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Agenda

- Setting the scene
- Government initiatives
  - Furlough extension
  - Job Retention Bonus
  - Job Support Scheme
- Returning to work
  - Practical issues
- Remote working
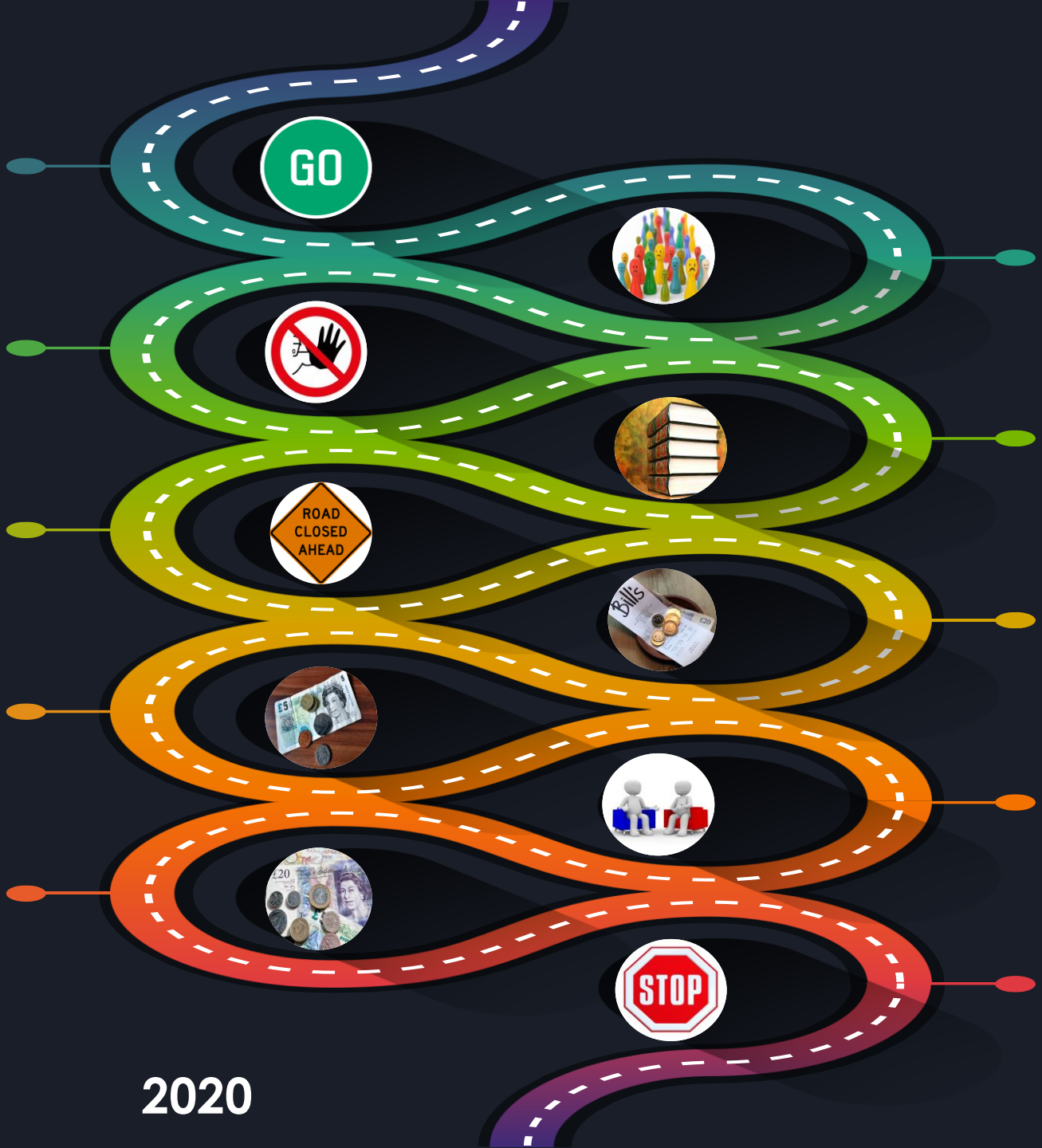- 5 key steps

