if they stopped working. However, many owner-managers pay themselves a very small salary and take the rest of their income from dividends as this is the more tax-efficient choice. This meant that the CJRS, which only covered salary only replaced a small part of their actual income. See Adam/Miller/Waters, Income Protection for the Self-Employed and Employees during the Corona Crisis, Institute for Fiscal Studies, 2 April 2020, pp. 4-5.

126 Federation of Small Businesses (FSB) Press Notice, FSB Highlights Gaps in Coronavirus Income Support Measures for Self-Employed, 1 April 2020; Trea-

The IFS, in an initial analysis of the government's first Covid-19 income support schemes (*CJRS* and *SEISS*), concluded that neither of the schemes were "as well targeted as we would expect in normal times. […] Many of the self-employed will be left financially better off as a result of this crisis, while some will get no support at all."[127] In a report, published in October 2020, the National Audit Office (NAO) concluded that the schemes had been "largely successful in protecting jobs through the lockdown period, with at least 12.2 million people benefitting from support", although "a combination of policy decisions and constraints in the tax system meant that as many as 2.9 million people were not eligible for the schemes."[128]

b) Liquidity Assistance

In the March 2020 Summary of Business Conditions, which is regularly carried out by the Bank of England, the companies surveyed assessed the economic situation as more threatening than during the financial crisis of 2009.[129]

The government had therefore put together a comprehensive package of measures to secure the liquidity of companies. These liquidity programmes included in particular the *Coronavirus Business Interruption Loan Scheme (CBILS)*[130], launched on 23 March 2020, the *Coronavirus Larger Business Interruption Loan Scheme (CLBILS)*[131], launched on 20 April 2020 and a simpler scheme for all businesses, the *Bounce Back Loan Scheme (BBLS)*[132],

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sury Select Committee, Government Must Act over Gaps in Support during Lockdown, 15 June 2020.

127 Institute for Fiscal Studies, Fast Choices by Government Provide Generous Income Support to Most Workers but Leave Some with Nothing and Others with Too Much, 2 April 2020.

128 National Audit Office, Implementing Employment Support Schemes in Response to the Covid-19 Pandemic, HC 862, 23 October 2020, p. 8.

129 Bank of England, Agent's Summary of Business Conditions, 26 March 2020.

130 Department for Business, Energy & Industrial Strategy/British Business Bank, Apply for the Coronavirus Business Interruption Loan Scheme, 23 March 2020, last updated 1 May 2020.

131 Department for Business, Energy & Industrial Strategy, Apply for the Coronavirus Large Business Interruption Loan Scheme, 3 April 2020, last updated 28 May 2020.

132 Department for Business, Energy & Industrial Strategy, Apply for Coronavirus Bounce Back Loan, 27 April 2020, last updated 4 May 2020.

launched on 4 May 2020. A successor scheme – the *Recovery Loan Scheme*[133] – was launched on 6 April 2021. The schemes were overseen by the British Business Bank, a government-owned business development bank, but applications were made to and funding decisions were made by a range of accredited lenders. No interests and fees would be charged to the beneficiary enterprises for the first year and no repayments were due for that period either.

The three original schemes were initially due to close between September and November 2020, but the closure date was extended on several occasions. They closed eventually on 31 March 2021 and were replaced by the *Recovery Loan Scheme*.

The *CBILS* supported small and medium-sized enterprises[134] with financing of up to GBP 5 million (approx. EUR 6 million) with a term of 6 years. The loans were 80% backed by the government. Although the scheme was widely welcomed, concerns were expressed that it was failing to reach enough businesses quickly enough and that lending rules were too restrictive.[135]

The *CLBILS* extended the standard *CBILS* approach to larger businesses[136], financing up to GBP 25 million (EUR 30 million).

With the *Coronavirus Bounce Back Loans*[137], the government introduced a further financing programme for all businesses, regardless of turnover, for loans of up to GBP 50,000 (approx. EUR 59,901) or 25% of turnover with a term of up to 6 years (start: 4 May 2020). The scheme offered streamlined application procedures and loans were 100% backed by the government.

On 6 April 2021, the new *Recovery Loan Scheme*[138] was launched which was initially to run until the end of the year ("subject to review"). It aimed to "provide support as businesses recover and grow following the disruption of the pandemic and the end of the transition period." The

133 HM Treasury/ Department for Business, Energy & Industrial Strategy, Recovery Loan Scheme, 3 March 2021 (last updated 27 October 2021).

134 With an annual turnover under GBP 45 million (EUR 54 million).

135 See, among others, The Guardian, Just £ 1.1 bn of Covid-19 Bailout Loans Have Been Issued to Small UK Firms, 15 April 2020.

136 With an annual turnover between GBP 45 million and 500 million (between approx. EUR 54 and 594 million).

137 Department for Business, Energy & Industrial Strategy, Apply for a Coronavirus Bounce Back Loan, 27 April 2020, last updated 4 May 2020.

