



RETURNING TO THE
WORKPLACE POST-
LOCKDOWN:

A HANDY GUIDE FOR BUSINESSES

JUNE • 2020

INTRODUCTION

It's difficult to believe that only 14 weeks ago, we were all living our lives and growing our businesses in what was for most of us a familiar and comforting routine. How the pandemic has changed all of that!

Now though, at long last, some business owners are able to start moving towards business as usual although for some sectors, their journey back to normality is travelling a much slower route.

Like you, we have had to consider the short and long term implications for our business with many critical decisions having to be made either in the run up to or very early on in lockdown. We were able to carry on with our business although face to face client contact ceased, many of my colleagues were able to work remotely whilst some who could not perform their normal duties were furloughed. We entered into early dialogue with suppliers and landlords to vary terms of contracts and leases and tapped into some of the government initiatives designed to help businesses through these difficult times.

No doubt you will have gone through a similar process to ensure that your business was able to survive both for the short and long term.

I am lucky in my role as CEO of Harding Evans to be able to tap into a resource of excellent legal brains as my colleagues have been on hand to help me make decisions on some of the actions I have taken but have also been able to ensure that any documents or paperwork that were needed to support those actions have been put in place.

Now is the time to dot the I's and cross the T's and make sure that all important decisions and agreements that you may have made and entered into during the lockdown period are properly documented. As you would expect, lawyers love an audit trail! In all seriousness however, by putting your paperwork in order now, you may well avoid any unforeseen problems as you move your business forward.

There will also be fresh considerations as you make sure your business is future proof. This document provides some food for thought and guidance on some of the issues you may be facing and decisions you may need to make as you work towards business as usual.

For many entrepreneurs and business owners the pandemic has also brought to the fore issues such as protecting their own personal positions and this document addresses issues such as Director and Officer responsibilities, Health Insurance as well as business continuity in the event of owner incapacity or death. We have collaborated with some of our external partners who have contributed to this document by offering their own expertise and we would like to thank AMG Wealth Solutions, Menzies and Thomas Carroll for their help in putting this guide together.

I hope that you find this very brief guide useful and whether you are an existing or future client, I wish you and your organisation the very best of luck as you emerge from lockdown and a speedy journey towards prosperity.

With good wishes

Joy Phillips
Chief Executive

PREPARING YOUR BUSINESS FOR SUCCESS

For us at Harding Evans, like many other businesses, the last few months have been about coming to terms with these unprecedented times. We are now beginning to implement our lockdown exit strategy. Other businesses will no doubt be doing the same and working out how to come out of the other side of this outbreak stronger, more flexible and more focused on business development.

Review



In all the commotion of lockdown, it is likely that you would have had to make decisions quickly. While it was essential to act fast, there may have been aspects that, with hindsight, that could have been handled differently. This is a great time for reflection so that you can learn lessons for the future.

Resolve



There may be immediate challenges that your business needs to face before you can begin working on business improvement activities. It is crucial to touch base with your employees, suppliers, contractors and customers to determine if there are any urgent issues that you need to address.

Resources



Businesses will be required to make decisions on the allocation of their resources, including bringing back staff. Further aspects to consider include virtual services, safer business practices and a more personalised and sociable service.

Revenue



One positive of this outbreak is that it has led many businesses to diversify their offering to create sustainable revenue streams. With the lockdown exposing new customer demands, the more agile businesses that can adapt to these new, innovative revenue streams will be in a better place to recover more quickly



LANDLORD & TENANT: LIFE AFTER LOCKDOWN

James Young - Associate Commercial Property Solicitor

The Covid-19 pandemic and resulting lockdown imposed has had a significant impact on the relationship between landlords and tenants with many tenants being unable to pay rent.

High profile business failures have sent shockwaves through the commercial property sector. More are likely to follow with businesses finding themselves insolvent and unable to continue trading.

Post lockdown, businesses will need to look at their long term viability in this time of crisis. With commercial premises costs being one of the largest fixed cost for any business, it is imperative that landlords and tenants work together constructively to enable them to continue trading. At the outset, parties need to fully understand their rights and obligations under the lease that governs their relationship to ensure they continue to comply with their obligations and do not inadvertently breach the lease in these uncertain times.

