



Business as unusual



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

Part 2
How to
crisis-proof
retail and legally
protect your
business

About this report

Take it from the *Titanic* – no boat, or business, is unsinkable.

While it's fine to hope that your retail business never hits a metaphorical iceberg, it's worth preparing in case it does. Crisis-planning shouldn't be a chicken or egg situation. The plan always comes first.

After all, imagine how different the *Titanic* story might have been if they'd had adequate preparation and provisions for such a disaster.

The thing about crisis is that, like the iceberg, you typically don't see it coming. And once you do it can be too late to turn the boat.

This report is designed to help retailers put in place the adaptability needed to keep their business going through crisis, but also through change in general. It also highlights the different forms that adaptable retail can take.

This is the second installment in our two-part report series on mitigating the impact of global crises on retail. If you would like a copy of the first part, please get in touch using the contact details on the back page.

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.



Why adaptability is retail's most vital attribute

Your retail business' ability to survive a crisis is not tied to how big your company is. It's not about how many stores you have or how many employees or how much your turnover is.

It's all about how adaptable you can be.

Adaptability is crucial to survival. Darwin's Theory of Evolution says that the species that thrive are the ones that adapt to the changes in their environment. Retail is no different.

If you can't adapt your business, or you're unwilling to, then you're effectively limiting its lifespan.

In 2015, McKinsey reported that the average lifespan of a company listed in the Standard & Poor 500 index was 61 years in 1958, 25 years in 1980, and only 18 years in 2011. At this rate, it says that 75% of listed companies will be gone by 2027¹.

Clearly there's a genuine competitive need to be able to adapt. It's now easier than ever to be left behind.

However, survival isn't the only benefit of adaptability.

1. McKinsey & Company, *Six building blocks for creating a high-performing digital enterprise*, September 2015

"Adaptability is about the powerful difference between adapting to cope and adapting to win."

Max McKeown

This is an important distinction. Businesses that have adaptability built into them don't just change in order to cope with what's happening around them. They can turn these situations to their advantage.

For example, fast fashion is fundamentally built on the concept of constantly adapting to new trends and customer demands.

As such, when lockdown hit, these brands responded accordingly with sales to get rid of old stock and the quick launch of new loungewear lines that fit the stay at home vibe.

As a result, some fast fashion companies didn't just have a successful April compared to other retailers, but actually increased sales for the month over the previous year. Their success

came from their decision to quickly adjust to the new landscape.

Adaptability doesn't come from nowhere. It is made. It is a conscious decision by businesses to enable them to react to changes which may be sudden and unexpected.

It's not about having all the answers – no retailer has a crystal ball regarding how long Covid-19 will be impacting us for – but developing the ability to quickly take a read of the situation and sensibly act on it.

This requires a significant mind shift – particularly for big and longstanding retailers. But being adaptable isn't just about being prepared to deal with crises, it's getting out of siloed thinking about what your business is.



Too many retailers cling to fixed labels about their business whether it's department store or grocery company or physical retailer or ecommerce company.

Thinking about your business in this way can quickly begin to limit you. The definition of 'what you do' needs to be broader and more fluid than just selling things through one or two channels. If you can instead think about how what you do more widely improves and impacts your customers' lives, then you can keep adapting alongside them.

Of course, it's important that you always stay true to your brand values and not cut corners in the name of quick change. It is possible to adapt without losing sight of why customers choose your retail business in the first place.





We've seen the issue of adaptability play out time and again in the retail industry. Think about the retailers who have folded in the last 5, 10, 20, 30 years? How slow were they in adapting to change? Were they sluggish when it came to ecommerce, for example?

How do you imagine those same businesses were set up for dealing with a crisis on a mass scale? Probably not very well.

The coronavirus pandemic isn't a one-off either. You don't have to look back too far in history to find all sorts of crises from the Great Depression to the 2008 financial crisis to the 2002 SARS outbreak. And in all these cases there were businesses that failed and businesses that survived and some businesses that thrived.

Being adaptive is the best way to ensure you're in the latter category.



What does adaptable retail look like?

The answer to this question is 'it depends...'

It depends on your specific business.
It depends on your customer base.
It depends on what you sell.

