



Society of Labour Lawyers
The legal think tank of the Labour Party

COVID-19 Self Employed Income Support Scheme:

Impact on Junior Barristers

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Introduction and Summary

1. This briefing addresses the government's Self-Employed Income Support Scheme (SEISS) and its exclusion of almost all first-year tenants, who are the most junior members of the Bar. This is deeply unfair and poses a serious threat to the future of the Bar and the justice system.
2. Whilst the express purpose of SEISS is to support the self-employed, most junior barristers who commenced tenancy in September or October 2019 are excluded from SEISS because they are unlikely to meet the eligibility criteria of having traded in the tax year 18/19 and submitted a tax return on or before 23rd April 2020 which shows 50% of their income from self-employment.
3. In particular:
 - a. Those who became self-employed between 6th April 2018 and 5th April 2019 but have a majority of employed income from that period will not have an 'eligible' 18/19 tax return; and
 - b. Those who started their 'second six pupillage' and therefore commenced trading on 1st April 2019 will have a 18/19 tax return which shows zero or negligible earnings.
4. This has a disproportionate impact on those with protected characteristics under the Equality Act as junior barristers are younger and more likely to identify as female or BAME.
5. The solution to the problem is extremely straightforward: the government should allow all recently self-employed individuals to rely on their 19/20 tax returns.
6. Alternatively, the government should allow first-year tenants to rely on their 19/20 tax returns which have been verified by their Head of Chambers, Inn of Court or even the Bar Council (i.e. '19/20 tax returns plus'). This would provide a simple solution for the most junior members of the Bar.



7. David Lammy MP, Shadow Justice Secretary, recently raised this issue in his article in the New Statesman [here](#).

The Self-Employed Income Support Scheme

8. SEISS was announced by the Chancellor of the Exchequer, Rishi Sunak, on Thursday 26th March 2020. A Treasury Direction setting out the legal framework was published on 30th April 2020 (**the Direction**)¹.
9. The purpose of SEISS is to provide much-needed support to self-employed people whose businesses have been affected by COVID-19 and the government-mandated lockdown (the Direction, para 2).
10. However, under the eligibility criteria, the scheme is only available to those self-employed people who (See the Direction, para 4.2):
 - a. traded in the tax year 18/19 and submitted a tax return on or before 23rd April 2020;
 - b. traded in the tax year 2019 to 2020;
 - c. intend to continue trading in the tax year 2020 to 2021;
 - d. carry on a trade which has been adversely affected by coronavirus;
 - e. had trading profits of no more than £50,000; **and**
 - f. received at least half of their total income from self-employed trading.
11. Those self-employed people who fall within the eligibility criteria will be entitled to a taxable grant based on their average trading profit over the last three tax years.
12. The grant is equivalent to 80% of their average monthly trading profits, paid out in a single instalment covering three months, and capped at £7,500 (i.e. £2,500 per month).

¹https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/882593/SEISS_Direction_Final_-_SIGNED.pdf



The payments will be made in June (see the Direction, para 6.1) and those who meet the above criteria will be approached by HMRC directly.

The Problem: Generally

13. This leads to a very serious problem with SEISS: it excludes the most recently self-employed.
14. Self-employed individuals who fall into the following two categories, whilst clearly requiring financial support, do not meet the eligibility criteria:
 - a. Anyone who became self-employed after 5th April 2019 because they do not have a 18/19 tax return at all; or
 - b. Anyone who became self-employed at some point between 6th April 2018 and 5th April 2019 but have a majority of employed income from that period because they will not have an ‘eligible’ 18/19 tax return.
15. These two groups comprise the most-recently self-employed in the UK: people who took the risk of setting up their own business, often leaving secure employment, in 2018 or 2019. This includes barristers who are first-year tenants i.e. the most junior members of the profession’.
16. The government is well aware that such individuals are excluded but does not appear to be concerned. The Chancellor has said that: *“There is nothing we can do for people with no tax return... We have to use the database of people we know about”*.²

The Problem: The Most Junior Barristers

The Most Junior Barristers Excluded

17. The members of the Bar who fall into the above categories are current first-year tenants (i.e. those who began their ‘second six pupillage’ and therefore started trading on 1st April 2019) and finished pupillage in September or October 2019. These are the newest and most junior members of the profession.

² In his response to a question from Robert Peston of ITV on the day the scheme was announced.



18. Many of these barristers filed 18/19 tax returns showing previous employment income from that tax year (i.e. from employment prior to starting pupillage) and / or which showed zero or negligible income due to them starting trading just five days before the end of the tax year.
19. They have therefore been excluded from the scheme entirely or, if they are technically eligible, will receive no or negligible support.
20. This is despite the fact that these barristers *would otherwise be eligible* because: (1) the vast majority or all of their income is from self-employment; and (2) they likely earn far below the £50,000 threshold. They have been excluded on a technicality.
21. The problem also extends to anyone who took the 18/19 tax year off from self-employment and had no income in that year, for example, any barristers who took maternity leave at that time.