Furlough Roadmap

BondLegal

20 March

Chancellor announces scheme

10 June

No new furloughs

1 July

Scheme closed to new employers

Flexible furloughing permitted

1 September

2nd Employer contribution increase

Employers pay 10% max £312.50 pm

1 October

3rd Employer contribution increase

Employers pay 20% max £625 pm

2020

19 March

Employee eligibility

Furloughed employees must be on employer payroll & RTI submission

12 June

Guidance on flexible furlough

1 August

Employer contributions start

Employers pay NICs and pension contributions

16 September

Last day to start compulsory consultation

31 October

Furlough scheme ends

No further grants available

Furlough numbers

- As at August:
  - 9.6 million jobs furloughed
  - Approx 32% of UK jobs
  - 1.2 million employers furloughed staff

- In the East Midlands (July):
  - 650,000 furloughed
  - 29.7% take-up

- Cost?
  - Estimated £80 billion by 31 October
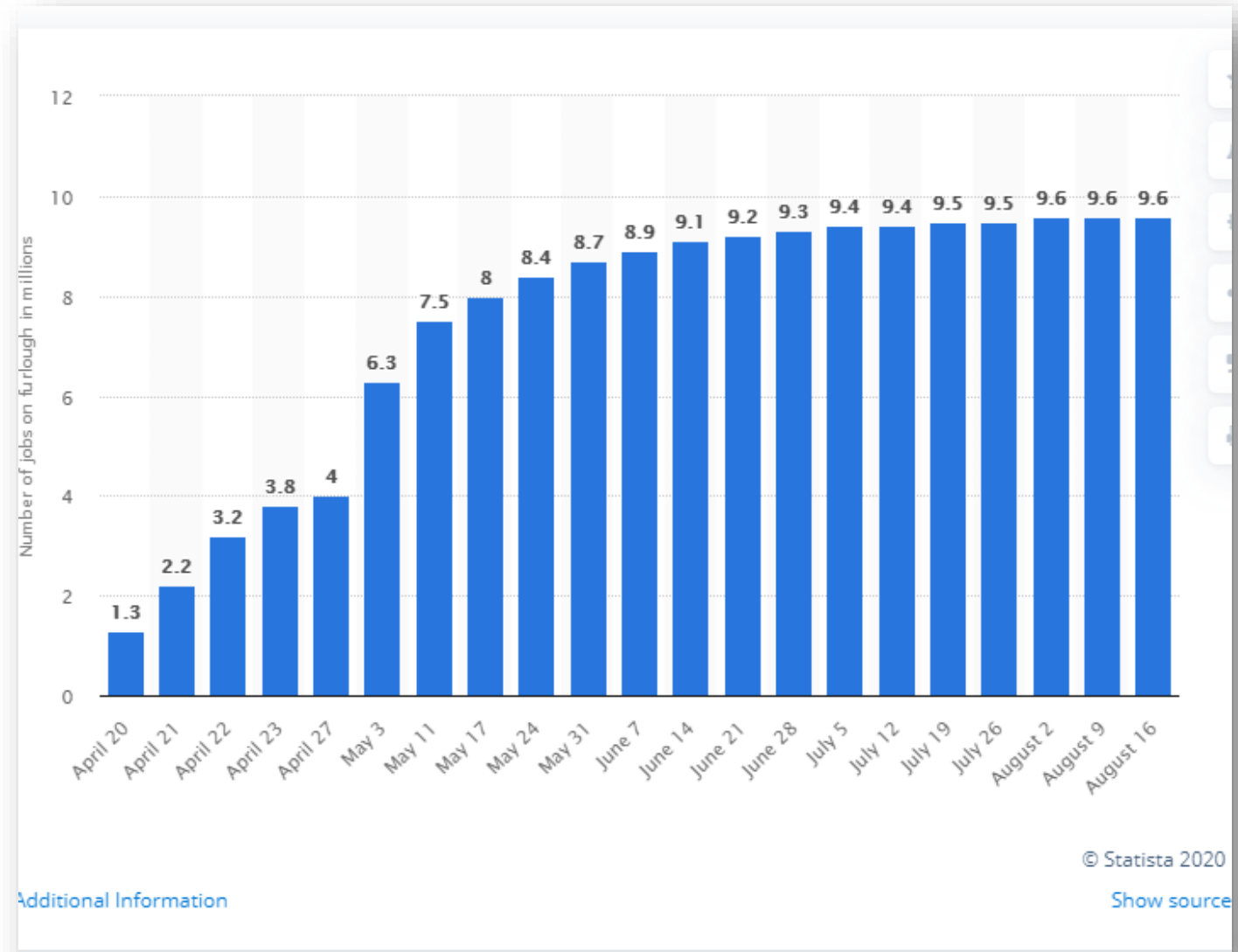
Covid: Nearly 500,000 redundancies planned since crisis began
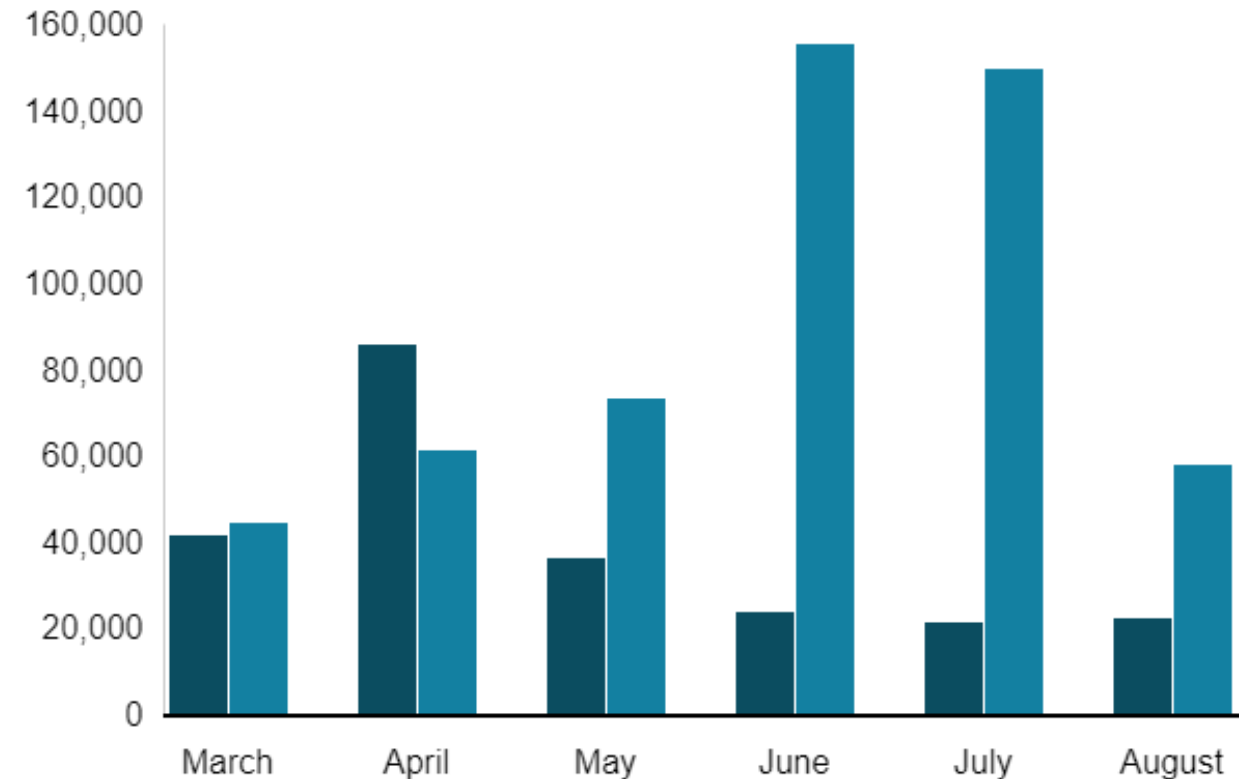
By Ben King
Business reporter, BBC News