Landlords may be concerned about incurring costs for additional cleaning and social distancing obligations in communal areas. They will want to know if these costs are recoverable. Tenants may have concerns about having to comply with obligations which cannot be complied with for example a covenant to stay open.

Professional advisors will be able to direct and assist parties to try and achieve business continuity and explore various options with them. Some landlords may wish to take enforcement action against a tenant for non-payment of rent. In relation to enforcing the The Coronavirus Act 2020, it is recommended that landlords seek advice from a solicitor at the earliest opportunity, due to the Act having short term enforcement. In particular, landlords would be wise to consider any tenant's ability to pay any sum due as a result of enforcement action and whether there would even be a new tenant available for vacant property.

To try and overcome an impasse in the landlord and tenant relationship, during the last financial crash of 2008, many landlords and tenants entered into confidential written agreements (side letter to a lease) to reduce rents. It is now time to revisit this process to assist business continuity as we move out of lockdown. This process would involve the parties agreeing a rent free period, deferment of rent or rent reduction.. Landlords and tenants may have already agreed these changes to rent payment or proposing such a change. Either way, it is imperative that any agreement is formally documented as it will have an impact on the other terms of the lease.

The commercial property sector has already seen a move to a turnover rent model and it may be the case that this will become far more common in the future when considering the current market volatilities.

WHAT SENSIBLE STEPS SHOULD YOU BE CONSIDERING?

Many thanks to Harding Evans Solicitors for working in collaboration on the 'Business Continuity and Resilience: Addressing illness and death' webinar. Following the discussions we provided business owners with plenty to consider. At AMG we can help you answer important questions such as:

- **What business protection should I have for shareholders and key people?**
- **How do I protect the business if the workforce is ill?**
- **My business is paying too much tax - how can pensions help solve this?**
- **How can I pay my rent to myself rather than the landlord?**
- **How can my pension help me grow my business tax efficiently?**

If you have been thinking about any of these then AMG Wealth Solutions offer a bespoke service tailored to your needs!



Contact Details:

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STARTING THE RETURN TO WORK JOURNEY

Daniel Wilde - Partner & Head of Employment Law

Since the 23 March 2020 many businesses have either been closed, working on reduced capacity with employees working from home or furloughed. As lockdown eases, businesses are planning a slow journey towards a new normality. What should employers be considering?

Employers should have reviewed the Government's documents for ensuring Covidsecure workplaces. These should underpin the risk assessments that all employers should conduct to minimise the risk of Covid-19 Transmission. There are specific guidelines in place for industry sectors with slightly different approaches being followed.

At the heart of these guidelines are the requirements for employers to put in place social distancing measures and other actions to reduce the risk of Covid-19 transmission as far as reasonably practicable. Employers in certain sectors will need to consider purchase of PPE, and equipment, for example, to shield reception staff from the general public as well as a range of other measures. Another key requirement might be to minimise the requirement to use public transport or use public transport at peak times by altering hours of work.

Notwithstanding the Government's stated wish to get Britain back to work, employers should not lose sight of the fact the guidance remains in place that employees should work from home wherever possible. This guidance remains in place in both England and Wales.

Employers will need to liaise with their employees about bringing them back off furlough, providing the appropriate notice of a return to work and carrying out an induction as to the new ways of working and social distancing measures that have been instigated in the workplace.

Employers will need to take in to account their more vulnerable employees and consider whether an immediate return to the workplace is appropriate for employees with underlying health conditions, those who are over age 70 and those who are pregnant. Certainly, at the current time, a return to the workplace would not be appropriate for those that are categorised as extremely clinically vulnerable. Workers in this category will either need to be allocated work they can do at home, or will need to remain on furlough. Unfortunately, furlough is now closed to those that have not had a 3-week period of furlough prior to 30 June 2020.

