



Oury Clark

7 Practical Steps to Mitigate the Madness →

(and hopefully save your business
and your employees jobs)



Don't panic!
But do take action.
We need some luck.
Here are 7 things you
can do right now...

Number 1 – Cash

**First
Things
First,
Cash**



If you haven't already, you need to run a cashflow. Now!

- And you need to sit down and get your head around it
- Cut what you can, while meeting your obligations, put off anything you can
- Run it again until you have something that makes sense
- Repeat at least weekly

Read Your Banking Covenants

If you can't satisfy the covenants – talk to your bank now

- Banks hate surprises and the preliminary advice is they will cooperate

If there are deadlines to give audited accounts

- Auditors may struggle to sign off
- Faced with looking at the next 12 months of your business to confirm it is a going concern.
- Talk to the bank now and make them understand your dilemma
- Ask them to undertake to provide finance for 12 months – and in return, you will provide an audit certificate once the offer is made
- We provide audited accounts without signature and agree to sign the moment they do
- Bit of a chicken and egg, but better than scrambled.

Don't Borrow in a Rush

- When borrowing money you shouldn't rush – Only do so if you are clear that you can pay it back
- And it will help you survive.
- Otherwise, problems for the future and no doubt the criticism from creditors, if they find the assets have all been dissipated without any really clear plan of how people are going to survive.

Number 2 – More Cash*

**Second
Things
Second
*Grants
& Debt**



Number 2 – More Cash

R&D Relief

- It's not debt
- Government double downed on budget for it increased large scheme to 13%
- Shorten your company year end and file a tax return – and (Usually) within 28 days you have cash
- It is a grant, you can use it as you wish, you don't pay it back
- You can borrow from companies such as www.fundsquire.com 3 or more months in advance of receiving the cash.
- But if comfortably profitable – may not help

Government Help?

£330BN Announced

A new Bank of England lending facility and an extension to the business interruption scheme announced in the budget, which will now provide loans of up to £5 million rather than £1.2 million, interest-free for six months.

CASH grants of up to £25,000 for retail, hospitality and leisure businesses with a rateable value below £51,000, to help them through a period when customers have been advised not to attend pubs and clubs.

A year-long business rates holiday will be extended to all companies in these sectors, said the chancellor.

Assured businesses that the government's action will allow them to make claims against insurance policies covering pandemic losses.

Cash grants of £3,000 for the smallest businesses, announced in the budget, are to be increased to £10,000.

Government Support

Great! How do I get the money though?

- British Business Bank
- New Bank of England

...But its going to take weeks for sure ...And it's mostly debt.

- * Next week we will hear the terms
- * Not free money
- * The Government guarantees 80% – But you may personally have to guarantee the other 20%

Number 3 – Staff

Avoiding Redundancies

The Key!

Careful planning and clear communication
with your staff when discussing alternatives
to redundancy

by Ross Meadows

Number 3 – Avoiding Redundancies

Ban Overtime

If you offer overtime consider banning/restricting overtime. However, this must be carefully communicated with employees, especially if employees normally rely on the additional pay they receive from working overtime;

Require Staff to take their Holidays

If requiring them to take holiday there are statutory provisions to follow (e.g. for 5 days' leave you would need to give 10 days' notice). As an alternative offer extra holiday in return for a pro rata reduction in salary. This can save money in the short-term.

Number 3 – Avoiding Redundancies

Other Alternatives

Unpaid Leave

Agree permanent reductions in hours of work and salaries or other employee benefits

Consider lay-offs or short-time working (“LOST”)

- Rumour’s that the government will pass emergency legislation

Lay off means

- that you provide employees with no work (and no pay) for a period while retaining them as employees;

Short-time is

- a temporary reduction in the hours or days worked during a given week.
- Unless there is a contractual clause (highly unlikely!) allowing for LOST, the employees express written consent is required

Number 3 – Avoiding Redundancies

Other Alternatives

If employees agree to LOST, be aware that:

- Employees could be entitled to guarantee payments (currently maximum £29 per day for 5 days in any 3 month-period (so £145.00)) – this increases to £30 from 6 April); or
- Employees could resign and claim a statutory redundancy payment (would need 2 years continuous service). To claim a statutory redundancy payment they would need to be on LOST for at least 4 consecutive weeks' or a total of 6 weeks (of which no more than 3 are consecutive) in any period of 13 weeks. Employers do have the right to counter-notice but this could prove costly for long-serving employees.