June & July 2020:

- 150,000 planned redundancies

August 2020:

- 966 employers submit HR1
- 58,000 jobs at risk
- 150% increase on 2019

Proposed dismissals submitted

■ 2019 ■ 2020

160,000
140,000
120,000
100,000
80,000
60,000
40,000
20,000
0

March   April   May   June   July   August

(England, Scotland and Wales)

Government announcements

- Furlough scheme
  - Due to end 31 October 2020
  - Job Support Scheme

- On 31 October:
  - Furlough extended to 2 December
  - Coinciding with lockdown

- On 5 November:
  - Furlough extended to 31 March 2021

Furlough extension (1)

- Up to January 2021:
  - 80% salary, max £2,500 per month
  - Flexible furlough available
  - Employers to pay NI & pension
- Amount of grant to be reviewed in February and March
- Eligible employees:
  - any type of contract
  - on PAYE payroll by 23:59 30.10.20
- Employers can top up wages

Furlough extension (2)

- Claims:
  - to be made in periods of 7 days
  - can be made for 01.11 onwards
- Redundant employees:
  - On payroll as at 23.09.20
  - Made redundant after 23.09.20
  - Can be rehired and furloughed
- More guidance expected 10.11.20

Furlough extension (3)

- Redundancy:
  - Consider re-hiring if redundant employees are eligible to be rehired
  - On going redundancy consultation
  - Will it be unfair to refuse to furlough?
- Skills:
  - Deskilling
  - Loss of contact with business

Furlough extension (4)

- What about:
  - Job Support Scheme?
  - Job retention bonus?

- On hold

- But could be back

Job Retention Bonus

- On hold

- £1,000 one-off taxable payment

- Per furloughed employed
  - Unless TUPE'd after 31 October

- Retained until 31 January 2021
  - Not serving notice
  - Receive pay of at least £1,560 pm
    - i.e. £520 per month
    - Between 6 Nov and 5 Feb
    - SSP/ unpaid leave will count

Job Support Scheme (1)

- Announced 24 September

- Expanded on 22 October

- Due to start 1 November – now on hold

- Open to employers with UK bank account & UK payroll

- Large employers:
  - 250 employees+
  - Have to prove turnover is lower than pre-Covid
  - 'not expected' to make share dividends

- Employees:
  - Must work at least 20% of usual hours
  - Can rotate on and off scheme
    - But reduced hours must be in blocks of 7 days

Job Support Scheme (2)

- Employer must pay usual wages for the 20% of hours worked

- For the remaining 80% of unworked time:
  - The employer pays 5%; and
  - The government pay 62%

- Government grant capped at £1,541.75 per month:
  - Paid in arrears
  - Does not cover Class 1 NICs or pension contributions

- Pay = pre-furlough, 'normal' pay

- Employees cannot:
  - Be forced to work for the 80% of downtime
  - Be made redundant or given notice during claim period – "viable jobs"

Job Support Scheme (3)

"the scheme ensures that employees earn a minimum of 73% of their normal wages"

Employee's usual wages = £1,000 per month

Employee works 20%, therefore earns   £200

80% of time remaining =   £800

Employer pays 5% of £800 =   £40.00

Government pays 62% of £800 =   £496.00

Employee therefore earns   £736.00

£736 = 73.6% of usual wages

Criminal offences

- Employers obliged to ensure those:
  - who have tested positive for Covid19
  - or have been in close contact with such a person

  do not attend work

- Unless employer has "reasonable excuse"

