



Business as unusual



**How to mitigate
the impact of global
crises on retail**

Part 1
How Covid-19
has affected the
retail industry
& strategies
for moving
forward

About this report

All around the world there are people who prepare with disaster in mind. They stockpile supplies, create action plans, prepare housing and much more.

The problem with this preparation is that it is often focused on the disaster scenario that they think is most likely to impact them.

Few, if any, people prepare for all the other possible eventualities.

Businesses are much the same. While we're often told to prepare for success, how many can say they are truly prepared to make success out of disaster?

This two-part report aims to help you do just that.

In this first part, we investigate what the coronavirus pandemic has shown us about how prepared retail is for crisis. We will explore what the retail landscape may look like in the short and long-term and the legal questions you should be asking yourself.

The second part will look at how retail can become more adaptable to crisis and how you can legally protect yourself.

FREETHS

Freeths is a top 50 law firm, with a dedicated National Retail Team that specialises in helping retailers both in the UK and internationally realise their plans to achieve long term sustainable growth.

INSIDER TRENDS

Insider Trends is a retail futures consultancy. It helps clients such as Nike, Chanel, Galeries Lafayette, Unilever and Lego understand what is coming next in retail and how they can take advantage of it.



Was retail prepared for Covid-19?

Had you planned for a day when you would have to shutter all your stores overnight?

Probably not, right?

Yet this is the situation faced by many retailers across the world as governments moved to limit the spread of Covid-19. Between these new legal requirements and shifts in consumer behaviour, the industry has largely been caught unprepared for the major disruption of its usual business models.

Who would have predicted that years' worth of ecommerce growth would

take place in a matter of weeks? It took Sainsbury's 15 years to build its online sales to 7% of total sales, and seven weeks to double that to 15%. It says it could double it again and still not fulfil demand.

It's safe to say that if it had a crystal ball then Primark probably wouldn't have put all its eggs into the offline basket. The company went from a retail success story making £650m a month to not bringing in a penny since it closed stores in March.

On the flipside, digital-native businesses may be in a position to keep making sales, but have found dealing with this uplift is no easy matter.

This is largely down to the fact that ecommerce is a hugely physical business which relies on human labour. Businesses that want to fulfil more orders need more people.

Even ecommerce-only leaders like Amazon found they couldn't cope with the influx of orders. Amazon has hired over 175,000 extra staff globally to try and keep pace. Instacart is working to hire 300,000 contractors before the end of June.

Covid-19 has highlighted the inherent risk involved in a one or the other approach to retailing. It's also shone new light on what's really important to consumers. A debate has been sparked about 'essential' and 'non-essential' retail as everyone from video game retailers to bike shops try to prove their worth.

However, the biggest revelation from the pandemic is that being prepared for disaster is not about the type of business that you are, but the mindset you adopt.

One of the pandemic's success stories has been grocery retailer Tesco. It has become the first retailer in UK history to deliver over one million orders in a week.

One of the keys to its success was preparing for business disruption. Four years ago, Tesco ran a "doomsday" management exercise, which imagined that its Welwyn Garden City HQ had to shut. As a result, while the rest of the world was trying to figure out how to run their businesses from home, Tesco was well prepared for remote working.

Others have simply had to change rapidly as a response to what's happened. Sainsbury's chief executive Mike Coupe has noted that if you'd suggested in January that the business could run with 4,000 staff working from home, he'd have said you were crazy.

While both Tesco and Sainsbury's have benefitted from being in a high demand industry, their success is down to their willingness to act in the face of disruption.

The retail industry wasn't prepared for the unique challenges of Covid-19, but it has shown there is more flexibility in many businesses set-up than you might imagine.

Taking advantage of this is how you weather disaster, rather than clinging to 'how you've always done things'.

If you can't prepare for every scenario, you can be prepared to respond to it.

What is the temperature of the UK retail industry?

In March 2020, online sales (as a proportion of all retailing) reached a record high of

22.3%

Office for National Statistics April 2020

36%

of Brits said they will continue to use their neighbourhood stores more frequently after lockdown ends.

