



University of Central Lancashire

BUSINESS LAW CLINIC

“Keeping your business legal”

Newsletter
March 2020.

Hi all, we hope you are staying safe and well in these strange times. We have had to change our ways of working due to Covid-19, however, you will be pleased to know that we are now set up remotely and will be available for appointments by Teams, Skype, Zoom or Facetime to answer your legal queries during this unprecedented time of uncertainty. Please do not hesitate to contact us at SLJones3@uclan.ac.uk. Also, Boost Lancashire have set up a #AskForHelp helpline for Lancashire's businesses that have been impacted by Covid-19. The helpline number is: 0800 488 0057

In this newsletter we will discuss the effect of Covid-19 on your commercial contracts, how you can protect your workforce and provide links to the government support that is available to you and your business.

The information we provide in this newsletter is correct as of 26th March, however, as the situation is changing daily we recommend that you check www.gov.uk regularly.

Self-employed workers

New style Employment and Support Allowance (ESA)

If you are sick with Covid-19, you may be eligible to claim ESA. During the outbreak you will be eligible to claim from day one of sickness instead of day 8. You can apply for ESA at: <https://www.gov.uk/guidance/new-style-employment-and-support-allowance>

Universal Credit

The government has increased the amount that you can claim to match the Statutory Sick Pay (£94.25 a week) which employees are entitled to. The government has relaxed the application process and there will be no need

to attend the job centre and from 6 April the Minimum Income Floor requirement will be temporarily relaxed during the outbreak. You can apply for universal credit at: <https://www.gov.uk/apply-universal-credit>
If you already claim benefits such as Tax Credits or Housing Benefit, we recommend that you inform the Department of Work and Pensions that you are unable to work due to Covid-19 as you might be entitled to more money.

Income Tax Deferral

The government is deferring Income Tax payments due in July 2020 under the Self-Assessment system until January 2021. This deferral applies to tax due between 20 March 2020 and 30 June 2020. You do not need to complete an application and you will be given until the end of the 2020-2021 tax year to pay any outstanding tax liabilities that have accumulated during the deferral period.

If Covid-19 is preventing you from being able to settle outstanding tax liabilities that accrued before 20 March 2020, you may be entitled to support through HMRC's Time to Pay Service. HMRC will decide on a case by case basis whether an arrangement can be agreed to settle the outstanding tax liabilities. The number to call is: 0800 0159 559.

Further financial assistance

Banks are offering a three-month break in mortgage repayments for those suffering financially due to Covid-19.

Landlords are being advised to give tenants payment holidays and the government has announced a ban on landlords starting proceedings to evict tenants for at least a three-month period.

The Financial Conduct Authority has called on lenders to be flexible with repayments for credit cards and personal loans. If you are unable to make repayments, we recommend you contact your lender to enquire about taking a payment holiday.

You might be entitled to financial support from your Local Authority's Hardship Fund which can help with council tax relief.

STOP PRESS: Today the Chancellor has announced a Coronavirus Self-employment Income Support Scheme for the self-employed. To be eligible:

- More than half of your income needs to come from self-employment.
- Your trading profit must be less than £50,000 in 2018-19, or an average trading profit of less than £50,000 from 2016-17, 2017-18 and 2018-19.

If you have suffered a loss in income, this will take the form of a taxable grant (or partnerships) and is worth 80% of your profits up to a cap of £2,500 per month. Initially, this will be available for three months in one lump-sum payment, and will start to be paid from the beginning of June.

Grants and Loans for SMEs

The government has introduced a raft of loans, grants, tax relief and wage support to help support businesses through the Covid- 19 pandemic.



Coronavirus Business Interruption Loan Scheme

The CBILS is a new scheme that provides facilities of up to £5 million for smaller businesses across the UK who are experiencing lost or deferred revenues, leading to disruptions to cashflow. To be eligible under CBILS, a SME must:

- Be UK-based in its business activity with an annual turnover of no more than £45 million; and
- Have a borrowing proposal which, would be considered viable by the lender and one for

which the lender believes the provision of finance will enable the business to trade out of any short to medium term difficulty.

To apply for a facility under CBILS, SMEs need to:

- Find a lender from the list of accredited lenders and contact them for a loan.
- The lender then makes a decision - they have the authority to decide whether to offer you finance. If the lender turns you down, you still have the opportunity to approach other lenders within this scheme.

The government will also make a Business Interruption Payment to cover the first 12 months of interest payments and any lender-levied fees, ensuring that smaller businesses will benefit with no upfront costs and lower initial repayments. They will also provide lenders with a guarantee of 80% on each loan to give lenders further confidence in continuing to provide finance to SMEs. More information about the CBILS can be found: <https://www.british-business-bank.co.uk/ourpartners/coronavirus-business-interruption-loan-scheme-cbils-2/for-businesses-and-advisors/>

Coronavirus Business Cash Grants

The government has announced a **small business coronavirus cash grant** of £10,000. You must be eligible for Small Business Rate Relief or Rural Rate Relief to get access to the funding available. This will be available from early April and will be issued by local authorities, who will write to eligible businesses with details of how to claim.