138 HM Treasury/Department for Business, Energy & Industrial Strategy, Recovery Loan Scheme, 3 March 2021 (last updated 27 October 2021).

government would offer an 80% guarantee, as in *CBILS*. In the Autumn 2021 Budget, the scheme was extended to 30 June 2022.[139]

There were two further general loan schemes: The *Covid Corporate Financing Facility (CCFF)*, a support programme of the Bank of England, was aimed at larger companies to overcome short-term liquidity or financing bottlenecks. It closed to new applications on 31 December 2020. The *Coronavirus Future Fund* was aimed in particular at those companies that are dependent on equity investments and do not have access to other government support programmes because they are pre-revenue or pre-profit, typically start-ups.[140] The scheme closed on 31 January 2021.

Other (sector-specific) financial assistance included, for example, the *Retail and Hospitality Grant Scheme*[141], which supported companies in the retail, hospitality and leisure sectors with direct grants of up to GBP 25,000 (EUR 29,950). Smaller companies could also receive grants under the *Small Business Grant Fund* (*SBGF*)[142]. The *Eat Out to Help Out Scheme* offered a 50% discount off the cost of food and/or non-alcoholic drinks eaten-in at participating businesses[143].

c) *Relief in Taxes and Social Security Contributions*

In addition to the abovementioned financial assistance, relief measures for a number of public-law dues intended to maintain the liquidity of companies: for example, the business rates for all businesses in the retail, hospitality and leisure sector were suspended for the tax year 2020/2021 ('business rates holiday')[144]. The March 2021 Budget extended 100% relief for the retail, hospitality and leisure sectors as well as for childcare nurseries, for the first three months of the 2021/22 financial year and then 66% for

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139 HM Treasury, Autumn Budget and Spending Review 2021: A Stronger Economy for the British People, HC822, October 2021, p. 65.
140 Department for Business, Energy & Industrial Strategy et al., Apply for the Coronavirus Future Fund, 20 April 2020, last updated 20 May 2020.
141 Department for Business, Energy & Industrial Strategy et al., Financial Support for Businesses during Coronavirus, 3 April 2020, last updated 9 July.
142 Ibid.
143 Treasury Direction made under Section 71 and 76 of the Coronavirus Act 2020: Eat Out to Help Out Scheme, 9 July 2020.
144 Ministry of Housing, Community & Local Government, Check if Your Retail, Hospitality or Leisure Business is Eligible for Business Rates Relief due to Coronavirus, 18 March 2020.

the remainder year.[145] The same sectors were then eligible for a 50% discount in 2022/23, up to a maximum of GBP 110,000 (EUR 131,783) relief per business.[146]

In addition, a number of payment deferrals were granted: the deadlines for payment of *Value Added Tax* (*VAT*) were extended by three months[147]; for self-employed persons, income tax payments due in July 2020 were postponed to January 2021.[148] As part of his *Winter Economy Plan* in September 2020 the Chancellor announced a new *VAT* referral scheme which allowed businesses that had deferred their *VAT* payments to repay what they owed over 11 interest-free payments in 2021/22.[149] The new scheme was opened on 23 February 2021 and closed on 21 June 2021.[150] Also, self-assessment tax payers will have additional time to pay back their taxes due in January 2021.[151]

On 26 May 2020, the government launched the *Coronavirus Sick Pay Rebate Scheme* which is available to small and medium-sized enterprises with fewer than 250 employees. Eligible employers can claim *Statutory Sick Pay* (*SSP*) costs for up to 14 days for employees who were incapable of work because they had to self-isolate or shield in accordance with public health guidance.[152] The iteration of the scheme stipulated that employers could only claim for employees who were off work on or before 30 September 2021. But the scheme reopened as part of the government's further announcement in December 2021.[153]

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145 HM Treasury, Budget 2021: Protecting the Jobs and Livelihoods of the British People, HC 1226, 3 March 2021.

146 HM Treasury, Autumn Budget and Spending Review 2021: A Stronger Economy for the British People, HC822, October 2021, p. 143.

147 HM Revenue & Customs, Deferral of VAT Payments due to Coronavirus, 26 March 2020, last updated 26 September.

148 HMRC, Defer Your Self-Assessment Payment on Account due to Coronavirus, 15 May 2020, last updated 15 October 2020.

149 HM Treasury, Winter Economy Plan, September 2020, (fn. 28), Para. 2.12.

150 HMRC, Pay VAT Deferred due to Coronavirus (Covid-19), updated 27 July 2021.

151 HM Treasury, Winter Economy Plan, September 2020, (fn. 28), Para. 2.13. See also: HMRC, Self-Assessment Customers to Benefit from Enhanced Payment Plans, 1 October 2020.