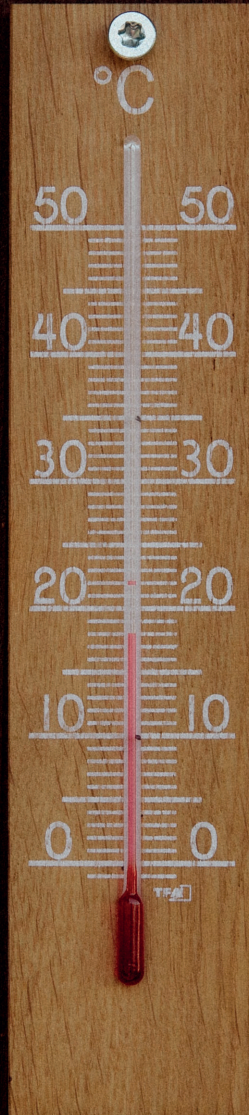
Finder April 2020

High street footfall rose

51%

week-on-week in England following non-essential stores reopening.

Springboard June 2020



In April 2020, UK consumer confidence hit its lowest level in over a decade.

GfK April 2020

37%

of UK shoppers are optimistic that the UK will recover within six months.

Capgemini April 2020

Lockdown has driven a shift in consumer spending habits in four key categories (groceries, alcohol, entertainment and hobbies & crafts) equivalent to an annual

£12.9bn

Legal & General and Centre for Economic and Business Research May 2020

How will Covid-19 change retail?

There is no doubt that Covid-19 has already changed retail. However, as we continue to live through the pandemic, it's clear that some fundamental challenges and conundrums lie ahead.

Stores are likely to look and function very differently for the next 9-18 months.

A survey by Qudini found that 37% of consumers have eliminated non-essential trips to stores and other public places since the outbreak¹. Another 43% have heavily reduced trips.

Shoppers' priorities have also changed, shifting to trust, utility and need, rather than price, inspiration or entertainment. Around the world, 60% of customers say they are turning to the brands they are sure they can trust. 33% of customers have already stopped using at least one brand that they felt was not responding appropriately to the pandemic².

THANK YOU FOR PRACTICING

SOCIAL DISTANCING



Remember To Stay 2 Carts Apart



1. Qudini, *The Covid-19 UK Consumer Survey - Retail*, May 2020

2. Edelman, *Brand Trust and the Coronavirus Pandemic*, April 2020

Mid-Covid: Retailing in the short-term

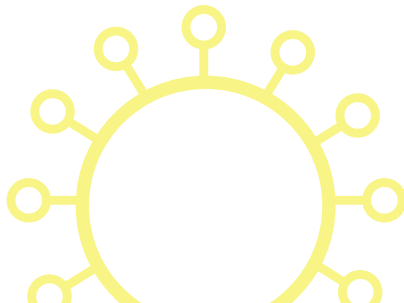
Reopening stores against a backdrop of a pandemic has been a major challenge for retailers to get right. Reopening too late means missing out on sales. Reopening too quickly could mean stores have to close again, wasting time and money.

Identify signposts

Signposting can help your team plan ahead and act quickly and decisively as things unfold.

Identify a series of signposts or clues that will indicate how the crisis is developing. These may be stores in China reopening or closing, new daily cases going above or below a certain level, customers embracing or rejecting initiatives from other retailers, and more.

Agree what your business will do at each point. When these signposts emerge, you'll be able to quickly speed up or slow down your reopening strategy. You'll be able to proactively respond rather than being caught on the back foot.



Things to reflect upon now stores have reopened

There have been a lot of variables to consider in the reopening of your stores. Here are some of the biggest concerns:

- **How many customers will you allow in store at one time?**
Will you allow customers to shop together?
Will you make any hygiene provisions for customers (eg places to wash hands, hand sanitiser, masks and gloves?)
- **Are your staffing needs covered?**
Do staff clearly understand the procedures in place?
Do you need PPE (such as gloves, masks) for staff?
- **How will you clean your stores?**
How often will you do this?
- **Do you need to change or suspend any services (eg product testing, fitting rooms, in-person consultations, click & collect)?**
- **Do you need to change your store design or layout to allow for social distancing?**
How will you manage queuing?
- **How will you handle returns?**
Will you have a separate place for processing these?
Will you keep returned stock off the shop floor for a certain period of time?
- **What payment options will you allow (cash, card, app, gift card)?**
- **What signage do you need in store and outside?**
- **What will you do with old or overstock?**
- **How will you communicate ongoing changes to customers?**

Safeguard staff and customers

The number one concern in reopened stores is public safety. A global survey revealed that 52% of shoppers feel brands must do everything they can to protect employees³.

