

Key Points from the Bar Council Online Finance Q&A Event

Thursday 9 April 2020

Introduction/recent announcements

- The Inns of Court have issued a [press release](#) stating that they will be contributing towards an emergency fund that is imminently being launched by the Barristers' Benevolent Association to distribute funds to barristers in urgent need.
- Each Inn will also be establishing hardship funds designed primarily to assist pupils and other junior barristers who are not eligible for either the Government assistance for the self-employed or for help from the Barristers' Benevolent Association.
- In addition, the Inns are taking measures to relieve hardship in relation to the rental obligations of Chambers on each Inn's estate.

- The Bar Council distributed a survey amongst chambers over five members strong, [the results of which](#) were widely circulated amongst ministers, officials and Bar leaders.
- The organisation issued two further surveys for [self-employed](#) and [employed](#) practitioners, which it is hoping will provide further crucial evidence that can be presented to the Government.

- There are three Covid-19 working groups (Civil and Tribunals, Family and Legal Practitioners) that meet at least once every other day, all of which are attended by at several representatives from the Bar Council. The conversations that take place are fed directly to the Lord Chancellor and senior Cabinet members, including the Home Office, Attorney-General and No.10.
- The Chair of the Bar, Amanda Pinto QC, meets with the Ministry of Justice several times each day and is in regular contact with the Lord Chancellor, the Attorney-General, the Senior Presiding Judge and various agencies such as the Legal Aid Agency, Her Majesty's Courts and Tribunals Services and the Crown Prosecution Service.
- Now that the new opposition front bench has been formed, the Bar Council has been able to speak with the Shadow Attorney-General and the Shadow Solicitor-General, and has arranged a future meeting with the Shadow Justice Secretary.

- One of the recommendations that the Bar Council has made to the Treasury is that pupil barristers and those who aren't currently included in the Self-employment Income Support Scheme ought to be.
- It has also been proposed that the £50,000 threshold for trading profits should be increased and that business rates relief should be applied to chambers.

Commercial loans and the Coronavirus Business Interruption Loan Scheme ('CBILS')

- The best application route for CBILS is through chambers' own bank. If your bank isn't [included in the Scheme](#) then talk to your business relationship manager in order to establish your options.
- There will be an assumption by the bank that chambers has already unsuccessfully applied for a commercial loan (or alternative commercial arrangement such as an overdraft or extended overdraft).
- The bank's main concern is going to relate to future repayments and to that end, they will be focused on any evidence that suggests chambers will have such an ability. Their assessment will take into consideration the historic relationship between themselves and the relevant chambers, including any previous applications for additional funding and chambers' month-by-month cash forecast (**not** the forecasts of its individual members).
- Early engagement with your bank is important; ask what is available to chambers/what chambers is eligible for and it can be accessed. Have chambers' budget, profit and loss, and cashflow forecasts readily available.
- It is worth noting that CBILS is available to individual practitioners in addition to chambers, and that they may even be more likely to make a successful application under the Scheme.
- Chambers should have also considered other commercial measures, such as extending an existing overdraft or restoring a previous one and using reserves established for other purposes (for example, end-of-lease dilapidations); the latter may have tax implications and advice should be sought from chambers' accountants.
- It should be noted that the responsibility for any debt incurred during the crisis will depend on the named guarantors of the loan and any internal cross-agreement between those guarantors and chambers' other members i.e. as set out in chambers' constitution or any other relevant documentation. In most cases, the liability for the debt will sit with every current member of chambers and possibly also with those who have recently left chambers.

Coronavirus Job Retention Scheme ('CJRS') and other employment matters

- The [CJRS](#) is currently available up until 31 May for employees who were on the payroll at the end of February. The minimum period of furlough is three weeks and employees can be furloughed and un-furloughed provided that the period of furlough lasts for at least that length.
- Furloughed employees are effectively on paid leave and their contracts of employment remain in force, subject to any amendments required in order to

accommodate their furloughed status (all of which should be covered off through a variation agreement).

