



15.04.2020

KEY ANNOUNCEMENTS

Health Secretary Matt Hancock led today's government announcements which focused on social care workers and social care settings.

Mr Hancock appeared alongside Chief Medical Officer Chris Whitty and Deputy Chief Scientific Adviser Professor Dame Angela McLean.

The main announcements this evening were:

- The government remains committed to its target of 100,000 tests per day by the end of this month.
- Testing in care homes is being expanded immediately to include symptomatic care home residents as well as all residents who are discharged from hospital into a care home.
- A new brand for social care has been launched by the government to recognise the high esteem social care workers are held in.
 - The government hopes businesses will honour social care workers in the same way they do NHS staff, for example by giving them priority access in supermarkets.
- The government is strengthening its national recruitment campaign for social care workers, with plans to pay for their initial induction training.
- New procedures are being introduced to allow people's closest loved ones the chance to say goodbye and to bring comfort to those who are dying.
- There are signs 'the curve' is flattening, indicating the current lockdown is working, but it is too early to confidently and safely say that the peak has passed.

- Decisions on whether to extend the lockdown will be taken at the government's COBRA meeting tomorrow.
- An increase in domestic abuse is sadly one of the many costs of the COVID-19 epidemic and the government remains willing to look at what measures are needed to support those affected.

Elsewhere in COVID-19 news....

The media has reported concerns from some businesses that they are at risk of collapse as a result of their insurers failing to cover the losses they have incurred from the current COVID-19 lockdown. The FCA has therefore issued a warning to insurance firms in response.

The lockdown also continues to have a devastating effect on the retail industry more widely, with high street fashion brands Oasis and Warehouse falling into administration today. However, the administrators have saved a number of employees' jobs by means of the government's Coronavirus Job Retention Scheme, and a judgment from the High Court earlier this week indicates that, for some failing businesses, this may provide a route forward.

LEGAL IMPLICATIONS

BUSINESS

1. FCA warns insurance firms that they should be making interim payments to businesses when reasonable to do so.

The FCA has today sent a [letter](#) to insurance firms stating "If there are reasonable grounds to pay part of a claim but not make the payment of such claims in full, we would like you and your Board to adopt an approach of making an interim payment".

The letter further goes on to say that if a firm did not wish to make such a payment, the FCA would like it to send them the ground for its decision and how it "represents a fair outcome for customers". The FCA has reminded firms of the jurisdiction of the Financial Ombudsman Services who can govern disputes in relation to smaller companies with fewer than 50 employees and an annual turnover below £6.5 million. It has put insurance companies on notice that the Ombudsman will soon be sharing details of the approach it is taking to deciding complaints relating to business interruption insurance through a series of "lead cases".

As a result of the pandemic, many businesses are seeking to claim under their business interruption insurance policies, some of which will cover a crisis of this nature and some of which will not. The FCA's letter, although couched as more of a request rather than an order, should be clear for insurance firms. They are expected to pay up immediately on valid claims under business interruption policies unless they have a good reason for doing so and have placed the customer at the centre of their decision-making.

This letter will be welcomed by businesses, as they will be able to quote directly from it if facing an insurance firm taking its time in making a payment.

2. The Coronavirus Job Retention Scheme may afford some support to employees of employers who have fallen into administration.

Much has been said of late about the Coronavirus Job Retention Scheme which, [as we reported yesterday](#), is anticipated to open for applications online on Monday next week. The scheme is intended to cover 80% of the salary of retained furloughed workers up to a total of £2,500 a month.

However, while the government has published some general guidance on the intentions of the scheme, no draft legislation or regulations have been published thus far. This has presented challenges not only for employers, but also for administrators, who have been unable to properly determine the relationship between the scheme and insolvency legislation.

The importance of this relationship has been underscored as yet more companies have fallen into administration as a result of the COVID-19 crisis, including, as was announced tonight, high street fashion brands Oasis and Warehouse.

When the Coronavirus Job Retention Scheme opens for applications next week, applications will be made by employers. The monies for furloughed employees' salaries will then be paid by the government as a grant to the employer to pass on, rather than payments being made directly to employees. In respect of a business in administration, those grant monies would then be classed as administration assets, to be dealt with in accordance with the rules on the priority of payments as set out in the Insolvency Act.

For those involved in the administration of a business, some concerns have therefore arisen as to whether the grant monies can actually be paid to employees in priority to others. However, on Monday this week, Mr Justice Snowden acknowledged in [the High Court's judgment](#) in the matter of *Carluccio's Limited (in administration)* that certain steps could be taken by administrators so as to enable payments to be made to furloughed employees using the grant monies they might obtain under the Coronavirus Job Retention Scheme.

Given the current crisis, it seems inevitable that more businesses will fall into administration. However, Mr Justice Snowden's judgment shows how staff could feasibly be furloughed at little if any cost to a business that is in administration, while a buyer for it is potentially sought.

DISCLAIMER

The above is not intended to be legal advice. Specialist advice should be sought for individual cases where necessary.

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