However, there are a number of key ways that retailers are working to increase the adaptability of their businesses.



SNOG

Frozen Yogurt

New store models

Physical retail stores have a lot of benefits. New research from Intu and the Javelin Group says that £8 of every £10 of retail spending in 2025 will still be in some way influenced by physical stores².

This includes the halo effect, which can see online sales more than double in an area where there is a physical store.

At the same time, physical retail has its challenges. Many retailers find themselves tied to restrictive and long leases that add up to a significant cost burden. And of course, right now, many have experienced the pain of having to pay for spaces that aren't open for trading.

As such, we're increasingly seeing retailers reinventing what we typically think of when we think of physical stores.

2. Intu/Javelin Group, *The value of physical retail*, June 2020



This includes opening up smaller stores that come with fewer running costs. Nike has announced that it is going to open 150-200 new small format stores in the coming years. These will draw from its Nike Live concept which focuses on personalisation and omnichannel.

In the UK, Fortnum & Mason is traditionally known for its large multi-floor department store, but the brand also operates a number of small-format spaces including St Pancras station in London. This enables it to tap into a new audience as this isn't a location that its previous stores could fit into.

It's a similar approach to that taken by many grocery chains with their 'local' stores on high streets up and down the country.

We're also seeing retailers pivoting to use their store space in different ways. One popular approach is to have an in-store cafe and/or restaurant. This makes the store more adaptable by giving customers more reasons to visit outside of making purchases.



It can also be a major source of income with Nordstrom reporting that one in four purchases at its stores are food or drink.

Some are spreading risk by inviting others into their space. Topshop's Oxford Street flagship has been a leader in this area for several years hosting a number of in-store pop-ups and services from other complementary brands.

Meanwhile, Next took this approach to a new level with the opening of its Oxford Street flagship in 2018. The store hosts dedicated shop-in-shop spaces for HEMA, Paperchase and Costa Coffee, alongside Next's wares.

Other retailers are adapting their store portfolios in recognition of the rise in online shopping. This may mean operating a small number of experiential spaces that aren't focused on selling, but customer relationship building.



For example, Microsoft has announced that it will permanently close all of its retail stores except for four experience centres in the US, Australia and UK. These spaces will not sell any products at all.

Another approach is to focus on services, rather than product, as Nordstrom has done with its Local concept. These spaces are typically located closer to customers and offer services such as tailoring, personal shopping, beauty experiences and order collection.

For some retailers the changes are more behind-the-scenes. To the customer the stores may not look

any different, but the way they function has shifted. On a basic level this is allowing customers to return product bought online in-store or to collect them.

This may also mean moving towards dual-purpose spaces where store stock is also used to fulfil local online orders. Others are looking at the concept of turning stores into dark spaces which aren't visited by customers but instead serve as ecommerce fulfillment hubs.

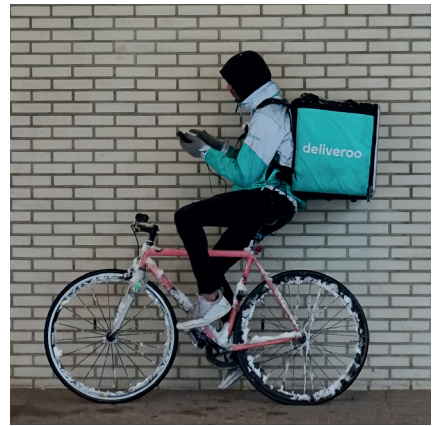
We've already seen this happening in the food delivery world due to the success of services like Deliveroo and UberEats.

Meanwhile, retailers like Levi's and Blackwell's temporarily repurposed their recently closed stores for picking online orders during the coronavirus pandemic. Majestic Wine made the decision to close its store estate for the same purpose, even though it was on the list of essential retailers.

When it comes to adaptable store models, we can't overlook pop-ups.

Pop-ups have shifted from being promotional concepts to an essential part of the retail mix. They give retailers a risk-reduced way of opening physical spaces whether on a temporary basis or as a test for a more permanent store.

The temporary nature of these stores and agreements breed adaptability whether it's not taking such a hit if the space has to close to quickly opening up in a booming market.