- Furloughed employees must not be asked to work by chambers or any of its members during the period of furlough, but they are not excluded from joining e.g. chambers' social events. They are entitled to undertake alternative remunerated work but must abide by their contract of employment when doing so i.e. they must not agree to work for a competitor etc.
- The Government will reimburse employers up to 80% of an employee's existing salary (capped at £2,500 per month), which is calculated by reference to either the amount that the employee was paid in the equivalent month in the previous year or the average salary over the preceding twelve months, if that is higher.
- The same rule applies to the employer's National Insurance contributions and the minimum contributions it makes under the Government's auto-enrolment pension scheme.
- Whether the employee is paid their salary in full whilst on furlough is at the discretion of the employer i.e. the employer can choose to pay the employee any additional amount, but it is not mandatory that they do so.
- The portal through which employers will be able to reclaim any related expenditure is unlikely to be available until May 2020. In the meantime, chambers should make a record of what it would have paid the employee and what it is paying the employee, so that it can be provided as evidence to HMRC if required.
- Many chambers and the Bar Council have actioned recruitment and salary freezes, with some asking their more senior employees to take temporary pay cuts and/or withholding discretionary bonus payments for all employees. Chambers might also consider asking their employees to defer a proportion of their salary until a later date (as yet to be confirmed).
- The Government has [recently introduced new law](#) allowing employees to carry over up to four weeks' annual leave entitlement in to their next two holiday years. This law applies to any holiday that the employee does not take because of Covid-19.

Insurance, business rates and rent

- The clauses in chambers' standard business interruption insurance almost certainly won't cover Covid-19 as it is not specifically mentioned in the list of applicable diseases, incidents and viruses.
- Where chambers have separate insurance that covers a lack of access to the building, they may be able to argue that it is triggered by the Government's current restrictions.

- At present, there is no business rate relief available to any set of chambers with a property that has a rateable value of over than £15,000. Under the [Coronavirus Small Business Grants Fund](#), all eligible businesses in England in receipt of either Small Business Rates Relief or Rural Rates Relief in the business rates system are eligible for a payment of £10,000.
- Chambers ought to approach their landlords and find out whether there is anything that they can do to assist e.g. by offering rent deferrals or allowing monthly, as opposed to quarterly, payments.
- Where chambers' landlord is one of the Inns of Court, they should note that the Inns go through cycles of being 'cash rich' and 'cash poor', which means that they may not currently have the cash reserves required to support their members. Furthermore, the Inns' property portfolios are not particularly useful assets as they don't form part of any balance sheets and the buildings are expensive to maintain.
- Most of the Inns of Court run their leases on three-month breaks, which means that they will be concerned about a significant proportion of their revenue disappearing with only three months' notice.
- As demonstrated by their most recent announcement, the Inns of Court are eager to support the Bar. They will therefore want to take what funding is available to them and offer it to those who are likely to experience the most hardship i.e. junior and pupil barristers, and students. To that end, where a set decides to approach the Inns of Court for rent assistance, it ought to be able to effectively demonstrate any exceptional hardship it is likely to encounter and have a proper understanding of the assistance that it is seeking.

General financial planning and miscellaneous financial measures

- Review chambers' planned projects and consider which can be delayed and/or cancelled in their entirety.
- Discuss whether any of chambers' suppliers, such as its cleaning, catering and facilities contractors, can furlough their employees in order to save additional expenditure. Have them confirm in writing to ensure that there can be no dispute relating to later invoices.

Lessons learned

- Chambers need to build cash reserves post-crisis. From a member's perspective, contributing to reserves is a business expense and is therefore tax deductible at a corporate rate. From a chambers' perspective, cash reserves can only be claimed as a tax-allowable expense if chambers can demonstrate what those reserves will be used for in future years.

- Where chambers operate through an incorporated limited company, any member being asked to act as a director of the company ought to insist upon chambers taking out liability insurance for directors and officers.

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