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ROADMAP TO REOPENING

THE TOP 5 QUESTIONS WE HAVE RECEIVED THIS WEEK: 5TH JUNE 2020



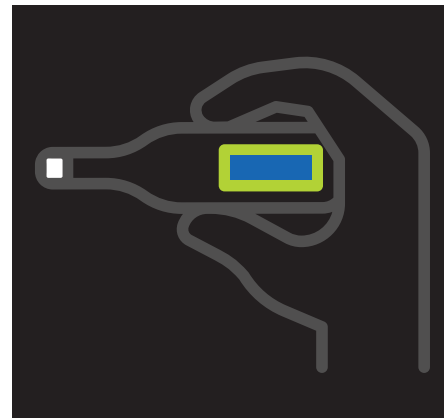
1. AS AN EMPLOYER, CAN I CONDUCT TEMPERATURE CHECKS ON STAFF RETURNING TO THE WORKPLACE?

If your risk assessment concludes that staff need to be tested or you need to record any symptoms of Covid-19, you should:

- Complete a data protection impact assessment. The ICO has a helpful [template](#)
- Bear in mind that temperature checks may be considered by employees to be intrusive and you will need to be able to justify their use
- Consider alternatives, particularly given that not all Covid-19 sufferers have a raised temperature and staff can be asymptomatic for days while being infectious.

You need to tell your staff:

- What data you will be collecting
- Why you need that data
- What decisions will be based on that data
- With whom you will share the information
- How long you will hold it
- Who they should contact if they have any concerns about their health data being collected
- Their rights to access the data held about them.



EMPLOYMENT

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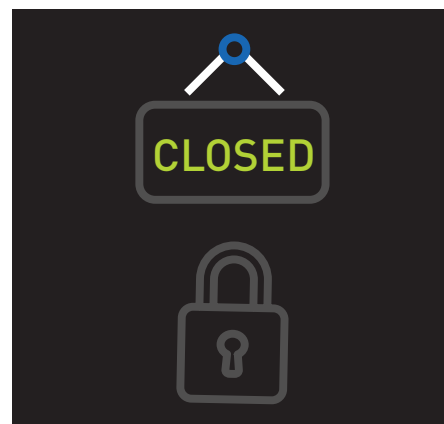
2. MY BUSINESS HAS SHUT DOWN AS A RESULT OF THE PANDEMIC. WHAT CAN I DO IF MY INSURER HAS DECLINED OR FAILED TO CONFIRM COVERAGE OF MY BUSINESS INTERRUPTION INSURANCE?

First of all, ensure that your claim has been properly notified to your insurers (you should have received a claim reference number). If your claim has been denied, lodge a complaint with your insurer explaining why you believe your claim should be accepted and paid.

The Financial Conduct Authority is bringing a test case, to be heard in July, for the courts to determine whether some business interruption insurance policy wordings respond to Covid-19. So far, the wordings which this test case will cover are fairly limited and unless more clauses are brought into consideration, many businesses will remain uncertain as to whether or not they have cover. On a positive note, the threat of this action has led some insurance companies to decide to pay out. You should check with your insurer if they are one of them.

In some cases, cover is clear-cut but in many others, it is unclear. Wordings can be ambiguous and vary from policy to policy, insurer to insurer, so it is important to get specialist advice.

We are [forming a group](#) to take action where insurers have not paid.



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3. MY CUSTOMER HAS GONE INTO ADMINISTRATION BUT SAYS THAT I STILL HAVE TO SUPPLY MY GOODS. IS THAT RIGHT?

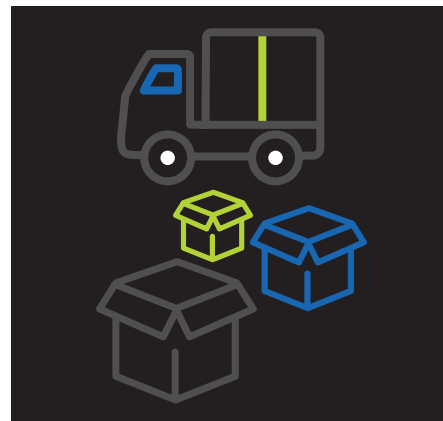
In short, no, unless you provide essential supplies. These are generally limited to utilities and other things like internet providers or chip and pin devices.

