

ADVICE FOR CHAMBERS ON PRECAUTIONS FOR COVID-19 – BULLETIN 2

THE COVID-19 WORKING GROUP BULLETINS

This is the second bulletin from the Bar Council, Legal Practice Management Association ('LPMA') and Institute of Barristers' Clerks ('IBC') COVID-19 Working Group ('C19WG'), set up with the aim to:

Identify the authoritative sources of information and guidance relating to the COVID-19 epidemic in the UK and impacting upon the Bar; and

Establish liaison and communications with appropriate agencies and organisations

in order to provide advice on best practice to chambers and employers¹.

Bulletins can be found on the Bar Council's coronavirus advice and updates webpage at:

<https://www.barcouncil.org.uk/useful-information/coronavirus-advice-and-updates.html>

This webpage also contains or has links to HMCTS and Legal Aid Agency ('LAA') updates and general Government guidance.

If you wish to provide any comment for consideration by the C19WG, please email C19WG@BarCouncil.org.uk².

These bulletins relate mainly to self-employed barristers and chambers, including sole practitioners. Employed barristers may nevertheless find much of it of relevance and interest, although they should in the first instance seek advice and instruction from their employer.

SOURCES OF ADVICE

Government Advice

The main site for all Government advice is:

<https://www.gov.uk/government/topical-events/coronavirus-COVID-19-uk-government-response>

This provides links to other pages and should be brought to the attention of all members and staff, who should all be required to read at least the following:

FCO Travel Advice <https://www.gov.uk/guidance/travel-advice-novel-coronavirus>

NHS Advice and FAQs <https://www.nhs.uk/conditions/coronavirus-COVID-19/>

There is also a link to the Guidance for Employers and Businesses, be read by anyone in a line-management or supervisory role:

<https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-COVID-19>

¹ **Important Notice:** this document has been prepared by the Covid-19 Working Group established informally by the Bar Council, LPMA and IBC in order to assist barristers and chambers on matters relating to the current coronavirus epidemic. It is not "guidance" for the purposes of the BSB Handbook I6.4, nor does it comprise – and cannot be relied on as giving – legal advice. It has been prepared in good faith, but neither the Bar Council, LPMA nor IBC nor any of the individuals responsible for or involved in its preparation accept any responsibility or liability for anything done in reliance on it.

² Please note that whilst the C19WG inbox will be monitored daily, it is not intended to be used to provide members of the Bar and chambers professional with advice or guidance. Instead, all comments and suggestions will be circulated amongst C19WG members for discussion and, where appropriate, addressed in future bulletins.

The main site offers the option to **sign up for email updates** to publications, press releases and news items; it is suggested that chambers' personnel appointed to monitor advice take this opportunity.

Please note that the advice for self-isolation and travel have changed significantly since the last bulletin. Chambers' advice should be amended to reflect these changes. (See also under 'Routine', below.)

MoJ and Government Agency Advice

HMCTS and the LAA have recently published COVID-19 advice, which can be found at:

<https://www.gov.uk/guidance/coronavirus-covid-19-courts-and-tribunals-planning-and-preparation>

and

<https://www.barcouncil.org.uk/uploads/assets/45ea28cf-8a16-4a90-bf65fd583874dc84/LAA-Covid-19-update-9-March-2020.pdf>

The Bar Council's liaison with HMCTS and the LAA confirms that both are planning for all contingencies. The LAA has also confirmed that it will maintain payments within its existing target timescales, and that all relevant staff can work from home. Matters relating to the operation of the Courts and the LAA and the potential impact of these on barristers and chambers are very much at the forefront of the minds of the Bar Council's leadership, and therefore directing the Bar Council's activities accordingly.

Regulatory

The C19WG continues to liaise with the Bar Standards Board ('BSB') over a range of regulatory issues. Guidance on many of these is expected to be published by the BSB in the coming week. (See also further points, below.)

Law Society Advice

The Bar Council is liaising with the Law Society regarding its advice to solicitors, and any relevant information will be covered in future bulletins.

WELLBEING

Be aware of the potential for mental ill health in themselves and others caused by COVID-19 and avenues of support, including the Assistance Programme ('AP') at <https://www.wellbeingatthebar.org.uk/assistance-programme/>. The AP provides a confidential telephone support and counselling service, as well as a wide range of wellbeing fact sheets, videos, self-help programmes, interactive tools and educational resources.