152 Statutory Sick Pay (Coronavirus) (Funding of Employers' Liabilities) Regulations 2020 (SI 2020/512). The maximum refund is GBP 191.70 (EUR 228) (equivalent to two weeks' maximum SSP) multiplied by the number of employees enrolled in PAYE schemes, reg. 3.

153 HM Treasury, GBP 1 Billion in Support for Businesses Most Impacted by Omicron across the UK, 21 December 2021.

4. Social Protection

The drastic public health interventions necessary to deal with the pandemic have had a significant economic impact, leading to the closure of whole sectors of the economy. This has, in turn, affected household finances and continues to do so.

Although some labour market measures, such as the *CJRS* and *SEISS*, may have alleviated demand on the benefits system, there has been a rapid increase in claims of social security benefits in general, and of *Universal Credit (UC)* as the UK welfare system's main 'safety net' for people of working age in particular. In response, the government implemented a number of changes to the benefits system, such as increases to the level of some benefits, the suspension of work-related conditionality (conditions such as meeting work-search requirements and attending regular interviews at Jobcentres were temporarily halted) as well as measures to facilitate social distancing (e.g. changes to assessments and Jobcentre appointments) and to support those who need to isolate or shield (e.g. changes to *Statutory Sick Pay, SSP* and to sickness and carer benefits).[154]

The total number of people on *UC* in Great Britain rose from around 3 million in March 2020 to around 5.9 million by the end of 2020, and has remained steady up to September 2021.[155]

By October 2021, although many had earlier been extended as the crisis drew on, most of the rule changes introduced to the benefits system in spring 2020 had been withdrawn. Only a small number of the benefit measures introduced in response to the pandemic remain fully in place, with no plans announced for their withdrawal, such as the higher maximum levels for private renters. This is consistent with the government's express intention not to alter the fundamental design and architecture of the benefits system and to keep policy changes "to an absolute minimum".[156]

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154 Most of these measures are, however, intended to be temporary or remain under review.

155 DWP Stat-Xplore: People on UC and Starts to UC datasets (accessed 12 November 2021).

156 Work and Pensions Committee, Oral Evidence: DWP's Response to the Coronavirus Outbreak, 23 April 2020, HC 178 2019-21, Q83 and Q118.

a) *Enhanced Sick Pay Entitlement and Support during Self-Isolation*

Under British law, 'employees'[157] who are unable to work due to illness are entitled to *Statutory Sick Pay (SSP)* for up to 28 weeks.[158] However, the benefit level is very low (GBP 96.35 = EUR 115 per week since 6 April 2020), which is less than 30% of the national minimum wage.[159] In this respect, one can hardly speak of a wage replacement benefit, but rather of minimum social security.[160] Moreover, it is only available to 'employees' earning above GBP 120 (EUR 144) per week (GBP 118 or EUR 132 before 6 April 2020)[161], which will in principle exclude those in precarious forms of employment[162], notably care workers.[163] The entitlement now starts on the first day of "limited capability for work" (and not, as is usually the case, on the fourth consecutive day of illness)[164] for those who are incapable of work because they suffer from a COVID-19 infection or because they had to self-isolate in accordance with public health guidance.[165] Since 16 April 2020, this extension of the definition of "limited capability for work" had also applied to employees who were deemed clinically extremely vulnerable and at very high risk of severe illness from the virus and who had been

157 Employees' in this sense are those employees that pay Class 1 National Insurance Contributions (NICs).

158 Social Security Contributions and Benefits Act 1992, Part XI, Sections 151-163; Statutory Sick Pay (General) Regulations (SI 1983/894).

159 Hendy, 2020, (fn. 76), p. 1 ff.

160 Flat-rate benefits, which focus on covering a certain minimum level of need are however typical of Beveridge-type social security systems.

161 I.e. the lower earnings limit (LEL) for the requirement to pay National Insurance Contributions (NICs): Social Security Contributions and Benefits Act 1992, s. 153(3) and Sch. 11 Paras. 1 and 2.

162 Novitz, COVID-19 and Labour Law: United Kingdom, Italian Labour Law e-Journal, 2020, p. 3. According to a government survey from July 2019, this excludes about 2 million employees from receiving statutory sickness benefit. See Government UK, Health Is Everyone's Business: Proposals to Reduce Ill Health-Related Job Loss, CP 134, 15 July 2019, Para. 97. See also Trade Union Congress, Sick Pay for All, 3 March 2020.

163 Hayes/Tarrant/Walters, Care and Support Workers' Perception of Health and Safety Issues in Social Care during the COVID-19 Pandemic: Initial Findings, 15 April 2020.

164 Disapplication of the Social Security Contributions and Benefits Act 1992, s. 155(1) by the Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations 2020 (SI 2020/374), reg. 2 in connection with the Coronavirus Act 2020, s. 40(1) to (4).