Equally, customers have to feel safe in order to want to visit stores and - in turn - spend money in them. Safeguarding strategies are therefore a primary focus.

Many retailers will follow the lead of grocery stores in making extensive protective equipment available for staff. Locations with a high concentration of stores, such as

shopping centres, are likely to make this equipment available to customers.



The British Retail Consortium and USDAW have created guidance on implementing social distancing in stores.

Suggested measures include:

- Limiting stores' entry and exit points
- Limiting the number of customers in the store at any time
- Clear signage inside and outside the store, explaining the social distancing measures in place
- Encouraging customers to shop alone wherever possible

It's important that you set targets for your safeguarding methods, monitor performance, and address the gaps. When trust equals sales, you need to be sure your initiatives are performing as you intended.

The industry also needs to recognise that a united approach may be required. The more consistency there is between retailers' measures, the more familiar customers will be with requirements, and the more reassured they will be. The more everyone adapts to the shopping behaviours required for the 'new normal', the more everyone wins.

On the plus side, many shoppers have been missing the 'fun' aspects of retail and the human interaction that tech can't provide.

In a survey, GlobalWebIndex found that 14% of UK shoppers said they would return to stores immediately after they reopened⁴. A further 19% said they would return very quickly.



This means that retailers who get it right with their safeguarding measures may see stronger footfall than potentially expected. Superdry has already reported that initial trading in reopened stores in Europe has exceeded its expectations

3. Edelman, Brand Trust and the Coronavirus Pandemic, April 2020

4. GlobalWebIndex, Coronavirus Research: Multi-market research wave 3, April 2020



Prioritise contactless

Retail is a high contact industry by nature. With social distancing the order of the day, making it as contact-free as possible is now the priority.

This applies to every aspect of your business, including deliveries, assisting customers and payments.

We can expect to see a variety of creative solutions emerge.

Appointment-only shopping, which requires customers to book slots in advance, may take off. Lidl has launched a WhatsApp chatbot that lets customers check store occupancy levels before they visit.

Higher-tech systems, such as virtual queuing systems and self-scanning

apps, may also form part of the solution. Automated solutions may be adopted at even faster rates.

In-store services with high levels of interaction, such as make-up testing, will need to be rethought. These may need to be temporarily suspended or conducted in a touch-free way, perhaps using disposable applicators and paper face charts.

In the past, high-level service has often meant high-touch. Social distancing will require this to be reimagined, as high service likely prioritises convenience. Delivery or pick-up from home, kerbside services or virtual sessions with experts may offer part of the solution.

Consider the continued shift to online

Retailers need to be aware that not all online journeys will move back offline.

The coronavirus pandemic has led many 'ecommerce virgins' to try online shopping. In Europe in early April, 13% of consumers said they were planning on browsing online stores for the first time⁵.

Now that these new customers have got over initial hurdles, such as setting up online accounts and linking payment methods, it's likely that many will continue to use ecommerce in the future.

However, it appears that omnichannel retailers may be doing the best out of Covid-19. IMRG Capgemini's Online Retail Index reported that multichannel retailer sales were up 35% in the UK for April⁶. By comparison, online-only retailers were up 8.3%.

