

CIVIL COURT USERS COMMITTEE BULLETIN NO. 5
FURLOUGHED EMPLOYEES

Following an Application in the Nottingham County Court today, the Designated Civil Judge, His Honour Judge Godsmark QC allowed an application to vacate by Bourne Leisure in the case of **Fottles v Bourne Leisure**. Nonetheless, the Judge declined to vacate on the ground that the Defendant's employees were currently furloughed.

Permission to appeal in relation to that ground was been sought but declined. The Judge's reasoning declining permission to appeal was as follows:

"This is a personal injury claim brought by a visitor to a leisure facility alleging breach of duty. The Defendant proposes to call as witnesses at trial three employees.

The application to vacate is on the basis that as all three employees had been furloughed pursuant to the Government Coronavirus Job Retention Scheme, to approach them to give evidence or to call them to give evidence would amount to a breach of the furlough conditions.

The Scheme provides that:

When your employees are on furlough

You cannot ask your employee to do any work that:

a) _____ makes money for your organisation or any organisation linked or associated with your organisation;

b) _____ provides services for your organisation or any organisation linked or associated with your organisation.

It is suggested that for the Defendant's solicitors to contact a furloughed witness or call them to give evidence constitutes asking the furloughed employee to do work that makes money for, or provides services for, the solicitors acting for the Defendant employer. Those solicitors being an organisation linked or associated with the Defendant and they will charge for their time in dealing with the witness.

I ruled that attending a court to give evidence for the employer is not "work" and certainly not work within the meaning of the furlough scheme. Further, being contacted by an employer's solicitor to arrange attendance at court is not asking a furloughed employee to do any work which makes money or provides services in breach of the scheme.

Participating as a witness (for employer or anyone else) in the justice system is not a breach of the terms of the furlough scheme.

I do not consider that an appeal has a real prospect of success and there is no other compelling reason why it should be heard."

To the extent that the Judge's reasoning appears from the above refusal, the case is of interest in relation to the position of a party who has to rely at trial upon the evidence of employees currently under furlough.

Philip Turton
4th June 2020