While the Corporate Insolvency and Governance Bill proposes a radical extension of this protection to cover all supplies of goods and materials, it is not yet law so all of your current contractual rights to assert title or terminate the contract still apply.

Even if the Bill does come into force, the draft currently contains a number of limitations:

- a temporary exemption for small businesses
- the customer has to pay for goods arising after it went into administration (or another qualifying insolvency event)
- the contract can be terminated with the consent of the company or the officeholder
- the contract can be terminated if the court is satisfied that continuing to supply would cause the supplier hardship.

Practically speaking, you should apply the steps we have previously identified ([Q&A 15 May](#) and [Q&A 22 May](#)) and ideally demand advance payment for future deliveries. Swift and decisive steps - in conjunction with good legal advice - will improve your prospects of being paid.



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4. I HAVE BEEN SENT A STATUTORY DEMAND – WHAT DO I DO?

As has been widely reported, the Government has proposed sweeping reforms to insolvency legislation. Although these will not become law until – it appears – the end of this month, their impact is being felt. The High Court this week granted an interim injunction to prevent a landlord presenting a winding up petition against a high street retailer which had failed to pay rent and cited the proposed legislation in its reasons for granting the injunction. We are in an unusual no man’s land where reforms yet to become law are, to all intents and purposes, binding due to the intended retrospective application of the reforms. But this does not mean that debtor companies should ignore statutory demands.

A statutory (or “stat”) demand is typically the first stage in winding up or compulsory liquidation procedures, prior to the presentation by a creditor of a winding up petition. When a company receives a stat demand for a debt exceeding £750, it has 21 days to set out why the debt is disputed “bona fide on substantial grounds” giving reasons for its challenge and requiring an undertaking not to issue a petition or pay the debt. If the debt is disputed and no undertaking is given, it should apply to the court for an interim injunction as was done in the above case.

For many companies in this position, the sensible course of action is to respond in writing as soon as possible setting out their reasons for disputing the debt, including those relating to the pandemic as explained above. A company which simply ignores a stat demand runs a greater risk of finding itself embroiled in costly winding up proceedings: far better to provide a detailed response at an early stage and allow time to apply to the court if necessary.



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5. HOW CAN I SIGN MY PROPERTY RELATED DOCUMENTS WHILE IN COVID-19 RELATED LOCKDOWN?

Property-related documents are broadly divided between contracts, which need to be signed, and deeds, which also need to be witnessed.

For contracts only, you can give your solicitor or other trusted adviser written authority to sign the contract on your behalf or a Power of Attorney (POA) if deeds are involved. The terms of the POA could be restricted to a particular transaction or limited in time.

Although the Land Registry do not accept e-signed deeds, recent practice changes now allow you to sign documents remotely, enabling registrable real estate transactions to proceed. Known as a Mercury virtual signing, this involves printing a signature page, signing it in 'wet ink', converting it into electronic form and emailing it back to your solicitor with an electronic copy of the full document.

The validity of a Mercury signing or e-signature depends upon the transaction and the preferences of all parties involved. For example, some lenders will not accept e-signatures and care is needed when overseas parties are involved. For corporate bodies, check that the signatory is authorised to sign and that constitutional documents do not prevent the chosen method.

By following the procedures, signing electronically or using a Mercury signing can avoid any Covid-19 lockdown obstacles.



REAL ESTATE

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For a selection of briefings and practical guidance to help minimise risk in this period of uncertainty visit our [coronavirus resource hub](#).
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The information contained in this Q&A is general in nature and is not intended to constitute legal advice.

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