Employers will need to recognise that while schools and nurseries are not operating normally and wider support groups such as grandparents are socially distancing, some employees may not be able to return to work. Detailed individual consultations will need to take place and we would suggest a sympathetic rather than disciplinary approach should be adopted.

Employees who raise legitimate concerns about health and safety have a right to protection from detriment and employers will need to ensure any concerns are properly addressed .



RIGHTSIZING YOUR BUSINESS

Sadly, we cannot hide from the fact that Covid-19 will result in an immediate recession and it remains to be seen how long it will take for the economy to recover and consumer confidence to return.

Many employers will need to look at reducing costs and to consider redundancies. Employers should not lose sight that even in a crisis such as this pandemic, employees' statutory and contractual rights must be honoured. Employers must still follow fair selection and consultation processes and act reasonably when implementing redundancies. If employers are contemplating 20 or more redundancies in a period of 90 days or less they need to take in to account that the duty to consult with a recognised trade union or employee representatives applies. Remember that if an employee is dismissed unfairly a tribunal can order up to a year's pay as compensation over and above the costs of making the redundancy. If the collective redundancies regime is breached a tribunal can award 90 days' pay per affected employee.

Reducing salaries and benefits

Making redundancies reduces an employer's costs in the medium term but, in the short term, inevitably results in a hit to the cash flow and many businesses having recruited and trained staff will not want to lose their expertise. Even with the current severe crisis, employees' contractual rights should not be breached. Reducing salaries and benefits without agreement is a breach of contract entitling an employee to resign and claim constructive unfair dismissal. Any proposal to reduce salaries and benefits should be negotiated and agreed with employees or their representatives.

If an agreement cannot be reached, consideration will need to be given to terminating the employment on notice with an offer of continued employment on the proposed amended terms. However, this does carry the risk of claims to the tribunal and we would recommend that you seek legal advice before embarking on this process.

Be open and be creative

Be open to ideas. It is always hard to sell to employees they should continue working hard for less money. Consider reductions in hours with pro rata reductions in salary. Consider whether the proposal should be a finite duration e.g. 6 months or whether it needs to be permanent. Some employees might be interested in taking a sabbatical or to take some temporary time away from work. Some employees might want to reduce their working commitment and haven't previously wanted to raise this with you. If you do not ask, you might not find out information that will help you make decisions.

Furlough

The Job Retention Scheme remains in place until 31 October 2020 for those that have been furloughed for a period of 3 weeks prior to 30 June 2020. Up to 31 July 2020 the Scheme continues in its current format, meeting up to 80% of an employee's salary, employer's national insurance contributions and minimum statutory pension contributions (subject to a maximum salary subsidy of £2500 per calendar month)

From 1st August 2020, employers will have to meet the costs of employers NICs and pension contributions on furlough pay. From 1 September 2020 while employees will be entitled to receive 80% of their normal pay while furloughed, the grant reduces to 70% of pay and then from 1 October 2020 to 60% of pay.



TERMS & CONDITIONS: THE IMPACT OF COVID-19

Ben Jenkins - Partner & Head of Litigation

As we emerge from lockdown and see that social distancing measures are slowly being eased, many businesses will be revisiting their own (and their supplier's) Terms and Conditions as they look to resume trading and to build a secure and sustainable future.

While many parties to commercial arrangements sought to suspend/terminate their obligations under existing agreements (e.g. by claiming Force Majeure), as businesses begin to re-open, they will need to consider how robust their T&Cs have proven to be during the crisis and what changes might be needed to provide greater protection for them in the future.

By taking the time to appropriately allocate risk and expectations at the outset, parties to commercial contracts will be able to have more control over how their potential exposure is managed. Early communication and possible variation of contracts is very important. This will give all parties the opportunity to provide clarity on what is viable and also help to avoid a dispute further down the line.

Will we see disputes at board level?

Many Directors, shareholders and partners will be feeling the strain caused by the uncertainty of lockdown and the significant change to our working environment.