Why the Most Junior Barristers are the Most Vulnerable

22. First-year tenants at the Bar are – by definition - the most vulnerable and precarious members of the profession. They generally:
 - a. earn the least;
 - b. have the least savings;
 - c. are the most reliant on court hearings as a source of income;
 - d. have the least developed paperwork practices; and
 - e. have the least well-developed relationships with instructing solicitors.
24. The closure of the courts and vacating of non-urgent hearings has a disproportionate impact on these members of the profession because court and tribunal hearings are the staple of most newly qualified barristers' practices and provide the majority, or even sole, source of their income.
25. This comes at a time of the year when first-year tenants have just incurred significant start-up costs to commence practice, including purchasing: (1) laptops, monitors and



IT equipment; (2) textbooks and online subscriptions; (3) furniture for Chambers; (4) accountancy fees; (5) professional indemnity insurance; and (6) practising certificates.

26. The above factors mean that first-year tenants are by far the most financially vulnerable member of the Bar. This vulnerability is exacerbated for those conducting work funded by the Legal Aid Agency.
27. It is devastating for these members of the profession to be excluded from the scheme. They are the most vulnerable members of the Bar who are likely to have been most badly affected by the current crisis
28. To make matters worse, the Chancellor has indicated that, once the current crisis is over, National Insurance will likely be increased for the self-employed to reflect the government support that has been provided to them. However, the result is that first-year tenants will be hit doubly hard: first, by being excluded from the scheme and, second, by being made to pay more in tax for the very scheme they were excluded from.

The Impact on Protected Characteristics

29. Excluding junior barristers from the scheme is likely to have a disproportionate impact on those with protected characteristics under the Equality Act 2010.
 - a. **Age.** The newest entrants are generally the youngest members of the profession, are least likely to have savings to fall back on, and least likely to have a partner or spouse who could support them financially or is eligible for financial support. This means that by excluding first year-tenants the **youngest** members of the Bar are disproportionately impacted.
 - b. **Sex and Race.** It is well-recognised that female and BAME barristers are disproportionately overrepresented in the lower earning areas of practice and underrepresented in the higher earning areas of practice. This means that, of all first-year tenants excluded from the scheme, **female** and **BAME** barristers will likely be the most significantly affected.
30. This raises serious concerns about the discriminatory effect of the scheme.



The Simple Solution: 19/20 tax returns or ‘19/20 tax returns plus’

31. There is an extremely simple solution to this problem. **The government should allow first-year tenants (and all of the most recently self-employed) to rely on their 19/20 tax returns.**
32. The 19/20 tax year ended last month, on 5th April 2020. This means that 19/20 tax returns can be filed at any time from now until the end of January 2021. Indeed, the scheme was announced when there was one week left of the previous tax year.
33. The most recently self-employed should be allowed to rely on these returns, which will be completely up-to-date and give a true reflection of their earnings. The 18/19 tax returns are, by definition, out of date by over a year.
34. However, if the government is concerned about the ‘fraud risk’ of people using their 19/20 tax returns (see below), then in the case of first-year tenants their tax return could be verified or ‘signed off’ by their Head of Chambers, Inn of Court, or even the Bar Council (i.e. ‘19/20 tax returns plus’).
35. This would be an easy, practical and secure way to extend the scheme to first-year tenants who have been unfairly excluded and are in desperate need of support.

Fraud Risk: Not a Real Risk

36. On 3rd April 2020 Martin Lewis (of MoneySavingExpert.com) asked the Chancellor a question via Twitter about whether the most recently self-employed could rely on their 19/20 tax returns.
37. Rishi Sunak responded: *“I think it is right that we stick with using the existing returns for 2018/19 because that’s what we have a full picture for already... If we now allow people to file brand-new tax returns for a new year in order to make a claim that would significantly increase the ‘fraud risk’ of this system [...] so was something we were keen to avoid”*.
38. Therefore, it appears that the apparent ‘fraud risk’ is the primary reason for the government’s position of not allowing people to rely on their 19/20 returns.



39. However, we do not believe there is a real or substantial fraud risk. This is because: (1) most people are honest and are very unlikely to artificially increase their trading profits to secure a higher grant, especially at this time of national crisis; (2) anyone who is dishonest enough to do this **will also increase their tax liability**.
40. Furthermore, in the particular case of junior barristers, it is extremely unlikely that they would manipulate their accounts to increase the size of any grant they would receive. The Bar is a regulated profession, where the most serious regulatory offences are ones involving dishonestly, and first-year tenants are highly unlikely to risk their entire career for the sake of an extra few thousand pounds. The government's approach does not make a realistic assessment of the risk of fraud, particularly in the case of the most junior barristers.
41. Furthermore, it is fundamentally wrong to say that the 18/19 tax returns show the “*complete picture*”. To the contrary, these returns are out of date and, in many cases, show previous employment income which people are no longer receiving. Indeed, it is perverse that so many are being excluded from the scheme because of previous employment income that they will have stopped receiving since August 2018 at the latest.
42. It is quite obvious that the 19/20 tax returns show the most complete and up-to-date picture. Indeed, it may well be the case that there are individuals who earned under the £50,000 threshold in the 18/19 tax year but exceeded it in the 19/20 tax year and who will now receive a windfall at the expense of the most recently self-employed.