- Failure to comply is a criminal offence

- Max fine = £10,000

- Employees must also tell employers if they test positive - £50 fine

A safe return to work

- 5 steps to take:

    1. **Follow government guidance**
        'Working safely during coronavirus'
        14 sector specific guides
        Not the law, but good evidence
    2. **Conduct a risk assessment**
        In writing
        For home & office working
        Tailored to the work place
    3. **Set up a safe system of work**
        Identified by the risk assessment
    4. **Ensure that the safe system is followed**
        Duty of care cannot be delegated
        Provide equipment/ intervene
    5. **Review the system**

Bringing staff back from furlough (1)

- Ensure your Risk Assessments are
  - Completed
  - Communicated
  - Actioned
- Communicate early about your intentions
  - Explain what, why, when & how
  - Provide reassurance
  - Check furlough letters – what did you agree?
  - Notice of return?

Bringing staff back from furlough (2)

- What terms?
  - The default position is a return to pre-furlough terms and conditions
- Changes:
  - Changes will need to be agreed…
  - … following consultation
  - and recorded in writing
  - Factor consultations into timescale for return
  - breach of contract/ constructive dismissal
  - dismissal / re-engagement

Bringing staff back from furlough (3)

- Collective consultation
    - Where an employer proposes to dismiss 20+ employees:
        - for redundancy; or
        - to dismiss and re-engage on new terms
    - in 90 days or less at one establishment
    - it must consult employee representatives over:
        - 30 days (20 -99 employees); or
        - 45 days (100+ employees)
    - If there are no reps, the employer should arrange for an election
    - Protective award for breach = 90 days pay per employee
    - HR1 must also be submitted

Bringing staff back from furlough (4)

- Discrimination
  - Equality Act 2010
  - Protected characteristics:
    - sex, race, age, disability, religion/ belief, sexual orientation, gender reassignment, pregnancy/ maternity, marriage
  - Part-time / fixed-term workers
- Importance of:
  - consistency;
  - a clear rationale for differences; and
  - consultation and agreement
- Disabled employees:
  - additional reasonable adjustments required?

Bringing staff back from furlough (5)

- s44 Employment Rights Act

- An employee cannot be subject to a detriment where:
  - they leave or refuse to return to the workplace;
  - in circumstances of danger;
  - which are serious and imminent; and
  - which the employee cannot avert

- Requires a "reasonable belief" by employee

- Covid19 likely to be a serious and imminent risk

Bringing staff back from furlough (5)

- Likely to apply to the daily commute
  - 'danger' is widely interpreted

- A day 1 right
- 2 rights:
  - unfair dismissal – 2 year rule does not apply
  - detriment
- What is a detriment?
  - Failure to pay?
  - Disciplinary action

Bringing staff back from furlough (6)

- Reluctant returners
  - Instruction to return may be a reasonable request
  - Disciplinary action may be justified but:
    - Consider the reason for reluctance/ refusal
    - Ask for evidence
    - Does the employee have a point?
    - What have you done to ensure safety?
    - How have you communicated that?
    - Consider s44 – reasonable belief?
    - Have you given reasonable notice?
    - Alternatives?

Bringing staff back from furlough (7)

- Top tips on handling reluctant returners
  - Consult over any return as early as possible
  - Flush out concerns early – what are they?
  - Be flexible:
    - Remote working
    - Partial returns
    - A rota?
  - Flexible furloughing
  - Give plenty of notice
  - Explain your safety measures
  - Be prepared to accept criticism if valid

Managing remote working

- Set ground rules
  - Hours
  - Communication
  - Availability

- Trust & clarity of expectation

- Communication:
  - Be proactive
  - Regular meetings
  - Ideally video

- Manager availability

- Remote social interaction:
  - Group socials
  - Virtual drinks

- Consider personality:
  - Introverts
  - Consider 1-2-1s
  - Be inclusive

- Offer support

BondLegal

5 Key Steps when furlough ends

1. Decide what you are going to do

2. Design the process & business case

3. Communicate

4. Get documents in place

5. Support health & wellbeing

5 Key Steps as furlough ends

1. Decide what you are going to do

   • Redundancy?