5. McKinsey & Company, *Thoughts on the Shape of the New Normal*, April 2020

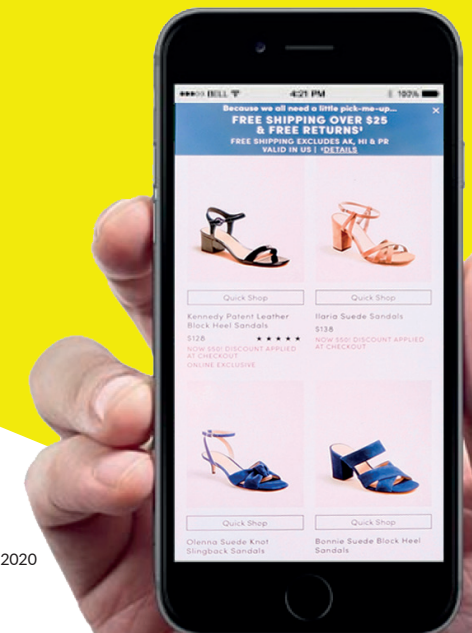
6. IMRG Capgemini Sales Index, April 2020

7. McKinsey & Company, *Fashion's Digital Transformation*, May 2020



It's clear that having multiple channels is a strength as customers are seeking out companies they would normally shop with in-person online. It just might be that the channel the sales come through changes.

- **37% of customers are currently spending less time working and more time online⁷**





Be aware that stores may be more useful as return points rather than sales points

Reopened stores may not just be faced with customers hungry to spend money, but those wanting it back.

The growth of ecommerce, and generous new return policies of up to 100 days, may change the core purpose of stores.

Quick, contact-free returns will boost the confidence of both customers and staff. For example, lockers could be used to collect online purchases or to deposit items to be refunded.

It might also be that specific return-only areas in-store will help minimise contact between customers, and can keep returned products separate from other stock.

Another option is to strip your returns policy back to the legal minimum. In the UK, most items bought in-store can be sold as non-refundable, and the return period for items bought online can be reduced to 14 days. You may achieve more goodwill by offering incentives or discounts to the customers who choose minimal refund policies, rather than forcing it on customers.

Accommodate short-term changes in human behaviour

By short-term, we mean the period that Covid will disrupt daily life. Mark A Cohen, former CEO of Sears Canada, believes that a 'window of normalcy' will return in late 2021, if not 2022.

In China, offline sales have improved as restrictions lift - although they are still far from normal levels. Whereas they were 39% of normal levels during the Covid-19 peak, they were around 79% in early May⁸.

As customers minimise their contact with others, they are making fewer shopping trips overall, but spending more in each transaction. Tesco says that, in April, customer transactions almost halved but basket size doubled. Primark is also seeing this in its reopened stores.

8. McKinsey & Company, *How Chinese consumers are changing shopping habits in response to COVID-19*, May 2020

9. Qudini, *The Covid-19 UK Consumer Survey - Retail*, May 2020

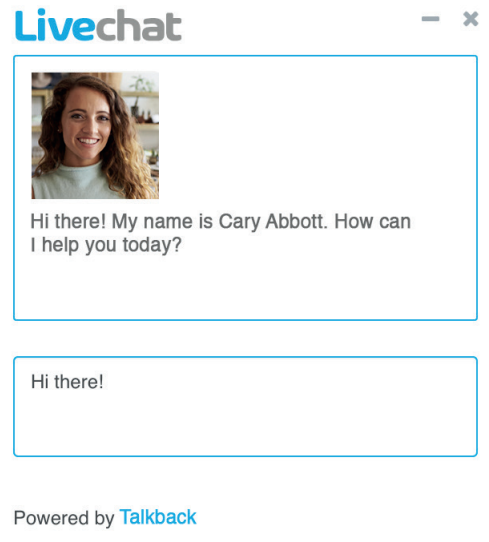
Customers are also finding other ways to reduce their time in store. In a survey by Qudini, 26% of customers are more likely to use click and collect services across retail in general during Covid-19⁹. This figure rose to 42% for grocery and pharmacy stores.

To take advantage of these shifts, retailers should focus on their omnichannel capabilities.



Concerns around job security may make shoppers cautious about spending. You may need to work harder to demonstrate product quality, answer customer FAQs and prove the value of your brand.

Customers are unlikely to be able to browse and buy in the same space. In the store, the focus will be on getting in and out quickly. As such, customers are likely to prioritise trusted brands and familiar names as they gravitate towards what they know.



There may be an opportunity to set up a service to browse stock online before visiting the store.