There is inevitably a degree of mistrust when you cannot see or measure what your fellow business partners are doing to stabilise, protect and drive the business forward. It appears that a lack of visibility is set to continue for the short term. Directors have duties to promote the success of the company and exercise a reasonable level of care, skill and diligence. This could all lead to costly and damaging disputes internally.

There should be concern about challenges by shareholders, wrongful trading claims, director's disqualification proceedings and insolvency, so it is about knowing your duties, acting accordingly, taking professional advice from legal, financial and/or insolvency specialists where necessary, and evidencing any meetings and decisions.

Payment of outstanding invoices

Cash is king. Make note of any outstanding invoices and build this into your cash flow forecast. In addition, conduct your research and examine your terms and conditions with each supplier. If you are unable to make a payment that is due, communicate with creditors and agree on deferred payment or a payment plan where possible.

There are a number of initiatives available to businesses during this time, for example: HMRC runs a scheme that allows eligible businesses more time to pay when tax arrears have built up. Do your research, find out what is available.

WHAT SHOULD BUSINESSES BE LOOKING OUT FOR POST-LOCKDOWN?

MENZIES
BRIGHTER THINKING

As the lockdown lifts, it is important for businesses to alleviate pressures on cash flow and improve financial resilience. However, in doing so, there are a number of factors that business owners should be considering. Bethan Evans, Partner at Menzies LLP, explains.

One of the biggest risks to businesses post lockdown is over trading. As the lid lifts on demand which has been suppressed through the lockdown, business owners will naturally jump at the chance to supply said demand and benefit from it. For some it will be about recouping some of the lockdown losses as well as making the most of an opportunity.

The importance of ensuring the business has sufficient working capital should not be underestimated at this time and business owners should be careful not to take their eye off their cash requirements. Whilst there is a protection from wrongful trading during the pandemic, business owners should remember their wider duties and responsibilities to stakeholders. They should also be mindful of the risk of wrongful

have insufficient working capital and have to rely on their suppliers' credit terms to fund trade.

For some businesses raising additional working capital funds will be easier than for others. It is important that business owners do not underestimate the importance of planning and forecasting to assist them in seeking additional funding. This will also assist them in their decision making, and well documented decision making will help protect against any future wrongful trading allegations.

Planning and forecasting tools are used by restructuring and recovery professionals as well. We use these tools to evaluate the options available to a struggling business and we look at how we can control all the different variables.

Those businesses that are able to plan, have a good understanding of their future sales profile and therefore cash requirement - meaning they will be able to identify potential problems earlier. Seeking help as soon as possible provides your professional advisor with a little more time to achieve the best outcome for your business and provide you with alternative outcomes and scenarios to help frame your decision making. Whilst cash may be tight, spending on professional advice will help protect you and your business.

Bethan Evans
Partner
Menzies LLP

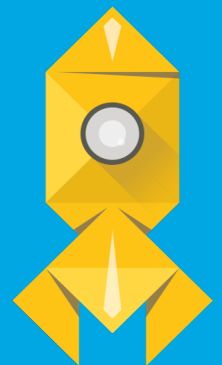


BRIGHTER THINKING BUSINESS RECOVERY SERVICES

All businesses are likely to feel the impact of Coronavirus. Our Business Recovery team are on hand to offer practical support and advice to help you proactively manage your situation. Remember, early engagement is key so if you are at all in doubt about the future of your business, please do get in touch with us. An outline of our services includes:

- Advisory and restructuring
- Option analysis and evaluation
- Company Voluntary Arrangements
- Administrations
- Receiverships
- Liquidations
- Creditor Services
- Individual Voluntary Arrangements
- Bankruptcy
- Forensic Services

As an active member of HLB International – a global network of independent advisory and accounting firms – we have access to specialists in over 150 countries worldwide. This elevates our business recovery capabilities, especially when dealing with international disputes.





Returning to Work Safely: The 'New Normal'

As lockdown restrictions start to ease, it is essential that businesses take the necessary steps to ensure that employees can return to work safely and without risks to their health and wellbeing. To assist, the Government has published a range of guidance to help employers, employees and the self-employed understand how to work safely during the coronavirus pandemic. To help you pinpoint any foreseeable hazards within your workplace and produce a plan to eliminate and control said hazards, we've put together a Returning to Work Health and Safety Guide - [Click here to learn more](#)

The guidance identifies 5 key principles:

Work from Home.