Unattended retail

Unattended retail has been around for a long time in the form of vending machines, but new technology is powering new spins on this concept.

We're now seeing vending machines being used to sell everything from fresh flowers to meat to socks to salads to whiskey – and all things in between.

Retailers are also gathering hugely valuable data from these machines as to product popularity, buying trends and more which can be used to quickly adapt offerings.

In China, small scale stores that use a cashierless self-service model have become a common sight. Customers access the space and pay via a smartphone app. Not only are these spaces less costly than operating a traditional store, but they have the benefit of being accessible 24 hours a day whenever customers need them.

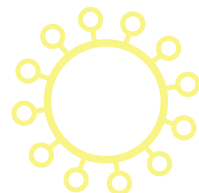
Even Amazon is exploring tech along these lines with its Amazon Go spaces. It now plans to sell that solution to other retailers.



SPAR has adopted the small format trend with its new mini mobile store in the Netherlands. The one-customer-at-a-time space works on a self-service basis with customers paying via contactless technology.

The company is envisaging placing the store in spaces that have limited facilities but may not support a traditional store model. This gives SPAR a huge amount of flexibility whether it is dropping a store into a car park or a rural location.

Likewise, it can use the mobile space to respond to new opportunities or locations with high demand.





Moby Mart has taken this idea even further with its self-driving mobile retail units. The dream is that you could use your phone to summon a unit when you need to buy something, and it will come to you.

However, driveable stores also serve a use as temporary stores that can then be repurposed elsewhere whether that's rural places with little infrastructure or a one-day event. In theory, you could even have a mobile collection and returns store that could weekly serve a place where you don't have a physical store.

Freeths' Top Tips

- Unattended retail outlets leverage artificial intelligence and the Internet of Things to provide customers with a frictionless shopping experience. This involves collecting and using customer personal data in a way which will be new and unfamiliar to most shoppers.
- Businesses can build strong relationships with their customers by using their consumer information fairly and lawfully. The best-prepared businesses will factor data protection considerations into their use of unattended retail from the outset.
- This includes being open and honest with customers about how their data will be used, and having lawful grounds under GDPR for using the customers' data for specific purposes.

Direct-to-consumer

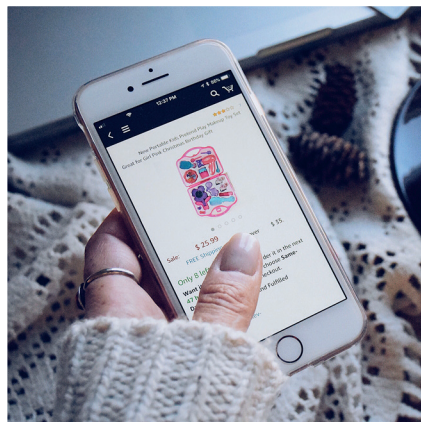
Another way that retail is adapting is by increasingly going direct to the consumer. While this isn't a brand-new trend with the likes of Nike moving in this direction for some years, it is growing.

Today even brands like PepsiCo are experimenting with cutting out the middleman and selling direct. It's clear that this move has been driven by the coronavirus pandemic which would have seen many traditional Pepsi outlets, including bars and restaurants, closed.

While Pepsi is never going to entirely shift away from these channels, having a direct line to consumers as well will give it greater flexibility going forward.

Direct-to-consumer has also allowed new retail models to be developed. Function of Beauty, for example, is an online retailer selling custom hair products directly to customers. It claims to have 54 trillion possible formulations which is a model that doesn't lend itself to the traditional limitations of shelf space.

At the same time, Function of Beauty has greater flexibility. It can continue to adapt its formulations quickly as new breakthroughs and developments take



place. It has a much shorter time to market than traditional competitors with the ability to turn around each custom formula in as little as seven days.

Drinks company Dirty Lemon has found a way to sell directly to consumers using simple text messaging. Customers can text the company at any time to reorder their favourite beverages with no need to go to a website or refill their payment details.

Dirty Lemon has even transferred the concept to physical retail with a cashier-free store that sees customers asked to pay for their chosen products via text. It's a trust-based operation that seems to work for the brand.