You can also invite your staff to livestream from the store, or assist customers on a 1-to-1 basis via videolink, to increase the browsability of online shopping.

Post-Covid: Retailing in the longer-term

With the pandemic situation changing on a daily basis, making firm predictions about the future is impossible. However, there are already some hints emerging about how post-Covid retail might play out.

Accommodate long-term changes in human behaviour

It may be that the most disruptive effect of the coronavirus pandemic is yet to be fully felt.

Around the world, non-essential purchases are down. Many consumers have reflected on what's truly important. This may trigger long-term shifts in consumer behaviour which will be with us long after a vaccine is found.

A KPMG survey found that 47% of UK customers plan on shopping as

they are now, even after the crisis subsides. 37% expect to keep some of their current behaviours and only 16% say they will shop exactly as they did before¹⁰.

Investing in great, new shopping experiences now could help you to win over customers and stop them reverting to previous behaviours. This includes wooing customers who normally wouldn't consider switching.

10. KPMG, *Preparing UK Businesses for their New Customer*, April 2020



While some view remote working as a temporary measure, others expect it to become part of the 'new normal'. Twitter has said it will allow employees to work from home forever if they wish to. The CEOs of Barclays and WPP both suggest that returning to large offices will be unlikely. If this is the case, we can expect shopping habits to be impacted.

Retailers who benefit from being part of consumers' daily routine (such as a morning coffee) may see a drop in traffic if fewer people are travelling daily to and from work. Impulse visits from passers-by (such as grabbing ingredients for dinner on the way home) may also go down. This could have a big impact on retailers based in transportation hubs, such as train stations, in particular.

We could also potentially see a decentralisation of retail with businesses moving from having a lot of staff in one location to using their store assets as mini offices for different teams.

Long-term we may see retail stores being designed with distancing in mind. IKEA is well-known for its in-store one-way system. This may become more prevalent across retail as a way of managing visitor numbers.

Other store designs that might serve as future models include Target's two-sided store in Texas. With one side focused on quick visits and the other on browsing, it could be a way for retail to manage different journeys in a distanced way.



Just don't be the slowest gazelle

If things get really bad, remember - not dying can be winning. When a lion chases a herd of gazelles, all the gazelles need to worry about is not being the slowest.

If you can stay in business while others can't, you'll be able to capture their market share.

Pro-actively adapting and embracing the opportunity for change is likely to yield more positive results, but sometimes we need to take any comfort we can.

What can I do?

This is the big question. The one on which the future of your business depends.

The question includes the word 'can', rather than 'should', because sadly you can't just do whatever you want. There are all sorts of restrictions and regulations that may make your bright idea impossible to execute.

In some cases you may be seeking to change things on a temporary basis. In others, you may identify ways to adapt weaker stores in the long-term, or to close them completely.

For example, we've seen many retailers considering different ways to sell the excess stock that they have accumulated during the lockdown period and short term pop ups are increasingly popular.

If you are considering changes, here are some key things to think about. It's also worth speaking to a legal expert to get specific guidance on your individual situation.

You never know what's possible until you ask.

What's in your lease?

If you haven't already, it's important to familiarise yourself with the terms and conditions of your stores' individual leases.

This will give you a sense of how much flexibility there is. Some leases will be a lot stricter than others, which may mean you have limited options - now and in the future.

For example, when your store reopens you might want to invite other businesses to run pop-ups to bring in footfall and revenue. Your lease will dictate whether or not this is possible.

If your business is struggling, your lease will highlight what room there is for a reduction in, or pause on, rent payments.

There may also be specific conditions that are triggered as a result of what's happening to other businesses. For example, if an anchor tenant leaves a shopping centre you have a store in, you may be able to terminate your lease or pay less rent until the space is filled.



Can you make changes to usage?

For some retailers, their survival strategy is to use stores differently. Examples include using stores as ecommerce facilities or warehouses, or using in-store cafes as delivery collection points, or picking and packing delivery orders from stores.

As previously mentioned, any such changes will be subject to your individual lease. However, they are also subject to planning regulations and restrictions.

