Large Firms COVID-19 Survey

Summary of Law Society activities to date in response to key findings

May 2020

Below is a summary of the main actions we have been and are taking in relation to the key points raised in the Large Firms COVID-19 Survey. We should add that of course we know that many individual firms are similarly making the case to Government on these points, so we realise that this is and will continue to be a collaborative effort with large firms like yours.

Support for your businesses

It is clear that, while still analysing the longer-term impact of the virus on your business, you are concerned now about liquidity. We have produced a toolkit to help your firm identify the support to which it is currently entitled, but we know this does not go far enough. We have been speaking regularly to the officials and ministers in the Treasury, BEIS and Ministry of Justice on your behalf and wrote formally to the chancellor, with our proposals to support the sector. This work has had a significant impact.

The Survey results told us that the Coronavirus Job Retention Scheme is the single most helpful government initiative to help firms retain staff, although changes may still be necessary to support firms for the longer run. We have therefore welcomed the scheme but called for it to be extended. We are pleased to have seen a one month extension but are arguing that this does not go far enough and are continuing to push for a three month extension to provide firms like yours with sufficient clarity during the lockdown period. We have also argued that the scheme should be adapted to the needs of higher-paying sectors. Whilst we recognise that the cap cannot be raised, we have argued that the scheme could be adjusted to top up the salary of those who are not furloughed but are working reduced hours. We have also provided guidance to firms on how to apply the scheme in practice.

After the job retention scheme, firms identified that other potential things Government could do would be postpone tax or give tax relief, provide a business rate holiday or relief and postpone VAT. We have therefore welcomed the deferral of tax payments, but if the Government’s lockdown remains in place, we will seek further provision for longer term deferral/partial payment.

We have been pushing the Government to ensure that its business interruption loans are accessible in practice and pointing out the difficulties that a number of firms have had in accessing these. We were pleased that, in response, the Government announced that prohibitive criteria, such as requests for personal guarantees and a demand that firms should show they had exhausted commercial credit, were removed.

We also made clear to Government that initially many large firms, which are so fundamental to the economy, were caught between an income limit on those businesses which could apply for Business Interruption Loans and restrictions on the types of legal entity which could apply for the Bank of England Financing Facility. We were therefore delighted with the recent announcement of the Coronavirus Large Business Interruption Loan Scheme.

We are pushing the Government to increase the support available to those who are self-employed (including many law firm partners), arguing that it is inappropriate that those who have previously had profits of over £50,000 should be excluded entirely from the scheme.
We are also calling for the Government to extend its schemes to support those firms running their businesses via incorporated companies, with income taken via dividends.

We have argued strongly that firms like yours have large and expensive premises which are mostly empty throughout this period and that, on this basis, the Government should introduce a 50% business rate relief scheme for firms in England and Wales affected by the social distancing requirements.

The additional measures for which we are calling, such as rates relief and more support for the self-employed, would, of course, have significant impact on the state’s finances, so will be met with strong resistance, but we continue to make the case that this is necessary to ensure firms like yours are able to flourish as soon as restrictions are lifted.

**Facilitating your ability to get on with business**

You alerted us to several barriers to your ability to get on with business. We were already aware of and are working to find solutions to some of these (we have given a flavour below). Others were new and we will work on them too.

Firms like yours highlighted a concern about the lifecycle and execution of documents hindering the practice of many areas of law. The areas you saw this in most acutely were conveyancing and property, wills and the courts. These issues will impact on your firms’ ability to complete or execute work without changes in law. We have therefore been in constant contact with the Ministry of Justice about the need for the legislation in relation to swearing oaths, affidavits and statutory declarations and the virtual execution of deeds to be changed, especially for those required in commercial transactions. We have been clear with Government that ensuring that complex legal and business transactions are completed keeps money moving in the economy and fosters growth and that if transactions are not completed on time, this has a financial impact on the client and the firm – with a potential knock on effect on the wider economy.

Conveyancing was also identified as a particular area of concern due to the slowing of property work and the fact that it potentially will be hit most by redundancies because of the downturn in the market. We have produced guidance for firms on how they might address the practicalities, where contracts had been exchanged but completion was yet to happen. We have also been speaking with the Land Registry about the need to adjust the rules which require wet signatures and have written with the City of London Law Society to formally request this. We welcomed the Land Registry’s announcement on 1 May that it would be relaxing its rules to accept Mercury signatures from 4 May, and are updating our own practice notes on virtual execution and e-signatures.

We have also been discussing with Government the possibility of bringing in changes in relation to the witnessing of wills, to make it easier to execute wills in the current circumstances, whilst maintaining appropriate safeguards against abuse. However, in many cases a change in law isn’t necessary but rather a clarification about what is acceptable in what circumstance, particularly in relation to witnessing and signing documents as well as the provision of hard copies. In light of your desire to know what the new ‘best practice’ is during the crisis, we have worked with the SRA to clarify their guidance on how practitioners can go about this important work.

We called for Government action to allow the parties to litigation to agree extensions to procedural time limits, which resulted in the new Practice Direction under the Civil Procedure Rules. We have been calling for HMCTS to stop serving hard copy papers, which require your staff to travel to the office.
We have worked with HMRC to develop an alternative means of processing stock transfer forms while the stamp presses are closed.

Easing the burdens

We have pushed the SRA to make clear that it will take a proportionate approach to enforcement during this period, and to issue guidance on those issues which are causing particular problems, such as ID checks, confidentiality, account rules and supervision. We worked with the SRA to find a way forward in relation to the treatment of trainees and those planning to sit exams this year.

We know that with all that you are grappling with, it is inappropriate to place additional burdens on your businesses. We have argued that, among others, the following measures should be delayed:

Economic crime levy

You saw the Budget’s announcement on a new levy to be paid by firms to deliver some of the commitments made in the Economic Crime Plan. As you are aware, the Treasury is due to publish a consultation on the levy by May. The legal sector remains committed to combating money laundering and we are supporting firms to ensure they are able to discharge their AML duties during lockdown. However given the financial hardship being faced by law firms across the country and the strong focus of both the profession and the Law Society in tackling the COVID crisis, we have advised Government that now is not the time to consult on this initiative or go ahead with these plans.

DAC 6

DAC 6 is the EU Directive that introduces new disclosure and reporting rules for intermediaries involved in designing and promoting cross-border schemes that have certain hallmarks related to tax and tax reporting. These reporting requirements are due to start on 1 July. We continue to speak to both HMRC and the Treasury at the highest level to push the case for deferring the commencement dates of the DAC 6 and the Trust Registration Service rules in the UK. Government and Revenue are both aware that we believe there is a strong case for deferral of both in current circumstances, given the burden they will place on both private and public sectors, including law firms. We understand that similar points have been raised elsewhere in the EU.

Rule of Law

In the longer term, as well as continuing to respond to the direct challenges for firms, we will also be scrutinising the impact of measures introduced to deal with the pandemic upon access to justice and the rule of law. We will report back on our priorities and achievements in this area using the same channels as our other updates.