The Right Thing to Do

43. Even if the fraud risk is real, the government should nevertheless take this risk in order to provide support to the most recently self-employed. This is the right thing to do and consistent with the rhetoric used by the government and the Chancellor himself.
44. The Conservative Manifesto in the 2019 general election stated:

We should do everything we can to support those who want to start their own company, strike out on their own, and have an idea that grows into a world-leading business.



45. The government should honour this promise by extending the government support to those who most-recently ‘struck out on their own’.
46. Furthermore, since the start of the crisis, the Chancellor has repeatedly stated that he will do “*whatever it takes*” to support people through this crisis. As long as the most recently self-employed are excluded from the scheme, then this is patently untrue.
47. Furthermore, the ‘fraud risk’, to the extent it exists, is something that HMRC can take steps to address further down the line, once this crisis is over. For example, HMRC could carry out more compliance investigations of those who received the grant. The government should act now to support people, and can then take steps to crack down on fraud retrospectively.
48. The only thing stopping the government from extending the support to those who have been excluded is political will.

The Bar Council’s ‘MakeTheCase’ Campaign

49. The Bar Council is aware of the problem and have raised it with the Ministry of Justice (MOJ) and the Treasury. In fact, their main recommendation has been that the government “*Expand the types of acceptable evidence required to be eligible for self-employed relief, to include those under the threshold but without 2018/2019 tax returns*”.
50. However, they do not appear to have succeeded and have turned to members of the profession to help make the case to the government for urgent support.
51. On 11th May 2020 the Bar Council launched its ‘MakeTheCase’ campaign in which it is asking members of the Bar to write to their MPs raising the issue of the impact of COVID-19 on the justice system and, in particular, the eligibility criteria for SEISS.
52. The Bar Council have prepared a draft letter which they are asking members of the profession to send to their local MPs. The first recommendation in the letter is to accept other forms of evidence from junior barristers without (eligible) 18/19 tax returns so that they can access SEISS.



53. You can read more about the campaign [here](#).

54. The fact that the Bar Council has decided to do this indicates that they have been unable to make sufficient progress with the MOJ and the Treasury. This is one of the reasons for preparing this briefing and why it is so important that there is support from the Opposition and Shadow Frontbench.

What You Can Do

55. As a Member of Parliament, you will know the best ways in which you can help raise this issue and pressure the government to extend SEISS to the most junior members of the Bar. Here are just a few examples:

- a. Write to the Lord Chancellor and the Chancellor raising this issue – you can use the template letter prepared by the Bar Council [here](#).
- b. Promote the issue on social media using the hashtag ‘#MakeTheCase’.
- c. Write an article or blog post about this issue, such as the article by David Lammy in the New Statesman [here](#).
- d. Raise this issue in written questions to the MOJ and Treasury Ministers.
- e. Raise this issue with your parliamentary colleagues, particularly those in the Shadow Frontbench, so that the entire Labour PLP is aware of the problem and in agreement on the need for an urgent solution.
- f. Continue to highlight the inconsistency between the promise in the 2019 Conservative Manifesto (and, indeed, the rhetoric used by the government at the moment) and the support that is actually being provided.
- g. Highlight the ease with which this problem could be solved by allowing individuals to rely on their 19/20 tax returns which show the most up-to-date and complete picture of their earnings.
- h. Speak with any contacts you have in the Government or Conservative Party that might be able to raise the issue.



Appendix: Further Reading

56. There has been very little reporting on this issue, both generally and with particular reference to the Bar.

57. The following articles may be of use:

- a. [Covid-19 cannot mean the collapse of the criminal justice system](#), David Lammy, New Statesman
- b. [Delaying justice will leave us with no barristers to pick up the pieces](#), Bar Council, Politics Home
- c. [Baby barristers' battle — Bar Council urged to secure better deal on Covid-19 relief](#), Jonathan Ames, The Times
- d. [Self-employed package 'woefully insufficient', say junior barristers](#), Jemma Slingo, The Law Society Gazette
- e. [Junior barristers blast the government's 'woefully insufficient' self-employed support package](#), Thomas Alan, Legal Business
- f. ["We have the lowest earnings, most debt and least savings": junior barristers raise concerns to Bar Council](#), Amar Meta, The Lawyer