It's likely that you will need permission for a change in usage. Various factors can influence the likelihood of this being granted. For example, you may find it easier to get permission to change an out of town store into a warehouse over a high street space. This is because disruption, such as an increase in logistics traffic, is likely to be less.



Deliveries from a high street store made using only bicycles may reduce traffic and be more likely to get a green light. Consider the tradeoffs though - this will also reduce the delivery catchment area of the store.

It may also be easier to make changes if they are temporary rather than permanent.

What are your staffing responsibilities?

If you've had to temporarily close your stores, there are likely to be many big questions around what to do with staff.

In the UK, the government is funding the retention of many jobs through its furlough scheme. For non-essential retailers with store staff unable to work, this is a major lifeline.



You need to factor in that you cannot ask staff to do any work for you while they are on furlough. Equally, you also need to keep in mind that the scheme is a temporary measure and you will have to start contributing to it from August.

While no-one wants to have to let staff go, it's worth exploring what rights you have when it comes to reducing hours, changing job roles and terminating contracts.

If you're in a position where your business is continuing to operate through staff working remotely, you should also make sure you understand your legal obligations regarding this. Are you responsible for health and safety for people working from home? Do you need to provide equipment for them to use or are they allowed to use their own devices etc? Do you need to ensure that data protection regulation is upheld?



Do you need to change your business structure?

An unfortunate reality of the current situation is that not all retail businesses will come out the other side or at least not in the same form as they went in.

Restructuring and bankruptcy often accompany a crisis.

Oasis & Warehouse, Debenhams, Laura Ashley, Cath Kidston and BrightHouse are among the names to have gone into administration since the beginning of the pandemic.

At the same time, a number of retailers are currently reassessing store portfolios. Clarks and Gap are among those who will not reopen all spaces. There are likely to be others.

If your stores are closed, this is a good time to look at each one and what it brings to your business. You can also assess the situation with each lease and whether it is coming to an end.

It's worth noting that some retailers currently see opportunity. Next has already snapped up five former Debenhams beauty departments to use to pivot their business into beauty.

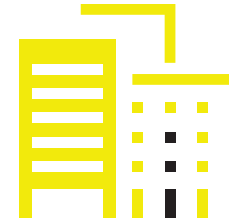
Next and John Lewis are also both mulling changes to their businesses that will make them less reliant on traditional retailing. John Lewis is reportedly exploring the option of working with a partner on more of a service-led offering. Meanwhile, Next is looking at becoming an online platform hosting other brands.



The Freeths take

The ongoing coronavirus pandemic has given retailers a lot to think about both now – and in the future.

The following information and advice comes from the legal experts at Freeths to help retailers navigate some of the biggest Covid-19 concerns.



Property

Retailers need to remain agile to enable them to react and respond to the challenges of any future pandemic, or public health emergency. To achieve this, we are likely to see retail, leisure and beauty operators requiring greater flexibility in the user clauses in their leases, and the ability to share occupation of the Premises with other operators. They will also need to consider any planning implications of any change of use.

One major issue faced by non-essential retailers during this crisis has been the requirement to pay rent,

FREETHS

notwithstanding that they have been unable to open their stores for trade.

The government have implemented some measures to ease the financial burden on retailers, including a rates holiday for the current tax year, introducing grants for smaller premises with a rateable value below £51,000 and temporarily suspending the Landlord's right to forfeit the lease. The government have announced that they are introducing insolvency protection measures, which are soon to be implemented.

However, notwithstanding these measures, as non-essential retailers have not received any income from their physical stores during lockdown, they are struggling to pay their rent. Also, from our experience, negotiations with landlords are not easy, as they also have financial commitments that they have to meet. Our clients have found that negotiations are slow and protracted.

Very few Landlords will agree to any form of rent suspension for the period of lockdown, unless they are receiving a benefit by way of a lease extension, or postponement of break dates, in return for the agreement of a rent free period.

Landlords' preferred option is for the rent for the lockdown period to be deferred, rather than suspended. This gives retailers breathing space, but does not help longer term, as they have not had any income from their stores for the lockdown period. Also, with social distancing measures likely to be in place for some time, it is likely to be several months before sales return to what they were prior to the lockdown period.

