



PENNINGTONS  
MANCHES  
COOPER

# ROADMAP TO REOPENING

FOCUS ON HOSPITALITY: 29 JUNE 2020



**1. I AM RE-OPENING MY COMPANY'S CHAIN OF RESTAURANTS ON 4 JULY WITH SOCIAL DISTANCING MEASURES IN PLACE. I ANTICIPATE THAT THE TURNOVER WILL BE SUBSTANTIALLY REDUCED.**

**I PAID PART OF THE MARCH RENT ON THE QUARTER DAY BUT NOTHING IN JUNE AND I AM NOT SURE THAT I WILL BE IN A POSITION TO PAY THE SEPTEMBER RENT.**

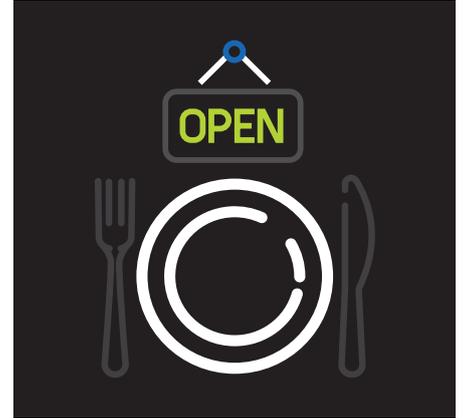
**THE LANDLORD HASN'T CHASED ANY OF THE UNPAID RENT. WHAT IS THE POSITION IF I DON'T PAY THE RENT DUE ON THE SEPTEMBER QUARTER DAY?**

**The emergency legislation made by the Government during the pandemic has not changed a tenant's contractual obligation to pay full rent and service charges due to the landlord under their lease. Unless you have agreed a formal compromise with the landlord, the rent for all three quarters must still be paid in full.**

The Coronavirus Act, which came into force in March, imposed a moratorium – which ends on 30 September - to prevent landlords from forfeiting commercial leases or opposing renewals of leases on the ground of non-payment of rent.

On 19 June, the Government issued a voluntary code of practice setting out best practice for negotiations to reduce rent and service charges and suggesting that landlords and tenants adopt a flexible approach to ongoing lease obligations. For example, you should be ready to evidence why you cannot pay the full rent and, if the landlord's costs of upkeep of the building have been reduced during the pandemic, those savings should be passed on promptly through reductions in the service charge.

As the code is no more than official encouragement and guidance, there is no sanction against landlords who refuse to offer rent reductions retrospectively for March and June and ahead for September and December. The only fall back then is to consider the possibility of restructuring or a CVA.



**REAL ESTATE LITIGATION**

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## 2. I WANT TO CONVERT PART OF MY PUB / RESTAURANT TO ACCOMMODATE NEW SOCIAL DISTANCING RULES, WHAT ARE THE OPTIONS UNDER MY LEASE?

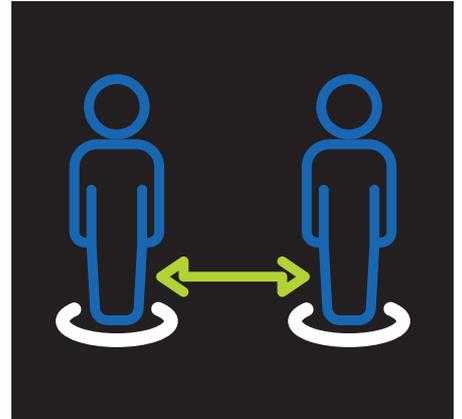
**First, check the alterations provisions in the lease. Most leases will contain a specific clause dealing with alterations which governs what tenants can or cannot do under the terms of the lease.**

The standard position (although it will vary across leases) is that tenants can undertake “non-structural” alterations with the landlord’s consent. These could include installing additional non-structural partitioning to separate different parts of the premises to maintain social distancing.

The landlord will usually require the consent for alterations to be granted formally under a “Licence for Alterations”, a separate legal document which deals with how the works are to be carried out and will usually require that the works are reinstated at the end of the lease.

If the lease prevents alterations, then you should request a formal variation of the lease from the landlord. For instance, if you wish to install an outdoor seating area, it is important to ascertain the extent of the demise - ie whether the outside spaces have been demised under the lease. Check with your local authority if there are licencing requirements to consider.

Finally, any alterations should be considered from a planning perspective and specialist advice should be sought to ensure that any necessary planning consents are obtained before the works start.