   • Job Support Scheme?

   • Back to normal?

   • Something else?

… and where remaining employees will do it

5 Key Steps as furlough ends

2. Design the process and business case

    - Business case:
        - crucial for redundancy
        - for a return/ partial return

    - The process:
        - Consultation
        - Selection
        - Alternatives
        - Timescale
        - Personnel – who will do it?
        - Appeal

5 Key Steps as furlough ends

3. Communicate

'in the next …. pandemic, be it now or in the future, be the virus mild or virulent, the single most important weapon against the disease will be a vaccine. The second most important will be communication'
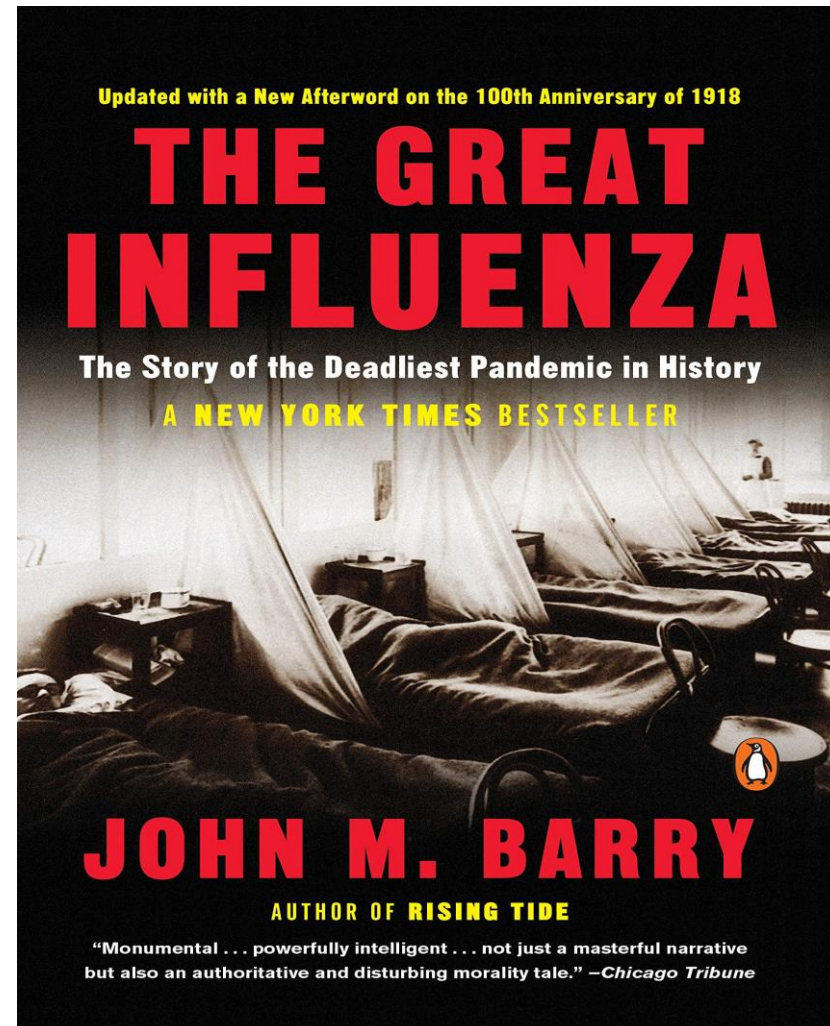
5 Key Steps as furlough ends

3.   Communicate

- Clear and accurate messaging, helps employees:
  - understand why it's happening to them
  - understand why it's necessary
  - trust in systems and processes
  - understand the process
  - engage in business goals (if being retained)

- Clear and accurate messaging, helps you:
  - reduce fear, anxiety, mistrust
  - mitigate litigation risk
  - manage expectations
  - deliver bad news