165 Statutory Sick Pay (Coronavirus) (Suspension of Waiting Days and General Amendment) Regulations (SI 2020/374), reg. 3.

officially advised to follow shielding measures.[166] From 1 April 2021, the advice to shield paused and from 15 September 2021, the shielding programme ended in England.[167]

Unless there is an intervention to continue the measure, coronavirus-related *SSP* waiting time will automatically revert to three days on 25 March 2022.[168]

Low earners (see above) and the self-employed do not qualify for *SSP*. They can, however, apply for *Employment and Support Allowance (ESA)*[169] if they have a "limited capability for work"[170], however normally only from the eighth day of illness.[171] The government had announced that this would also be available from the first day for those affected by COVID-19.[172] *ESA* is worth GBP 74.35 (EUR 88) per week for the first 13 weeks.[173] The changes to *ESA* were introduced through time-limited regulations, which have twice been extended and are now due to expire in mid-November 2021.[174]

Existing claimants of *Carer's Allowance* and *Jobseeker's Allowance* have also been allowed to continue to claim during breaks in care or job search if affected by the virus.[175] Regulations for these measures were originally to be in place for eight months, but were twice extended, along with other public health measures.[176]

166 Statutory Sick Pay (General) (Coronavirus Amendment) (No. 3) Regulations 2020 (SI 2020/427).

167 Department of Health & Social Care, Guidance for People Previously Considered Extremely Vulnerable from Covid-19, updated 21 December 2021.

168 The amendment of the SSP rules was made under the Coronavirus Act 2020 which contains an expiry date (s. 89 (1)) under which the suspension of the general law will cease two years after the date of Royal Assent.

169 The income-based element is currently being phased out and replaced by Universal Credit, however, the contribution-based element remains available.

170 Welfare Reform Act 2007, s. 1 (3) (a).

171 Welfare Reform Act 2007, Sch. 2 Para. 2; Employment and Support Allowance Regulations 2008 (SI 2008/143), reg. 144(1), as amended.

172 Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020 (SI 2020/289), reg. 2.

173 Department for Work & Pensions, Benefit and Pension Rates 2020 to 2021, 9 April 2020.

174 Employment and Support Allowance and Universal Credit (Coronavirus Disease) Regulations 2020, SI 2020/289 (as amended).

175 See explanatory notes to The Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371).

176 Social Security (Coronavirus) (Further Measures) (Amendment) and Miscellaneous Amendment Regulations 2020 (SI 2020/1201): extension to 12 May 2020.

As a response to concerns that some people may find it difficult to self-isolate due to financial constraints, the government announced, on 20 September 2020, a GBP 500 (EUR 594) lump sum *Test and Trace Support Payment* for people on low incomes required to self-isolate and who cannot work during their self-isolation period.[177] Local authorities administer the scheme, with the costs reimbursed by the UK government. To qualify, a person must be employed or self-employed, and must normally be receiving certain benefits or tax credits.[178]

b) Extra Support for Those on Low Incomes or Without Work

On 20 March 2020, at the beginning of the coronavirus pandemic, the Chancellor announced temporary increases to the following working-age, means-tested benefits and tax credits: The standard allowances of *Universal Credit (UC)*; the basic element of *Working Tax Credit (WTC)* and *Local Housing Allowance (LHA)* rates.[179]

All persons who are in work but on low incomes as well as those who are unemployed or whose capability for work is limited by sickness or disability and who have not yet reached the legal retirement age can apply for *Universal Credit (UC)*[180]. The increases in *UC* and *WTC* amounted to an ad-

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Social Security (Coronavirus) (Miscellaneous Amendments) Regulations 2021 (SI 2021/476): extension until 31 August 2021.

177 Prime Minister's Office, New Package to Support and Enforce Self-Isolation, 20 September 2020. Whilst the UK government and the NHS have published advice on self-isolation as far back as February 2020, on 28 September 2020, the UK government introduced a new legal duty in England requiring individuals to self-isolate if they test positive for coronavirus or are identified as a contact by NHS Test and Trace. See: The Health Protection (Coronavirus, Restrictions) (Self-Isolation) (England) Regulations 2020 (SI 2020/1045).

178 A person must be currently receiving Universal Credit or other means-tested 'legacy' benefits or tax credits. However, there is also a "discretionary fund" which allows local authorities "flexibility to support individuals who require corresponding financial support to self-isolate while falling outside [the] strict eligibility criteria." See UK Health Security Agency, Claiming Support under the Test and Trace Support Payment Scheme, updated 14 January 2022.