### REAL ESTATE

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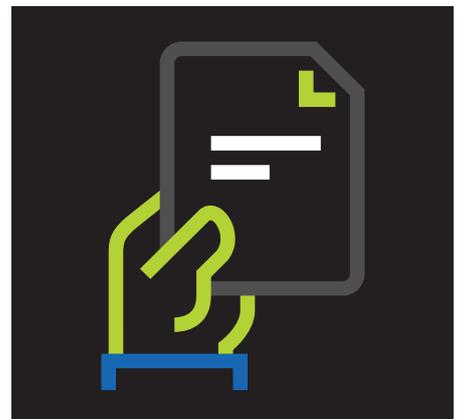
## 3. WE CAN OPEN OUR PUB AND RESTAURANT FROM 4 JULY. WILL OUR BUSINESS INTERRUPTION INSURANCE PROVIDE COVER IF WE OPEN ON A RESTRICTED BASIS OR DECIDE NOT TO OPEN AT ALL?

**If you cannot open your pub or restaurant or you decide not to do so because the continued restrictions and social distancing measures that will apply from 4 July are still too onerous, you may still have a claim under your insurance policy for losses due to interference with your business.**

It will all depend on the particular wording of your policy and your particular circumstances as some establishments can more easily accommodate social distancing measures than others. If you have already claimed under your policy for loss and damage during the lockdown and had that claim declined, then it is likely that cover would also be declined for your post-4 July claim.

That is not, however, the end of the road: you can challenge the insurer’s decision. Although cover is clear-cut in some cases, it is not in many others. Wordings can be ambiguous and vary from policy to policy and insurer to insurer, so it is important to get specialist advice.

We are currently forming a group to take action where insurers have not paid.



### COMMERCIAL DISPUTE RESOLUTION

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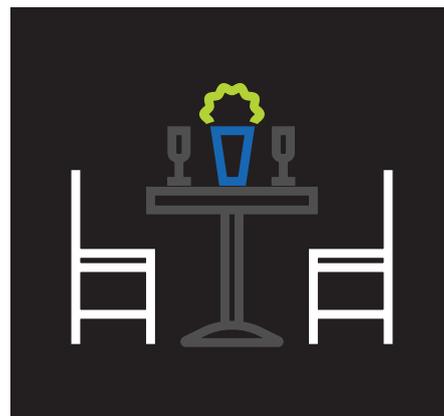
## 4. MY RESTAURANT IS RUNNING ON EMPTY SO WHAT CAN I DO IF BUSINESS DOESN'T TAKE OFF AFTER 4 JULY?

It is likely that most pubs, bars, hotels and restaurants are currently technically insolvent and many restaurant groups have already entered administration or CVAs. As a director in the hospitality industry, you may be continuing to trade in the hope that business will sky-rocket after 4 July. Hopefully it does, but what if it doesn't?

Directors who get it wrong and fail to minimise any potential losses to the company's creditors could face personal liability. To prevent this happening, you should:

- Carefully review your cashflow and sales so that you can build an accurate forecast. Keep updating and reviewing it on a daily or weekly basis.
- Keep a contemporaneous record of the decisions made and the reasons why you believed they were in the best interests of creditors.
- Seek professional advice from either an insolvency practitioner or lawyer as appropriate and follow the advice. It may be that some form of restructuring process might enable you to emerge leaner and fitter from this pandemic.
- Engage with your creditors and stakeholders to set out the company's plans for continuing to trade.

This is only a summary but the restructuring and insolvency team are on hand to help steer directors personally and their businesses through these challenging times.



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## 5. WE HAVE BEEN RELYING DURING LOCKDOWN ON THE FORCE MAJEURE CLAUSES IN OUR CONTRACTS BECAUSE WE HAVE BEEN ORDERED TO CLOSE BY THE GOVERNMENT AND CANNOT OPERATE. CAN WE STILL RELY ON THOSE CLAUSES EVEN THOUGH THE GOVERNMENT HAS SAID WE CAN REOPEN, BECAUSE IT IS NOT COMMERCIALY VIABLE FOR US TO DO SO DUE TO THE SOCIAL DISTANCING MEASURES?

