

Covid as a Catalyst for Change

COVID-19 Guide
May 2021





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For advice and support on any of the issues raised in this guide please email enquiries@stephens-scown.co.uk

It feels a bit like the whole pack of cards, that was business life as we knew it, was thrown up into the air last March... and we are yet to see what will fall down and where it will fall. Some business models and practices will continue with only a few tweaks, but for most businesses it seems Covid will be the catalyst that fast-tracks significant changes.

So what building blocks do businesses need to have in place to thrive in this new environment? What contingency plans do we need now and in the future?

We talk to businesses of different sizes and sectors across the South West and nationally on a daily basis. The following areas are the key themes we're hearing about and advising on.

The advice given in this article is correct as of 17 May 2021. The situation with COVID-19 is developing rapidly, so please do check our COVID-19 [Insights Hub page](#) for the latest updates.



HEALTH CONCERNS AND SOCIAL DISTANCING ARE HERE TO STAY

The Government has made it clear that social distancing is here to stay, meaning we are likely to see a continuation of distancing measures, mask wearing and a focus on space and hygiene well into the future.

For retail, entertainment, and restaurant venues in particular, this could of course be particularly problematic. Implementing protective measures often means higher staff costs but lower capacity, frequently hurting profitability, so amidst the hype and excitement of reopening, comes the challenge of being able to make it a financial success.

Consumer and employee sentiment adds another challenge, as people may remain cautious for some time despite the encouraging progress of the vaccine programme and the UK's decreasing case numbers. Adopting practices that reduce their concerns and allay fears – and communicating these as part of your marketing and communications strategy – will be important. Businesses will need to continue to provide a safe environment, health and safety policies will need to form an integral part of your internal and external messaging, and hygiene rules and cleaning regimes will need to be maintained and strictly adhered to in order to create confidence amongst customers and employees.

Heightened concerns around health and safety while at work, brought about by the pandemic, must continue to be actively and sensitively monitored and managed. Strong employee engagement and customer feedback will ensure businesses understand and meet those concerns quickly.

On a more general level and irrespective of sector, businesses should assess their requirements for physical space both in the shorter term - factoring in the need for Covid safe measures - and looking forward to the longer term and what their 'new normal' might resemble. Some companies will need to consider permanently redesigning their existing space or perhaps relocating to premises better suited to their revised requirements.



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BUYING HABITS HAVE CHANGED

Convenience and personal safety have been a priority for consumers during lockdown, resulting in a real upsurge in the popularity and use of e-commerce and a further blow to physical shopping.

Aside from the ongoing battle with online, bricks and mortar stores have suffered tremendously throughout the on-off lockdowns of the past year, with challenges surrounding safety, sanitising and distancing, of ongoing – albeit in some instances deferred - rental obligations, supply difficulties including surplus inventory and stock going out of season, concerns about travel and changes in people's working patterns, all playing a part.

The impact of the last year has demonstrated the importance and usefulness of businesses having an engaging online presence coupled with a robust delivery programme, offering customers flexibility and convenience. Although it remains to be seen, whilst online activity might not count for quite as large a proportion of buying activity going forward as it did in 2020, it's generally felt that its popularity will remain high, and so continued investment in this area is therefore key for retail businesses.

Of course, retail is not the only area impacted by the events of the past year: with many people having successfully switched to remote working and become adept at interacting virtually via various online platforms, it's likely that agile working patterns will continue in many sectors. Whilst online video conferencing was adopted by many on a 'needs must' basis, the reach and potential for any business which these platforms unlock is undeniable, and the possibility of combining the more traditional face-to-face model with a continued online programme is exciting.

As with any online activity, safety and security are key. Businesses must continue to ensure the portals they use to interact with customers are secure and GDPR compliant. The Information Commissioner's Office temporary moratorium on enforcement and leniency on deadlines was short lived and the regulatory landscape for online trade for services and general data management is due to become trickier to navigate over the coming years. See our previous articles: [Providers of Online Services - are you ready for the Children's Code?](#) and [ICO Issues Fine Against Marriott International – a tale of two lessons](#).

As businesses rely increasingly on online strategies to deal with customers and win work, their ability to control their reputation becomes more important than ever. This need is exacerbated by the way in which, in the absence of being able to deal with retail outlets etc in the traditional way, customers may be more likely to air any issue in public forums online. Therefore, it's important to have a complete social media strategy to cover your content and to be responsive to what others post.



CHANGING WORKING HABITS

Many employees cannot imagine working full time in an office again, suggesting that remote working and hybrid workplaces will become standard. With research highlighting that employees have felt more productive working from home, it raises the question as to whether it leads to employees not being able to 'disconnect' and separate work life from home life. Businesses will need to help employees create boundaries to ensure working from home is sustainable and does not lead to burnout from over-working. It may be useful to announce initiatives, such as establishing specific 'office hours' and/or setting no expectation for emails to be answered after a certain time. See our article on [homeworking vs office working](#) for more information.

Employers will continue to need to invest in the right technology and take the time to ensure that data is properly protected. A great deal of personal data that would usually be confined to locked offices and business premises is now being processed in employees' homes. This means it is now even more important to have adequate data protection policies in place to ensure your business is compliant. You should also ask employees to lock away print outs and devices at the end of the working day and to only use approved work technology when handling personal data.