179 HM Treasury, The Chancellor Rishi Sunak Provides an Updated Statement on Coronavirus, 20 March 2020.

180 Universal Credit is a means-tested benefit which is in the process of replacing six existing means-tested benefits (so-called 'legacy' benefits) and tax credits for working-age households: Income-Based Jobseeker's Allowance; Income-Related Employment and Support Allowance; Income Support; Working Tax Credit;

ditional GBP 1,000 per year, or GBP 20 (EUR 24) per week for each household claiming benefits. For a single *UC* recipient (over 25 years of age), the standard monthly rate thus increased from GBP 317.82 to GBP 409.89 (from approx. EUR 378 to approx. EUR 487).[181] The increases to *UC* and *WTC* were originally announced as a temporary uplift for the 2020/21 tax year. Ultimately, the Chancellor extended the uplift of *UC* for a further six months, until October 2021, in the March 2021 Budget.[182] A one-off GBP 500 (EUR 594) payment was made to claimants of *WTC* in April 2021.[183]

Also, the maximum *Local Housing Allowance* (*LHA*)[184], for the purposes of *UC* and *Housing Benefit,* has been increased to cover a higher proportion of rent.[185] The *LHA* rates, which set the maximum amount available in housing support for private renters, had been frozen in cash terms for four years and had fallen behind rising rents in many places. These were restored to the 30th percentile of local rents.[186] The Secretary of Work and Pensions has since confirmed that this was a "permanent uplift".[187]

However, rather problematically, the increase in *UC* and *WTC* was not matched for those receiving so-called 'legacy' benefits[188], therefore prioritising new claimants, who are likely to have become unemployed as a result of the pandemic, over those who were already receiving state support. This seems to echo the long-standing Victorian poor laws which

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Child Tax Credit, and Housing Benefit. See Welfare Reform Act 2012, Part I. UC is now the only option for any working-age individual or family wishing to apply for a means-tested benefit, i.e. it is no longer possible to make a new claim for any of the six 'legacy' benefits or tax credits which are being replaced. UC is administered and delivered by the Department of Work and Pensions (DWP) and is managed and accessed almost entirely digitally.

181 Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371) Reg. 3(1) to (2).

182 Universal Credit (Extension of Coronavirus Measures) Regulations 2021 (SI 2021/313).

183 HMRC, New One-Off GBP 500 Payment for Working Households Receiving Tax Credits, updated 28 April 2021 (withdrawn on 17 August 2021).

184 The LHA rate determines the maximum amount of housing support that tenants in privately rented accommodation can receive as part of their UC housing cost element or Housing Benefit claim.

185 Social Security (Coronavirus) (Further Measures) Regulations (SI 2020/371) reg. 4.

186 For further details on changes to housing support, see Commons Library Briefing, The Rent Safety Net: Changes since 2010, SNO565638, 17 August 2021.

187 House of Lords Economic Affairs Committee, Oral Evidence: The Economics of Universal Credit, 2 June 2020, Question 119.

188 See above fn. 180.

differentiate between the 'deserving' and 'undeserving' recipients of support.[189]

Also, there has been no corresponding increase of the 'benefit cap' which limits the total amount of out-of-work benefits a household can receive.[190] Many families subject to the cap were therefore not reached by the temporary increase in the safety net and the benefit increases meant that more families became subject to the cap.[191] Of 154,000 households now affected by the cap, 52,000 are single parents with at least one child under five.[192] Moreover, the two-child limit, which limits *UC*- or *WTC*-tied payments to two children in a given family, remained untouched – a reduction now affecting 250,000 households.[193]

For the self-employed receiving *UC* there has been a suspension of the *Minimum Income Floor* (*MIF*)[194]. Initially, this applied only to those self-employed claimants directly affected by coronavirus, but the *MIF* was soon suspended for all claimants.[195] This suspension was originally due to expire on 12th November 2020, but was twice extended until the end of July 2021[196], when it began to be reintroduced. Regulations allow for a phased reintroduction of the *MIF* up to July 2022, with easements remaining in place until the *DWP* conducts an interview and determines that the claimant is in gainful self-employment.[197]

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189 Meers, Social Security under and after Covid-19, p. 171, 174 ff., in: Cowan/Mumford (eds.), Pandemic Legalities – Legal Responses to Covid-19 – Justice and Social Responsibility, Bristol, 2021.

190 Universal Credit Regulations 2013 (SI 2013/376) reg. 82, as amended by Universal Credit (Benefit Cap Earnings Exception) Amendment Regulations 2017 (SI 2017/138) reg. 2.

191 Institute for Fiscal Studies (IFS), If the Cap Doesn't Fit?, 7 April 2020.

192 BBC News, Coronavirus: Huge Increase in Families Hitting Benefit Cap, 6 August 2020.

193 Meers (fn. 189), p. 176.

194 After a UC claimant has been self-employed for a certain amount of time, their award is calculated as if they earned the National Minimum Wage for the hours they are expected to work, even if their actual earnings are lower. See Universal Credit Regulations 2013 (SI 2013/376) reg. 62.

195 Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371) reg. 2.

196 The Social Security (Coronavirus) (Further Measures) (Amendment) and Miscellaneous Amendment Regulations 2020 (SI 2020/1201) gave effect to an extension of the suspension until the end of April 2021, the Universal Credit (Extension of Coronavirus Measures) Regulations 2021 (SI 2021/313) extended the suspension until 31 July 2021.