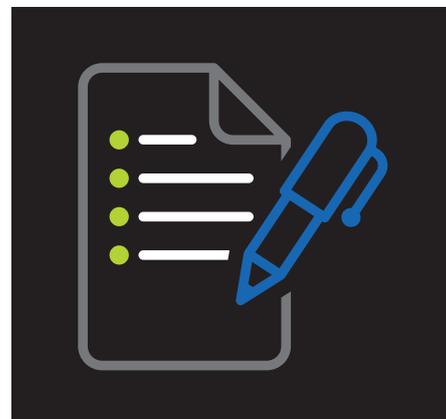
Over the last couple of months, hospitality businesses in particular might have relied on force majeure clauses in their contracts as a defence to enable them to suspend their contractual obligations where they have been impacted by the Covid-19 restrictions imposed on those businesses by the Government.

Businesses that were able to claim successfully that they were unable to perform their contractual obligations because of events “beyond their reasonable control” will now need to carefully assess the situation.

During lockdown, and provided the contract contained an appropriate force majeure clause, many businesses have been able to claim that they simply could not perform their contractual obligations because the Government had forced them to close. The other party to the contract was then unable to terminate for the duration of the force majeure period.

Now, however, the Government is removing those restrictions and allowing businesses to re-open and requiring them to comply with social distancing and other safety measures.

A business cannot rely on a force majeure clause in a contract in the situation where it can physically open and trade with the appropriate safety measures but would prefer not to do so because it would be unable to make a profit or would even suffer losses. The business would therefore need to recommence performing its obligations under the contract. If it does not, the other party to the contract might be entitled to terminate it and/or claim damages for their losses.



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## 6. AS A PUBLICAN WHERE SHOULD I TURN FOR GUIDANCE ON THE LATEST RULES BEFORE REOPENING?

Perhaps the most significant announcement (certainly as far as the media were concerned) was that pubs and restaurants can reopen from 4 July, provided it is safe to do so! Publicans should be aware that:

- Careful consideration needs to be given to all the practical details – for example, where tables will be located, how orders will be placed, frequency of handwashing and provision of bathroom facilities.
- The Government is also mandating that staff maintain social distancing, and whilst households/bubbles can sit together, groups of more than 30 are prohibited.
- All normal food hygiene and health and safety measures that are necessary to run a business successfully must continue to be implemented.
- Anyone with symptoms must self-isolate for 7 days and each of their contacts must also then self-isolate for 14 days. It may be helpful to consider additional sources of staff, in the event that regular staff are unable to work for longer periods.
- If premises are being significantly altered (eg use of outside space for the first time), you may need to revise your premises licence or apply for a new licence (eg a pavement licence) – but the indications are that the local authorities will be sensible as regards changes.

There is useful Government guidance available [here](#) and industry guidance is also being produced, for example [here](#); we would also be happy to assist with any queries.



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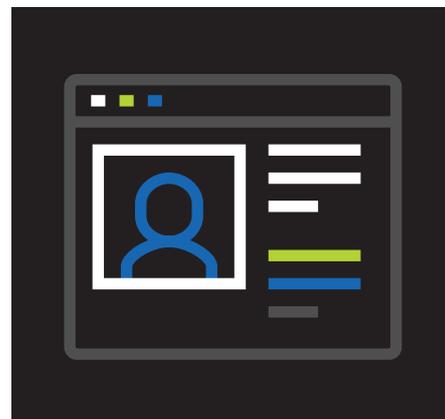
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## 7. ARE THERE ANY DATA PROTECTION IMPLICATIONS WE NEED TO CONSIDER IF WE RETAIN CUSTOMER CONTACT INFORMATION FOR 21 DAYS FOR NHS TEST AND TRACE PURPOSES?

Initial guidance states that hospitality businesses should collect customer contact information and retain such data for a period of 21 days. This would assist the NHS Test and Trace service.

Businesses will need to collect personal data from their customers, i.e. name and contact details. When doing so, these businesses need to consider their obligations under data protection laws. In particular:

- Security: data that is collected should be kept appropriately securely, whether it is kept in paper form or via electronic records.
- Transparency and fairness: individuals should be told why their personal data is being collected. Existing privacy notices will need to be updated for this purpose. Individuals should be told that the collected data will be shared, with the NHS Test and Trace service and other Government authorities, and should also be given mandatory information required under data protection laws. This privacy notice should be brought to customers' attention in an appropriate way taking into account where and how the data is collected. Also consider how you might provide this information to individuals with any protected characteristic, for example those who are sight impaired.
- Minimisation and retention: businesses have been asked to retain this data for a period of 21 days. Appropriate processes should be implemented to delete data in a timely and secure manner.
- Purpose: staff should be made aware that the data collected for these purposes should not be used for any other purpose.



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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.*