Number 3 – Avoiding Redundancies

Volunteers for Redundancy

Whilst this is a “redundancy”, offering a voluntary redundancy package could reduce the need to make compulsory redundancies and follow fair redundancy procedures. Would suggest entering into a settlement agreement with “volunteers” to ensure they waive the rights to bring claims against you. This requires the employee receiving independent legal advice;

Number 4 – Staff

Unavoidable Redundancies

It's tough,
but... it's real*

*Hopefully you survive the storm
and hire them back**

**The good ones...



Number 4 – Unavoidable Redundancies

Redundancy

Definition – Redundancy can be a workplace closure or there is a reduction in the requirements for an employee or employees to carry out work of a particular kind;

Formal Process – A formal process needs to be followed. Failure to do so could lead to unfair dismissal, wrongful dismissal, holiday pay, and discrimination claims;

Number 4 – Unavoidable Redundancies

Key Considerations

The formal process to follow will depend on the following:

How many staff affected?

- If 20 or more staff – Collective Consultation Method
- If 19 or less staff – Perhaps only Individual Consultation Method

What is the length of service

- If less than 2 years
- If more than 2 years

Are all employees at risk of redundancy

- If so, the process should be fairly straightforward subject to collective redundancy obligations if applicable;
- If not you need to ensure the selection process and consultation is fair and objective;

Number 4 – Unavoidable Redundancies

Key Considerations

If not all employees are at risk, do the at-risk employees carry out a unique role?

- If yes, the process should be more straightforward and you would just need to consider “bumping” (i.e. should the employee be bumped into another role in the business that is not at risk (normally a junior role));
- If not you would need to “pool” the at risk employees with other employees carrying out the same/similar roles. When selecting the redundant employee(s) from the pool you would need to use fair and objective criteria such as:
 - Attendance records;
 - Disciplinary records;
 - Skills or experience;
 - Performance/Standard of work.
- What if 2 employees score the same based on the objective criteria?
 - As a last resort you could use “Last in, First out”. i.e. those with longer service remain employed.

Number 4 – Unavoidable Redundancies

How to Consult?

If collective redundancies, there are set rules to follow;

If less than 20 redundancies it involves individual consultation. You must ensure you clearly and effectively discuss the following with the employees:

- Explain why you are planning on making redundancies;
- In return employees should be allowed to discuss:
 - Ways to avoid or reduce redundancies;
 - How to reduce the impact of the redundancies;
 - Why the and how the employee(s) was selected for redundancy.
- You must consider and respond to suggestions made by employees;
- You can reject any ideas that you do not think are reasonable but you should explain why;
- It's important to document all discussions and the reasons for your decisions.

Number 4 – Unavoidable Redundancies

Redundancy Entitlements

- Once redundancy is confirmed you must ensure you pay redundant staff what they are due
- Their salary and contractual entitlements up to the termination date. This would be paid in the normal way and be subject to tax and national insurance contributions
- Their accrued but untaken holiday up to and including the date of termination. This will be subject to tax and national insurance contributions
- Their notice pay – They could be required to work their notice or you can pay them in lieu of notice. This will be subject to tax and national insurance contributions

If the employee has 2 years or more continuous employment at the date of termination

- A statutory redundancy payment which depends on their age, length of service and salary
- Other - You also need to consider whether employees made redundant have other entitlements (e.g bonus, commission, share options) on termination and how these are paid/managed.

Number 5 – Staff Insurance

**Insurance?
I know... but**



Number 5 – Staff Insurance

Staff Insurance

The market is still very much open for some things. And some things could make sense for some STAFF.