197 The Universal Credit (Coronavirus) (Restoration of the Minimum Income Floor) Regulations 2021 (SI 2021/807).

Certain groups of claimants were temporarily given eligibility for benefits during the crisis, or allowed to retain benefits in situations where they might normally have ceased to be eligible: For example, prisoners on temporary release as part of the *End of Custody Temporary Release Scheme*[198] were given entitlement to *UC* and other benefits.[199] People placed on the *Coronavirus Job Retention Scheme* were also allowed continued access to *Maternity Allowance* and other family-related benefits, which would normally only be available to people in work.[200] Entitlement for *WTC* could continue even where a claimant was working fewer hours than would normally be needed to qualify, and critical workers were given longer to report changes of circumstances.[201] Either through amendments to regulations, or because they were linked to the *CJRS* or *SEISS*, these measures were extended until the end of September 2021, when they were withdrawn.[202]

Regulations in force from 30 March 2020 suspended work availability and work search conditionality for claimants of *UC* and *Jobseeker's Allowance* for a three-month period[203], thereby recognising the added difficulty many claimants face in returning to the labour market.

It has been argued that the changes to benefit levels and conditionality requirements have turned the *UC* into "a rather different animal"[204] from the benefit it was originally designed to be. However, the *Department of Work & Pensions* (*DWP*) has stated that these policy changes were only meant to be temporary during a moment of acute crisis and that there was no intention "to change the fundamental principles or application of Universal Credit"[205].

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198 Ministry of Justice, Measures Announced to Protect NHS from Coronavirus Risk in Prisons, 4 April 2020; Prison Advice and Care Trust, End of Custody Temporary Release (ECTR).

199 Social Security (Coronavirus) (Prisoners) Regulations 2020 (SI 2020/409) (as amended).

200 The Maternity Allowance, Statutory Maternity Pay, Statutory Paternity Pay, Statutory Adoption Pay, Statutory Shared Parental Pay and Statutory Parental Bereavement Pay (Normal Weekly Earnings etc.) (Coronavirus)(Amendment) Regulations 2020 (SI 2020/450).

201 Tax Credits (Coronavirus, Miscellaneous Amendments) Regulations 2020 (SI 2020/534) reg. 2 and reg. 4.

202 For an overview see House of Commons Library Briefing, Coronavirus: Withdrawing Crisis Social Security Measures, CBP08973, 26 October 2021, pp. 37 ff.

203 Social Security (Coronavirus) (Further Measures) Regulations 2020 (SI 2020/371) reg. 6(1),(2).

204 Bennet, Coronavirus – the Making or the Unmaking of Universal Credit, University of Bath Institute for Policy Research Blog, 6. April 2020.

205 House of Commons, Covid-19: DWP Update, 4 May 2020, Vol. 675.

The suspension of conditionality was lifted from the beginning of July 2020 as the *DWP* began the process of reopening Jobcentres to begin “a return to normal” in order to “help people to get ready again for the world of work”.[206] However, the government was careful to stress that it would take “a phased approach to deliver a tailored and effective service for our customers, recognising the individual and prevailing circumstances including COVID restrictions.”[207] The process of fully opening Jobcentres was interrupted by fresh public health restrictions introduced in autumn 2020. On 19 March 2021, however, the *DWP* announced that Jobcentres across Britain would return to normal opening hours from 12 April 2021.[208]

The government has put in place various initiatives aimed at getting (particularly young) people back into employment. The government reported that young people are two and a half times more likely to be in a sector that had to close as a result of the pandemic, and were particularly vulnerable to become unemployed due to their lack of work experience.[209]

For this purpose and to help replace the employment support schemes, the government published, on 8 July 2020, a *Plan for Jobs*[210]. The plan includes employment support measures relating to *UC*, such as the *Kickstart Scheme* which provides funding to create job placements for those aged 16-24 who are on *UC* and are deemed at risk of long-term unemployment. An expansion of this package worth over GBP 500 million (EUR 594 million) was announced in October 2021. Employers were able to apply for funding until 17 December 2021, and *Kickstart* jobs need to be started by 31 March 2022.[211]

c) *Support for Local Authorities*

The ongoing funding crisis[212] in local authority budgets is likely to be aggravated by the pandemic, leading to further reductions in key social ser-

206 House of Commons, Covid-19: DWP Update, 29 June 200, Vol. 678.
207 PQ 68348 [on reintroducing conditionality], 7 July 2020.
208 Department for Work and Pensions, Normal Jobcentre Opening Hours Resume from 12 April, 10 March 2021.
209 HM Treasury, Plan for Jobs, 8 July 2020, p. 8.
210 HM Treasury, Plan for Jobs, 8 July 2020 (fn.).
211 HM Treasury/Department for Work and Pensions, GBP 500 Million Plan for Jobs Expansion, 4 October 2021.
212 Spending power is down by a quarter in real terms since 2011/12. See Housing, Communities and Local Government Committee, Local Government Finance and the 2019 Spending Review, 22 July 2019.

