

Contractually responsible behaviour during COVID-19

June 2020

The Government has issued [guidance](#) advising people to act “responsibly and fairly” during the COVID-19 pandemic.

In May 2020, a note from the Cabinet Office urged all parties to act “responsibly and fairly” when performing and enforcing contracts “materially impacted” by the COVID-19 global pandemic to “protect jobs and the economy”.

In that note, the Government set out recommendations strongly encouraging all parties (whether businesses, individuals or public sector bodies) to emulate the approach required of us all as individuals (by staying at home, social distancing and self-isolating) and to ensure that our actions, when performing and enforcing contracts, are carried out with a view to protecting the long term interests of the economy.

“Responsible and fair behaviour” includes:

- being “reasonable and proportionate” when responding to performance issues;
- co-operating with each other; and
- understanding the pandemic’s impact on the parties’ ability to perform the contract and their financial situation.

Examples of when to apply this more collaborative approach include when requesting payment under a contract, giving notices or considering contract variations and enforcing judgments.

The Government has not included the guidance in legislation and as such it does not have legal force. The wording of any contract will remain of paramount importance when it comes to interpretation and resolving

disputes. However, the existence of the guidance might well assist when asking a court to exercise a procedural discretion in relation to a contract affected by COVID-19, such as for a stay of proceedings, an adjournment or a stay of execution particularly where the stay/adjournment is due to a cash flow issue.

The Cabinet Office recognises that disputes can be destructive, and so encourages parties to seek to resolve their problems through alternative dispute resolution mechanisms, such as negotiation, mediation and arbitration, before making applications to the courts. It is important that adjudicators and other third parties are mindful of the spirit and intentions of the guidance.

Further, on 20 May 2020, the Government introduced the [Corporate Insolvency and Governance Bill](#) to parliament. The Bill is currently with the House of Lords for consideration and offers certain concessions to companies and their directors during the pandemic, as outlined in our [article](#) of 3 June 2020.

It’s now more important than ever to keep contracts under review, particularly long-term contracts, and to ensure that any variations are agreed and performed in accordance with the proposed bill and the Cabinet Office’s guidance (due to be reviewed at the end of June 2020).

If you’d like to discuss the terms of any of your contracts, or any other commercial concerns, contact corporate lawyer and head of corporate and commercial, [Victoria Holland](#).

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