There are other wellbeing resources on the Wellbeing at the Bar online hub, <https://www.wellbeingatthebar.org.uk/>.

If you are required to self-isolate, please do look after your physical and mental wellbeing. Self-isolation or remote working can feel lonely, so keep in touch with people virtually. The charity Mind has some good advice: <https://www.mind.org.uk/information-support/coronavirus-and-your-wellbeing/>

FINANCE

Clearly, self-employed barristers will be seriously concerned about income. For those conducting publicly funded work, the Bar Council has asked the MoJ to urgently seek deferments for tax and VAT payments and to enable interest-free government loans, at the very least. We are determined that the vital public service provided by the independent Bar is recognised in the same way as every other public service. The Chair of the Bar will be meeting with senior officials on Tuesday 17 March to pursue this.

The most significant finance-related developments in the last week have been the reduction in the Bank of England ('BoE') Base Rate to 0.25% (which may have an impact on certain financial commitments of chambers and individual barristers) and the measures to alleviate financial difficulties for the self-employed and small businesses announced in the Budget by the Chancellor.

Along with the Base Rate cut, the BoE also announced other terms for participant financial institutions, financed by central bank reserves, which are intended to help ensure that the Base Rate reduction is passed on to the "real economy" and provide incentives for banks to provide credit and support lending to SMEs.

The Budget measures which are most likely to impact upon chambers and barristers are:

Enhancing the existing HMRC Time to Pay scheme with a dedicated Helpline, through which businesses and the self-employed can get financial help and advice regarding payment of their taxes; details can be found here:

<https://www.gov.uk/government/news/tax-helpline-to-support-businesses-affected-by-coronavirus-covid-19/>

A temporary Coronavirus Business-Interruption Loan Scheme, with loans of up to £1.2M to small businesses – further details are expected in the coming week.

The refund of Statutory Sick Pay ('SSP') payments to businesses with fewer than 250 employees (so, all sets of chambers and individual barristers with employees) for up to 14 days for each employee; (SSP now applies from Day One of absence, and payable to all those who are advised to self-isolate or who self-isolate in accordance with Government guidance.) This doesn't include barristers.

Enhanced small-business rate relief, which should apply to many sole practitioners who have one business property, the rateable value of which is less than £15K;

CHAMBERS' PROCEDURES AND ROUTINE

In Bulletin 1, we suggested that chambers should require all members, staff and visitors to confirm their compliance with relevant advice. Our current guidance, superseding the earlier wording, is that chambers should:

Require all members and staff to confirm that they are and will remain compliant with the FCO travel advice, they do not have COVID-19 symptoms and, to their knowledge, they have not been in contact with anyone who is currently self-isolating or who has tested positive or is awaiting test results for COVID-19; furthermore, they commit to inform chambers immediately of any change to this;

Require all visitors to Chambers to confirm that they are at that point compliant with the FCO travel advice, they do not have COVID-19 symptoms and, to their knowledge, they have not been in contact with anyone who is currently self-isolating or who has tested positive or is awaiting test results for COVID-19.

We understand that some chambers are conducting trials of their arrangements for complete and/or substantial levels of homeworking by both barristers and staff and related Business Continuity plans; we recommend all chambers consider doing so in order to identify any issues in advance.

We have also heard from another set of chambers of its arrangements for ensuring urgent communication:

Barristers who are briefed to attend a hearing or conference or other client/third party-facing event, and who therefore run the risk on the day that they may wake up with the symptoms of coronavirus, making it unsafe (or possibly unlawful) for them to attend, should ensure that they have a foolproof means of communication with their solicitors beforehand, so that if necessary, they can alert them to their impending inability to attend.

It is suggested that the contact details for solicitors and the Court should be written on the instructions, the electronic case record, and e-mailed to the barrister(s) and that the barrister(s) should provide mobile-phone contact details to the solicitors.

ISSUES RAISED

Several further issues have been raised in messages to C19WG@BarCouncil.org.uk and in discussions within the C19WG and the Bar Council and with other stakeholders. Some of these are still awaiting confirmation of advice, whilst others are addressed below.

Ethical considerations

We are receiving a growing number of queries via the Ethical Enquiries Service about the ethical considerations associated with the impact of COVID-19 on practise. Examples of the kind of queries we are receiving relate to withdrawing from a case and refusing to accept new instructions. Circumstances vary from barrister to barrister and the situation is dynamic so it is important that barristers call the Ethical Enquiries Service on 020 7611 1307 or email Ethics@BarCouncil.org.uk to discuss their individual cases because advice will depend on the unique facts, and advice may differ from case to case.