vices, such as direct payment support for the disabled and homeless services.[213] In response, the government launched an initial GBP 16 billion (EUR 19 billion) package to local authorities on 19 March 2020 and another GBP 1.6 billion package on 18 April 2020. In addition, the Chancellor announced a *Hardship Fund* of GBP 500 million (EUR 594 million) to be paid out to the local authorities, through which they are to counter-finance a reduction in council tax[214] for particularly vulnerable persons.[215]

5. Conclusion and Outlook

While the government's coronavirus support package's initial focus on (repayable) business loans could still be seen as corresponding with a neo-liberal view of society based on personal responsibility, this can hardly be said of the extensive schemes to stabilise the labour market and support the self-employed. The former can surely be described as one of the most remarkable announcements in the history of peacetime labour law[216] and as being seemingly at odds with the UK social assistance model. These extensive measures taken in relation to the labour market have undoubtedly helped to preserve jobs during the crisis, however they did not necessarily provide effective protection for all those at work. *SSP* and *SEISS* only benefited employees or self-employed persons with a certain income level. Also, so-called 'limb (b) workers' who are classed neither as employed nor self-employed frequently fell outside the scope of both the *CJRS* and the *SEISS* schemes. According to the IFS, around 1 million people were made redundant between April 2020 and June 2021. This compares with 550,000 for the same period in 2019.[217]

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213 Graby/Hosmayoun, The Crisis of Local Authority Funding and its Implications for Independent Living for Disabled People in the United Kingdom, Disability & Society 2019, p. 320.

214 Council tax is a municipal tax levied on domestic real estate. It is paid by the person who is liable for the property, which is usually the person(s) living in the house.

215 Ministry of Housing, Communities & Local Government (MHCLG), Council Tax: Covid-19 Hardship Fund 2020-21 – Local Authority Guidance, 24 March 2020, p. 4 f.

216 Bogg/Ford, Legislating in Times of Crisis: The Coronavirus Job Retention Scheme, UK Labour Law Blog, 23 March 2020.

217 Institute for Fiscal Studies, Employment and the End of the Furlough Scheme, October 2021.

According to the government, social partners in the form of umbrella organisations such as the Trades Union Congress (TUC) and the Confederation of British Industry (CBI) were involved in the development of both the C*JRS* and the *SEISS* in an advisory capacity.[218] However, the limited extent of social dialogue and the probably rather negligible influence of the trade unions[219] on the concrete design of the programmes, their operation and withdrawal is particularly evident in their low focus on the protection of the most vulnerable participants in the labour market, notably those in precarious employment.[220]

These persons are particularly hard hit by the consequences of the crisis and were affected at an early stage. However, *UC* frequently remains their only option, the level of which, despite the temporary increase, remains very low. Many benefits were also paid out with a considerable delay[221] or as lump sum payments for the next few months.

This low focus on workers in precarious employment, such as agency workers or gig economy workers can also be seen, for example, in occupational health and safety regulations: only 'employees' have the right to refuse to attend work for health and safety reasons.[222] With more people returning to work, there is no indication that this entitlement will be extended to more precarious workers.

Although the government's response to the crisis can be regarded as an unprecedented state intervention in the market and a huge increase in public expenditure, the support measures taken were neither comprehensive nor inclusive and mostly limited in time. It is estimated that approximately 3 million individuals have been excluded from the government

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218 As expressed by the Chancellor of the Exchequer: "[...] thanks to the Trade Union Congress, the CBI and other business groups, for our constructive conversations."

219 According to etui, just over a quarter (26%) of workers in the UK are currently union members, with the degree of union organisation in the public sector (55%) being much higher than in the private sector (14%).

220 Novitz, 2020, p. 6 (see fn. 162). Nevertheless, the TUC has been successfully advocating changes to the CJRS, namely its extension to those in employment on 19 March 2020 (rather than 20 February) and the more recent extension of the scheme in accepting phasing-in of part time work.