Supervision and training also needs some thought. Many businesses that have moved to working remotely through the pandemic have found ways to ensure that junior colleagues still get the mentoring they need, but it is likely that this will have been more ad hoc than when people were working more physically closely together. Businesses should look for best practice in their organisation and roll this out consistently. On-boarding and induction processes should also be reviewed to ensure vital company information and your culture is being imparted to new employees even if they are physically on site less.

Managers may also welcome the opportunity for further training on how to best manage disparate or remote teams, given in many businesses this will now continue in some format.

BUILDING BLOCK	Clear flexible or hybrid working policy	Ongoing employee wellbeing support programs	Review your training, supervision and onboarding processes	Clear data protection policies, processes and training	Management training and support for disparate/ remote teams
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RENT



Landlords and tenants would be well-advised to discuss and agree future arrangements...

The Government's introduction of the moratorium on forfeiture for commercial rent arrears last year provided welcome relief to occupiers whose businesses were completely reliant on visitor numbers. Income was uncertain in the face of imposed lockdowns and restrictions and so their ability to service tenancy arrangements provided a particular point of concern.

When that moratorium ends, we are unlikely to see landlords – many of whom have received little in the way of arrears for over 12 months – clambering to forfeit across the board as this might not result in a desired outcome (after all, which landlord wants to increase their voids?!) but they are likely to want to reach agreements with their tenants both in respect of any outstanding 'Covid arrears' to the extent these have not already been resolved, and in respect of any ongoing occupation.

Landlords and tenants would be well-advised to discuss and agree future arrangements, such discussions being encouraged by the Government through the introduction of the Code of Practice governing commercial property relationships, particularly as it feels like we are going to be in a transitional period for some time.

BUILDING BLOCK	Tenants should assess rental obligations and speak with landlords to agree future arrangements
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CORONAVIRUS IN CONTRACTS

Covid-19 is not going anywhere soon, it is clear it will become like the seasonal flu so mutations and strains are likely. As the virus is now a known risk, parties that enter new contracts during periods of economic normalcy will need to address the possibility of lockdowns and pandemic-related economic downturns that could affect contractual relationships. Parties should not rely on generic force majeure clauses. Instead, pandemic-specific obligations should be written into contracts or pandemic-specific language should be used in force majeure clauses. Furthermore, the allocations or risks and remedies in these contracts should be thought through carefully.

BUILDING BLOCK	Include clauses for future disruptions
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TESTING STAFF AND REQUIRING THE VACCINE

Parties should not rely on generic force majeure clauses.



With the predictions that Covid 19 will return every winter, like the seasonal flu, regular testing in the workplace or proof of vaccination may become normal. It has been widely discussed whether governments or employees can make the vaccination mandatory for its citizens or staff. However, this opens governments and businesses up to possible issues of unfairness and discrimination. Some people are cautious about receiving the vaccine for religious, health and ethical reasons and some people, such as young people who are last in line to get the vaccine, may not have received it by the time life returns to 'normal.' Another key issue is that the vaccine is not routinely offered to pregnant women.

Employers cannot legally force an employee to have the vaccine, nor can they compel an employee to be tested. Dismissing an employee because they refuse to receive the vaccine creates possible unfair dismissal or discrimination claims. Furthermore, some businesses say they will not hire new staff who have refused the vaccination on non-medical grounds stating, 'no jab, no job.' This again can be argued to be unfair and discriminatory. It is important to be open with employees and provide support when there are disputes surrounding these issues and to review and create vaccination policies.

For more information, see our article on Covid-19 vaccination [here](#).

BUILDING BLOCK	Thought out testing and vaccination policy
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TRANSPORT AND TRAVEL



Covid-19 has led to governments prohibiting people from travelling nationally and internationally, whilst Brexit has taken away the free movement of people and made the transportation of goods from the UK to the EU increasingly difficult.

Vaccine passports have been discussed by the Government and look like they could be introduced to replace the track and trace system. They could also be used to start up business travel again too. It has not yet been stated whose responsibility it would be to police the passport system and if it would be up to businesses to decide whether to refuse entry to customers who have not been vaccinated. Although, this could be an extra burden on staff and lead to tension within the customer experience, cutting revenue and footfall needlessly. However, businesses should be prepared to collect personal data from customers on a large scale if needed and have the appropriate measures to hold and store that data securely and lawfully.

BUILDING BLOCK	Consider whether you wish to introduce a "passport" policy in your business?	Ensure appropriate measures are in place for gathering and storing personal data
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RESTRUCTURING

Whilst Government support – such as the furlough arrangements, the moratorium on forfeiture and the loan schemes – has helped to ease some pressure brought about by Covid, there have been some big name casualties along the way. As support starts to be withdrawn, many businesses will be faced with a question mark over whether they will float unaided out of this storm and it's expected that there will be a large increase in insolvency situations. Many businesses will already have been faced with taking some tough steps to ensure survival, and ongoing business planning will have been at the forefront of every director's mind even more so than usual, but it's important to be taking steps to assess your business case so that you're planning ahead and prepared for the long term.

Think about opportunities there might be for your business if a competitor is experiencing financial difficulty. For example, recruitment of its key staff, acquisition of the competitor's business, or opportunities with new customers.

Plan for and make contingencies in your own business for when liabilities that were on hold or paid at a reduced rate return to pre-pandemic payment terms and consider how any accrued arrears will be covered. Getting a strong debt recovery system in place will also be important.

BUILDING BLOCK	Assess your business case and financials objectives	Plan for financial contingencies	Deal with accrued arrears
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