As well as speaking to the Ethical Enquiries Service, it is vital that barristers follow government advice, for example on when to self-isolate. One consequence of self-isolation is that barristers may have to return instructions. Our analysis suggests that there are circumstances under which a barrister should be able to respond to any need for isolation without breaching the Handbook. Each barrister, however, must take responsibility for assessing their own ethical position, based on the facts, considering government advice and taking a risk-based approach. If you have a query about any ethical issues, please contact the Bar Council's Ethical Enquiries Service. Full details of the EES are available on the [Bar Council website](#).

Whilst any decision by the independent regulator, the BSB, would be based upon the specific circumstances of the matter in hand, the Bar Council's initial view is that there would be no cause for disciplinary action if there has not been a breach of the Handbook.

We have approached the BSB on a number of COVID-19 points and expect the BSB to issue a range of formal guidance on COVID-19 matters in the coming week. The Bar Council also continues to liaise with HMCTS and the Judiciary.

"At-Risk" Barristers

Concern has been voiced regarding barristers aged 60+ and those with underlying health issues who are at greater risk from COVID-19 than others, and what consideration is being given to increasing the use of video conferencing in hearings to mitigate exposure.

HMCTS has remarked in its guidance of 13 Mar on the current options for video hearings. At this stage, if counsel consider they are at risk and, following discussion with the Court and the client, their participation by video is not permitted, the C19WG suggests they should consider what precautions they can take and they may have to consider withdrawing from the case, whilst being mindful of their regulatory obligations. Chambers should monitor HMCTS advice for any changes to its guidance.

The Health Secretary has confirmed (on 15 Mar) that the Government's action plan includes asking those aged 70+ to self-isolate; this measure has not yet been announced but will be "certainly in the coming weeks"; this will obviously apply to a number of barristers.

Solicitors' Firms

It has been stated that some barristers are being asked to indemnify solicitors against fees and there is a concern that debtor days will begin to increase. Whilst the C19WG would be interested to hear of specific

examples, the discussion of fees and payment arrangements must remain, in principle, a matter between the barrister and the instructing solicitor.

At least one firm of solicitors has reported its temporary closure owing to confirmation of COVID-19 infection in one of its employees. Chambers are reminded of the Government's guidance to business <https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-COVID-19> which address this situation. The immediate closure of the workplace is not recommended; advice will be offered by the local Health Protection Team on measures to be taken. In some circumstances, this might involve temporary closure of parts or all of the premises to permit cleaning.

Containment/Delay Measures

The continuing admission of tourists and other members of the public to the Supreme Court building was questioned, as this potentially increases the risk of infection to those who are required to be at the Court. The current HMCTS guidance does not limit the admission of the public, but it will update its arrangements as the situation demands.

The C19WG notes the media reports that the Government's strategy envisages the incremental introduction of limitations on meetings and movement in due course, and that mass meetings (of more than 500 people) are likely to be prohibited at some point in the next week, along with the introduction of other measures. It has also been stated that the Government's Chief Scientific Adviser and Chief Medical Officer will be publishing their modelling that informs the strategy. It is clear that the situation is changing frequently, and chambers are advised to ensure they remain up to date with the latest Government advice.

Training and Pupillage Applications

The Bar Council is liaising with the BSB over the latter's current and contingency plans for forthcoming Bar Transfer Test, Par Professional Training Course and Graduate Diploma in Law teaching, exams and assessments. We will update the Bar as soon as possible on any changes to the current arrangements.

The Bar Council is also considering the timetable for the current Gateway pupillage competition, in response to several questions from chambers. Again, we will alert the Bar to any changes. The C19WG draws your attention to the suggestions regarding pupillage interviews in our first bulletin; it is appreciated that some chambers may not consider video-link interviews to be the *ideal*, but their use may enable chambers to complete interviews within their existing timescales. Interview by video is commonplace in the workplace (and has been used successfully by some chambers) and the technology to achieve it is simple and readily available. We recognise nonetheless that chambers will wish to follow their own existing procedures as far as is practicable as the situation develops.

Please continue to make any comments by emailing C19WG@BarCouncil.org.uk.

C19WG

16 Mar 2020