221 See e.g. British Chambers of Commerce, BCC Coronavirus Business Impact Tracker, 8 April 2020, (fn. 49).

222 Employment Rights Act 1996, s. 44 and 100. See on the mentioned problem: Bales, COVID-19 and the Future of Work, University of Bristol Law School Blog, 2 April 2020; Brittenden, The Coronavirus: Rights to Leave the Workplace and Strikes, UK Labour Law Blog, 27 March 2020.

support schemes.[223] The UN Special Rapporteur on extreme poverty and human rights criticised the UK government's response to the pandemic as "utterly hypocritical" and warned that many effects of austerity policies "cannot and will not be undone".[224]

The policy transformation is therefore hardly sufficiently profound to speculate about a paradigm shift as some commentators seem to indicate[225]. Rather, moving into the next stage of the pandemic and finally into an endemic phase, existing inequalities seem to be at risk of being perpetuated: The IFS Deaton Review of Inequalities has noted that some of the main risks of the pandemic include the exacerbation of a range of inequalities across society, including wages and employment, health and ethnicity as well as generational, gender and educational inequalities.[226] Inequality at work can for example be seen in the fact that younger and/or low-paid workers were exceedingly more likely to have been furloughed, whereas higher paid workers on furlough were more likely to have received salary top-ups by their employers.[227] It was also more common for mothers to explicitly request furlough, raising questions about their longer-term job security without adequate provisions of childcare.[228]

Also, concerns regarding the financial sustainability of measures taken at the beginning of the crisis led to the planned reduction of the state's contribution to the job retention schemes in autumn 2020. The Chancellor emphasised that the new scheme was designed only to "protect viable jobs", stressing that the government could not sustain the same level of spending seen at the beginning of the crisis.[229] Facing increasingly stringent restrictions due to the second phase of the pandemic, the level

223 Hitchings, Unprecedented Times, Journal of Social Welfare and Family Law, 2020, p. 277.

224 Booth, UK Coronavirus Response Utterly Hypocritical, Says UN Poverty Expert, The Guardian, 26 April 2020.

225 Elliot, The Coronavirus Crisis May Lead to a New Way of Economic Thinking, The Guardian, 22 March 2020.

226 Blundell et al., COVID-19 and Inequalities, Fiscal Studies, June 2020, pp. 291-319.

227 Cominetti et al., The Full Monty: Facing up to the Challenge of the Coronavirus Labour Market Crisis, Resolution Foundation, 2020, p. 24 ff.

228 Adam-Prassl et al., Furloughing, Fiscal Studies, 2020, p. 591, 592 f.

229 HM Treasury, Chancellor of the Exchequer Rishi Sunak on the Winter Economy Plan, 24 September 2020. Public sector net borrowing from April to August 2020 is estimated to have been GBP 173 billion, GBP 146.9 billion more than in the same period last year and the highest borrowing in any April to August period since records began in 1993. See Office for National Statistics (ONS), Public Sector Finances, UK: August 2020, 25 September 2020.

of state contributions had then been (repeatedly) revised back upwards (see above, 2.). This frequent revision of government measures reflects the political challenges of phasing out the crisis measures, in particular against the backdrop of a residualist welfare state. Commentators have also argued that the government's repeated prevarication over extensions of the furlough scheme (initially beyond October 2020) and uncertainty over its long-term future have had a negative impact on the labour market as redundancies in the three months to November 2020 increased to a record high of 395,000.[230] Some organisations, such as the TUC, have called for the introduction of a permanent short-time work scheme to protect against future disruptions of the labour market, such as future pandemics or technological change[231]. However, the government has not indicated it will implement such a scheme, suggesting that the post-September 2021 period is highly uncertain for those workers returning from furlough. Provisional government data suggests 1.14 million jobs were still on furlough when the scheme ended.[232] A pessimistic outlook thus suggests that the furlough schemes offered little more than a 'waiting room' for redundancy as, importantly, no obligation had been placed on employers to retain furloughed staff beyond the *CJRS*.[233] While the unemployment rate has not risen sharply[234], wider signs of a labour market conducive to heightened job insecurity are evident. Notably, the benefit claimant count increased by 115% between March and May 2020, while 738,000 fewer people were registered on payroll in the 12 months to April 2021.[235]

Some measures introduced to mitigate the impact of the crisis have been successful, such as the furlough schemes but also the scientific contribution and the early vaccination roll-out. However, from the outset of the pandemic, crisis management in England has been characterised by measures introduced "too little – too late" and a policy of repeated U-turns and late decision making. The pandemic has exposed long-standing systemic problems such as a continuous cut-back in public services and the welfare

230 Stuart et al., COVID-19 and the Uncertain Future of HRM: Furlough, Job Retention and Reform, Human Resource Management Journal, 2021, pp. 908, 911.

231 Trade Union Congress, "Daughter of Furlough" – TUC calls for permanent short-time working scheme to protect jobs in times of economic crisis and change, 12 August 2021.

232 HMRC, Coronavirus Job Retention Scheme Statistics: 4 November 2021.

233 Stuart et al. (fn. 230), pp. 908, 911.

234 See above section 2.

235 Francis-Divine/Powell, Coronavirus: Impact on the Labour Market, Briefing Paper No. 8898, House of Commons Library.

state in recent decades as well as persistent economic and socio-cultural inequalities which have left the country ill-prepared for an adequate emergency response.[236]

236 See for example Marmot, Why did England have Europe's Worst Covid Figures? The Answer Starts with Austerity, The Guardian 2020; Williams et al., Covid-19 in the UK, p. 225.