In future leases, we are likely to see a greater shift in rent for retail premises being purely based on turnover, mitigating the risk of any slowdown in sales/store closure in a crisis.

In non-turnover rent leases, retailers will be pushing for the rent to be suspended where they are unable to open their stores for trade, for reasons outside their control. The retail property market has to change to give retailers greater protection in their leases against any future crisis, and with all retailers pushing for change, we should see a shift towards this.

Top Tips

- Consider longer term plans for the business and what greater flexibility will be required in leases going forward;
- Engage with landlords at an early stage of any crisis to try and find a mutually beneficial solution to the challenges faced;
- Look for any lease events that could be varied to give Landlords back some value, in return for any rent free period, for the period of store closure;
- Push for the rent in future leases to be turnover only, to share the risk with Landlords of any future lockdown or decrease in sales caused by a national or global crisis;
- Consider opportunities to sell goods via pop up stores and short term lets.



Reputational management

One important consideration for retailers will be customer perception. How the business conducts itself during this crisis will play a key role in whether that is positively, or negatively affected.

What retailers do now, how they handle the pandemic, and manage the safeguarding of their staff and customers once they reopen, will have a significant impact on how they are perceived in the future.

Whilst customers will have some level of empathy for retailers during this time, opinion can quickly change, as we have seen with Richard Branson and Virgin Atlantic, who were heavily criticised for seeking government loans to help with cash flow.

Reputation management should not be viewed as a nice to have, but an essential part of the business recovery process.

One poor decision could leave lasting effects on a retailer's brand and reputation. Conversely, one smart move could help drive new customer sales, helping a brand elevate itself into a new space within the market.

Communication will be key. Customers will seek reassurance that their health and safety when visiting stores or ordering online will be a top priority. Retailers who fail to manage this effectively may see a heavy decline in footfall and sales.

Top Tips

- Put yourself in your customers' shoes and try to align your business with their key priorities;
- Ensure you remain connected to your customers through regular communication;
- Keep one eye on the future. The way the business conducts itself now will have lasting effects on how customers view your business.

Employment



On 28 May 2020 England's contact tracing system came into place (the devolved nations have their own systems). Contact tracing means that the requirement to self-isolate extends beyond just those that live in the same household as someone with symptoms to those who have had close contact with them.

This potentially has a huge impact on the workplace, as an employer could see staff having to self-isolate because a colleague has symptoms. Employers should consider putting in place measures to mitigate against the risk of losing entire teams, or a significant number of employees from a team.

The government has published a series of *Working safely during Coronavirus* guides, including specific guides for shops and branches, warehouses, and vehicles.

In terms of workforce management, the guidance is that employers should be taking measures to maintain social

distancing in the workplace. This includes things such as staggering start/finish times, and creating distinct shift groups to ensure employees have contact with fewer colleagues.

Employers should consider whether it is necessary to change employees T&Cs, or HR policies, in order to implement and manage the necessary changes to working practices.

The ongoing need for social distancing and the economic impact of the 'lockdown' will require retailers to make changes to their workforces. This is likely to see redundancies and changes to T&Cs, or a mixture of both.

Retailers should be aware that if these changes could affect 20 or more employees, the obligation to collectively consult may be triggered. If this is the case, careful planning and early engagement with employees, or the trade unions, is vital to minimise the risks associated with such a process.



Our experience during the coronavirus crisis is that employers that have engaged with employees, and have been as transparent as possible, are the ones that have managed best through the crisis, and therefore avoided employee relations issues.

Experience from the 2008 financial crash tells us that employers who get employee 'buy-in' during the initial crisis, are more likely to maintain employee goodwill and loyalty when things improve.

Home working was implemented for many businesses at very short notice when this crisis started. As it is likely working from home will become the norm for an increased number of head office staff, employers should consider whether they are set up to support this in the long term.

Issues to consider include: homeworking policies, properly risk assessing home working environments, ensuring employees have the correct equipment, and ensuring supervision and communication systems are suitable over a medium to long-term timeframe.

Health and safety



As with most things relating to Health & Safety, it is all about risk assessments being effectively carried out. For retail, it means reviewing existing risk assessments, taking into account Covid-19, using the guidance issued.