5 Key Steps as furlough ends

4. Get documents in place

- For the process:
  - Redundancy
  - Return to work from furlough
  - Job Retention & Support Schemes

- Why?
  - Employee consent to changes
  - Evidence
  - Litigation
  - To communicate
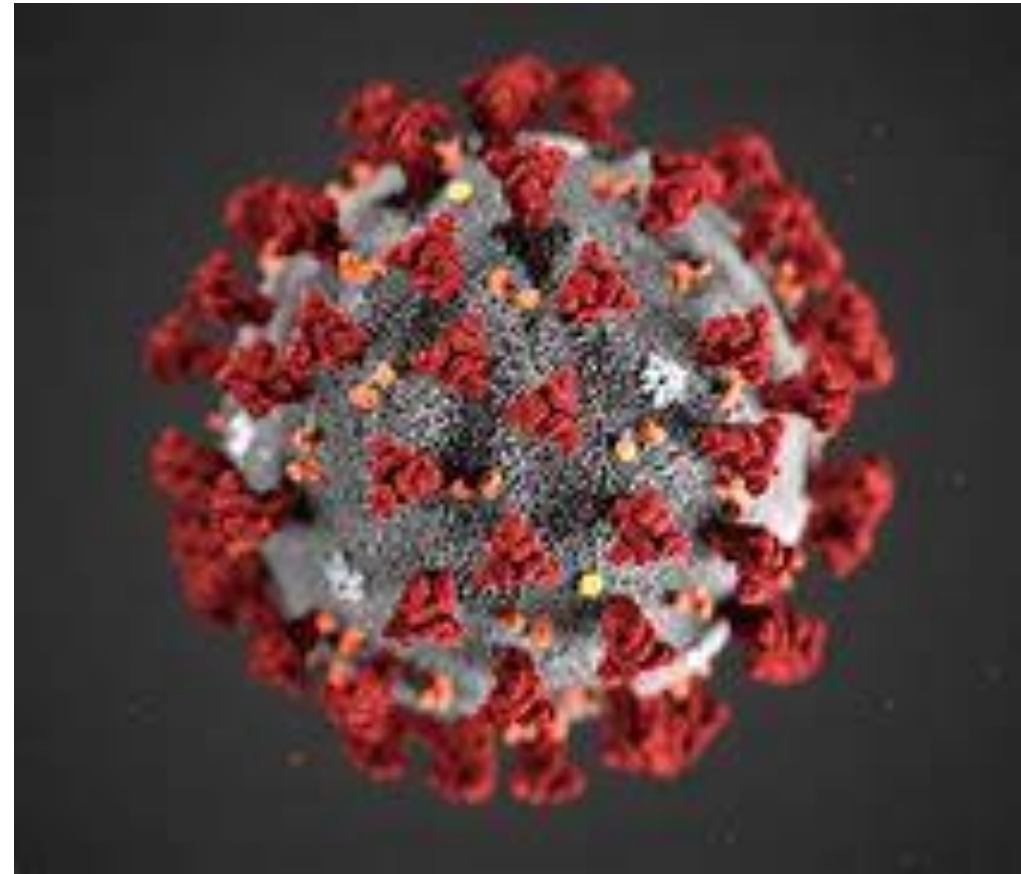   - why, what, when & how
  - For well-being

5 Key Steps as furlough ends

5.   Support wellbeing

'it shall be the duty of every employer to ensure, so far as is reasonably practicable, the health, safety and welfare at work of all his employees'

s2(1) Health & Safety at Work Act 1974

Supporting Mental Health

- WHO/ MIND recommendations
  - Good & accurate communication
  - Encourage & monitor breaks
  - Regular check-ins with employees
  - Encourage collaborative working
  - Encourage social support amongst employees
  - Awareness of how employees can access support
  - Use technology – Zoom, Teams etc
  - Wellness Action Plans

    www.mind.org.uk