Employees should work from home, if possible.



COVID-19 Risk Assessment.

Carry out a COVID-19 risk assessment and publish the results on your website



[Click here to download your COVID-19 Risk Assessment Template](#)

Practice social distancing.

You should maintain 2 metres social distancing, wherever possible.



Manage the risk.

Where people cannot maintain 2 metres social distancing, manage the risk of transmission.



[Click here to download our return to work guidance document](#)

Good hygiene.

Practice good hand hygiene by washing your hands with soap and water and clean the workplace more frequently



Each individual business will need to consider how they will return to work safely and develop a structured Return to Work Strategy which should focus on 4 key areas - **Plan - Do - Check - Act:**

PLAN

Identify what you need to do such as complete a risk assessment. Identify responsibilities of the management team and who can return to work. Outline measures to safeguard against the transmission of COVID-19, such as washing facilities, hygiene stations, signage, 2 metre distancing measures, directional flow signs, rearranging layouts and seating, redesign and staggering shift patterns, barriers, PPE, entrance and exits, welfare provisions, deep cleaning protocols, travel arrangements to work, ensuring statutory testing and inspections are up to date and first aid and emergency arrangements etc.

DO

Communicate the Plan to all employees and explain what's expected from them. Take action to Implement your plan.

CHECK

Check that the Plan is working and managing the risk of COVID-19 effectively. Encourage feedback and involvement from employees and/ or their representatives. Identify and investigate any issues that have arisen, including any new cases reported.

ACT

Learn from experience and continuously improve and update your COVID-19 risk assessment and Business Continuity Plans. Keep a record of all the reviews undertaken.

Whilst the Plan-Do-Check-Act model will help organise your return to work, the information provided above is far from exhaustive. If any further help is required, please visit our [website](#) OR contact us on T: 02920 853794



NEXT STEPS: DOES YOUR BUSINESS HAVE EVERYTHING COVERED?

We hope you have found the content within this guide useful and that it has provided an insight into the areas that require consideration as you look to plan for the immediate future.

As a recap, the guide in particular has focused on the following key areas:

- The important stages required to prepare for long term sustainability;
- The issue of the relationship between landlord and tenant concerning commercial premises;
- Starting the return to work journey and focusing on the reintegration of employees.
- Identifying any required adaptations that need to be taken into consideration, such as amending salaries or working hours;
- The impact of lockdown on commercial contracts, in particular focusing on any issues concerning terms and conditions.

Next Steps

Whereas the guide may not cover each business situation that may need addressing post-lockdown, it has covered the main areas that require addressing and should provide you and your business with a starting point to plan for operating within our 'new normal'.

Further support required? Get in touch...

Covid-19 has left many of us feeling anxious, uncertain and confused in relation to what the future may hold for our businesses. It is essential to put a plan in place that will enable your business to build a sustainable and successful future.

If you require further advice relating to this or any other matter, please get in touch by using the contact information below:

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Commercial Contracts/Litigation

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USEFUL LINKS

If you require further information to help you and your business post-lockdown, you may find the following resources useful:

Support, Advice & Initiatives

HMRC

Find out the financial support schemes you may be eligible for by clicking **here**

Welsh Government

Further information on the latest guidance and updates relevant to businesses can be found by clicking **here**

Business Wales

For information and advice on available grants, schemes and initiatives available to businesses in Wales, please click **here**

Business Support Videos

Business Continuity and Resilience: Addressing illness and death'

We're joined by Matt Pathmanathan of AMG Wealth Solutions, as we provide businesses the answers they are looking for, in relation to mitigating the risk of illness and death. Watch this Webinar by clicking **here**

'Emerging from lockdown: Easing your Employment-related concerns'

Preparing to be fully functional post-lockdown? View our latest Employment Law Webinar for the latest information and advice by clicking **here**

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