Retail, hospitality and leisure businesses operating from smaller premises will be eligible to a **£25,000 grant**, if your premises have a rateable value of between £15,000 and £51,000. All retail, leisure and hospitality companies will be exempt from business rates for the year 2020/2021. Action for this will not need to be taken as the relief will be applied to the next bill in April 2020.

Coronavirus Job Retention Scheme

All UK employers will be able to access support to continue paying part of your employees' salary for those

employees that would otherwise have been laid off during this crisis. To access this scheme, you will need to:

- Designate affected employees as ‘furloughed workers’ and notify your employees of this change.
- Submit information to HMRC about the employees that have been furloughed and their earnings through a new online portal (further details of this will be set out by the HMRC).

The HMRC will reimburse 80% of furloughed workers’ wage costs, up to £2,5000 per month. This is available for any worker who is on the PAYE system, including many employees with zero- hour contracts.

Deferral of VAT payments

Businesses can defer VAT payments for 3 months. The deferral will apply from 20 March 2020 until 30 June 2020. This scheme is automatic with no applications required. Businesses do not need to make a VAT payment during this period.

Further information on the Grants and Loans available to SME’s can be found on the webpage below: <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19/covid-19-support-for-businesses#support-for-businesses-through-the-coronavirus-job-retention-scheme>

IR35 Regulations – Changes Delayed

For those of you that have been concerned about the impact of IR35, HMRC announced an amendment to the reforms on off-payroll working. The IR35 tax regulations were to be implemented on 6 April but the reforms have now been postponed for 12 months and will be introduced on 6 April 2021. This policy is aimed at ensuring that people working like employees but through their own limited company pay broadly the same amount of tax as those employed directly. You are still urged to make the most of this delay to fully prepare for the new rules by mapping your current and future exposure for IR35 and ensuring that you are set up appropriately.

Covid-19 and your B2B contracts

Many businesses are concerned that they may be losing money due to contracts being cancelled. It depends on the terms of your contract as to both parties’ rights to cancel. If there is a suitable cancellation clause or you can both agree to cancel or suspend the contract, there should not be a dispute. If, on the other hand, one party wants to cancel and the other does not and money in some form has changed hands, then the situation is more complicated.

If you have a written contract, it may contain an express ‘force majeure’ clause that will:

- Set out a list of matters that qualify as force majeure.
- Explain the consequences of any of these force majeure events (e.g. whether the contract is delayed or can be terminated).
- May also set out what happens to payments made and services delivered prior to the force majeure event

Interpretation of these clauses is complicated and if you need assistance, please email us.

If your contract does not contain a force majeure clause, this cannot be implied under English law and the general position is that “costs fall where they lie”. Any costs incurred or payments made will not be recoverable and each party must accept their fate (hence why insurance is often taken out to try and back this off although, as we are seeing, even if the cause is notifiable disease, like Covid-19 now is, it may still be excluded from cover and insurance policies should be carefully checked). However, the law of frustration may apply as this tries to guard against so-called “unjust enrichment” where the loss falls unreasonably too much on one party by comparison to the other.

For frustration to apply, performance of the contract must be impossible rather than just difficult. This is a high bar to overcome. If it can be overcome:

- If money was paid prior to the frustration of the contract, that sum may be recovered by the

paying party. If money was due to be paid at the time of the frustration, that sum is no longer payable.

- Parties may be able to recover money already spent towards performance of the contract. If the party receiving payment under the contract has, prior to the frustration, incurred expenses for the purpose of their performance of the contract, they may be able to retain or recover the whole or any part of the sums paid or due to be paid in order to cover the cost of those expenses (limited to the amounts actually incurred).

It is likely to be easier to show for event contracts (tied to a specific date) rather than for general, ongoing supply chain agreements.

You should probably consider the business relationship that is potentially at stake. For one-off events, you may choose to take a more rigid line to protect yourself e.g. by charging full fees for cancellations. Where there is a long-standing relationship (e.g. an event hosted annually at the same venue), then a more commercial, pragmatic approach may be preferred, and you may be able to agree a course of action outside of the contract to try and share the exposure more fairly. If you do choose to vary the contract to deal with the impact of the prevailing circumstances, you should make sure that any variations are properly documented.



We know that this is a particularly difficult time for you and your business and we will aim to assist you in any way possible. If you have any queries regarding your business and the information within this newsletter, please contact us at the Clinic – sljones3@uclan.ac.uk .

Best wishes

Stephanie, Katie, Zoha and Emma.

For all new clients and those seeking to use the clinic's services after their first 6 months has expired, we have introduced an administration fee of £50 plus VAT. For more details of our appointment system, please email sljones3@uclan.ac.uk