You should then share the outcome of those Covid-19 Risk Assessments, and the methods to eliminate, or reduce the coronavirus risk with the workforce.

The government has given an extra sum of money to the HSE and EHOs to police the methods being used, and to initially advise the retailer if they have got it wrong. If need be, enforcement notices can be used, but these are being seen as powers of last resort!

Guidance has also been published by the government on what you need to do to re-open as a specified retailer.

The retailer will need to do a specific Risk Assessment for the store using this guidance.

Restructuring



Whilst retail businesses have been hit particularly hard by the impact of Covid-19, the UK government has introduced new legislation to help businesses that are struggling from the economic impacts of coronavirus.

In addition to not being allowed to forfeit a commercial lease for non-payment of rent, there is now a temporary suspension for landlords (and other creditors), presenting winding up petitions against companies that are unable to pay their debts due to the impact of the coronavirus crisis. The goal is to protect “otherwise viable companies” from collapse.

However, retailers should be aware that rents are not being waived, but simply deferred. So retailers must still address how they will repay landlords, and other creditors, once such measures have been lifted. Directors of retailers should seek professional advice. If they are insolvent, there is a risk of personal liability for the directors.

There are also a range of restructuring options available which retailers should consider if they are struggling, or are likely to struggle financially in the future.

Directors duties



Retail is one of the sectors to be hardest hit as the Covid-19 outbreak worsens, with short to medium-term cash-flow issues expected. As the situation has developed so quickly and unpredictably, it has been hard to prepare for. Directors should therefore be particularly alert to the effect that these circumstances may have on their statutory duties.

The general duty to promote the success of the company is modified where a company is (or is on the verge of being) insolvent so that a director must act instead in the best interests of the company's creditors.

A director may also be guilty of wrongful trading and be ordered by the court to contribute towards the general pool of assets which are available to a company's creditors where he or she:

- knew or ought to have concluded that there was no reasonable prospect of the company avoiding insolvent liquidation or administration;
- continues to allow the company to trade after he or she knew or ought to have so concluded;

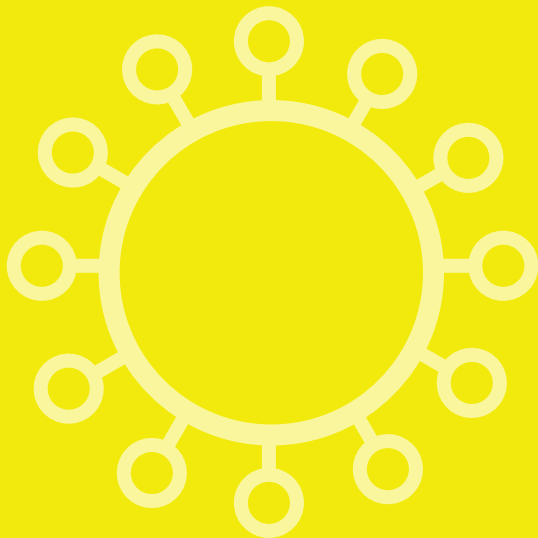
- does not take every step he or she ought to from that time to minimise the potential loss to creditors.

However, the government is expected to pass legislation shortly to temporarily suspend the wrongful trading provisions.

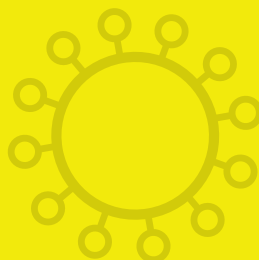
The potential risks for a director in such circumstances are complex. Determining, with reasonable certainty, whether a company is in fact insolvent is, therefore, crucial, particularly as commercial decisions in the creditors' interests can be substantially different to those benefitting shareholders.

Directors who are concerned about the company's ability to meet its current and future financial commitments following Covid-19 should seek independent advice as soon as possible if they are to avoid potential personal liability under insolvency legislation.

Directors should hold regular board meetings, and take detailed notes of any decisions taken, and the justifications. It is important to take advice early as this advice can act as a defence.



Part 2 of this report will look at how retail can become more adaptable to disaster and how you can legally protect yourself.



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