Keyperson cover

Losing a key person, even for a short period of time, can have a big impact on a small to medium sized business.

With key person protection in place, if a key person dies or is diagnosed with a critical illness, the business will be able to:

- Meet its expenses.
- Get practical advice and support in recruiting a temporary or permanent replacement.
- Afford to train one of their other employees to step into the key person's shoes.
- Get career and back-to-work services support.
- Access a legal helpline that can advise on all aspects of employment law.

Number 5 – Staff Insurance

Ownership protection – Keeping control of the business

The loss of a partner, member or shareholding director can have a major impact on the success of a business in terms of making sure the remaining owners keep control.

The potential problems will depend on the business type, the size of the business share, and the procedures laid down in the articles of association, the limited liability partnership (LLP) agreement or the partnership agreement if there is one.

The aim in setting up ownership protection cover is to make sure:

- The remaining business owners keep control of their business.
- The estate of the owner who's critically ill or who has died gets fair value for selling their share of the business.
- The arrangement is set up in a tax-efficient way.

Number 6 – Force Majeure

Force Majeure...

IF you ever wondered what it
meant– well it's time to find out

By Simon Walsh



Number 6 – Force Majeure

Check your contracts

- Don't just end them – there could be penalties
- The key thing to look for is...

Force majeure

A contractual obligation becomes legally or physically impossible to perform.

Typically

- war, strikes, government actions and some, but not all force majeure clauses will include an epidemic or a pandemic.

Number 6 – Force Majeure

Mitigation

look at each of your contracts and think about the following

- How might your contractual obligations be affected
- Consider whether there are other ways of delivering on the contract
- Check whether there is a specific reference to a pandemic or epidemic in the force majeure clause;
- Consider how you can minimise the risk that your contractual performance will be disrupted;
- Are you reliant on the supply of goods from other geographies that may be impacted by Covid-19.

Number 6 – Force Majeure

Communication

- Discuss openly
- Negotiate extended time limits / rights to terminate / payment terms etc.
- If it is the other party that is failing to meet its obligations under a contract with you, ask them what their proposed plan of action is

Keep Records

- Make sure you document the steps you have taken or will take to minimise the impact of the disruption resulting from Covid-19;
- Keep records / minutes of strategic meetings / board meetings where you have made decisions in relation to the disruption caused by Covid-19 as this may assist in the event that you have a dispute with the other party to a contract.

Number 6 – Force Majeure

New Contracts

- Ensure that there are adequate provisions for epidemic or a pandemic;
- Check your insurance coverage (e.g. professional indemnity insurance) to ensure that cover would apply and engage with your insurers / insurance brokers to ensure they are aware of the potential risks within your business

Where there is no force majeure clause in a contract?

- you may be able to rely on the common law rules relating to frustration.
- This would only apply where the contractual obligations are essentially impossible to perform e.g. you have an obligation to do something in a country / region that is subject to a mandatory lock-down.

Number 7 – Directors Duties

Directors Duties

What matters right now really?

By Simon Walsh

Number 7 – Directors Duties

Incredibly well protected in the UK, But...

- You do have to be aware of wrongful or fraudulent trading, and preference
- Wrongful and fraudulent
- Do that cashflow, follow steps above
- If that doesn't look good, or you know its game over
- Hold a meeting of the directors and raise your concerns push for a members controlled voluntary insolvency. Basically you get an insolvency practitioner before your creditors do

Number 7 – Directors Duties

Preference

The insolvency practitioner has a duty to look at your actions too

The things they look for are...

- Whether or not you have paid some debtors out of preference to others
- For instance your staff and not the tax man,
- Or your dividends and not some bill. Or some bill and not your dividends.

Basically if you have cash flow problems you have to be careful not to bias anyone too much on payment.

Don't panic – you really have to be over the line to be in trouble

That's It.
Good Luck Friends
We're here – if you
need us!

Remember... there are going to be a lot of opportunities in all this madness. Don't go mad with stress and miss, the cleverer step than the rest.

Questions and Answers →