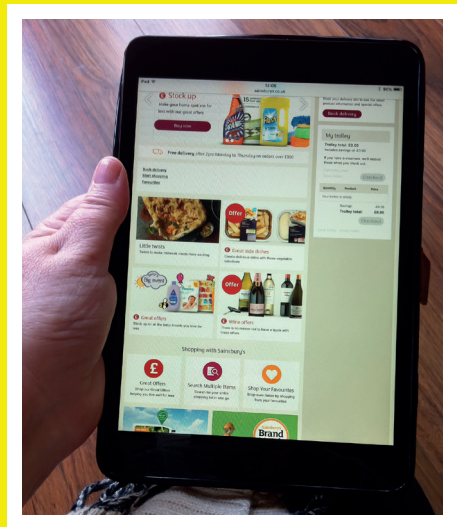


Digital channels

One of the easiest ways for retail to build in adaptability is to embrace digital channels.

For many retailers having an ecommerce operation is now a no brainer. But it took a long time for the industry to get here. With technology changing so fast though, retail can't afford to keep dragging its heels in the future.

The beauty of digital is that you can transact anywhere at any time. Retail can now become part of almost everything we do in the online space. This includes enabling customers to shop directly from social media.



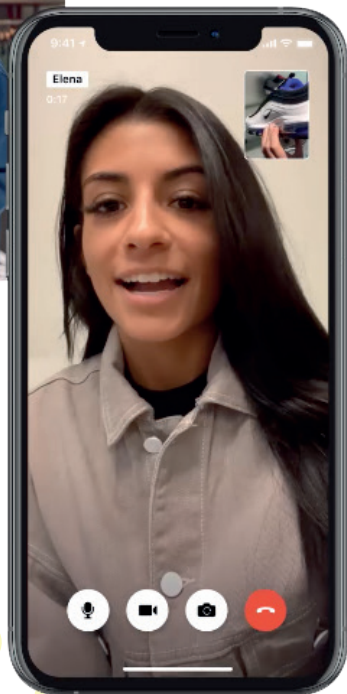
With many using image-heavy platforms like Instagram for inspiration, it makes sense for brands to enable them to seamlessly buy what they see. These transactions can now take place within the social media platform itself rather than redirecting to the retailer's website.

But we're also seeing brands intermingle with our digital lives in unexpected ways. Last year, Nike went digital-only for its latest Air Jordans design by dropping them in the hugely popular video game Fortnite.

Following the cancellation of many major festivals this year, a lot have turned up as digital versions including one taking place in the Minecraft video game.

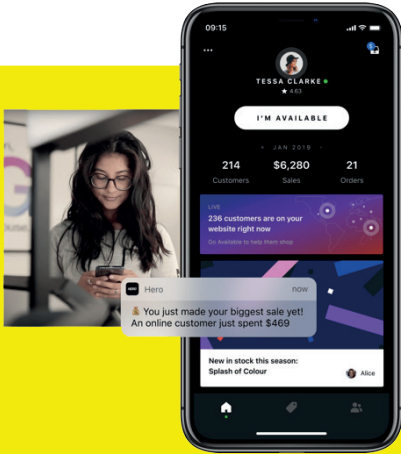
Retail needs to embrace all these digital opportunities rather than putting its eggs in one basket.

Social media channels, for example, come and go quickly so the key is being mindful of this and choosing platforms that make sense for the business and audience. At the same time though,



always having one eye on what is declining and being ready to adapt and shift away.

The meeting of digital and physical can also create new opportunities. Companies like Hero bring together online shoppers with in-store staff via livestreaming. The employee can answer customer questions and show them a product and its features, which helps with conversion.



With a system like this, retailers can keep making use of their physical stores and staff expertise even if customers aren't able to visit them in person as per the Covid-19 pandemic.

Likewise, other retailers have seen success by adopting a live commerce model that sees staff or influencers showing and talking about products in a home shopping style. Customers can then buy and have their items shipped to them.

In China, Dada Group used its on-demand delivery capabilities and online retail platform JDDJ to offer an accelerated live commerce experience. It held a series of livestreaming events with different products and promotions.

Customer orders were fulfilled from stores less than five kilometres from their location, so they were in their hands within an hour. As such, Dada was even able to promote perishables like ice cream during the events.

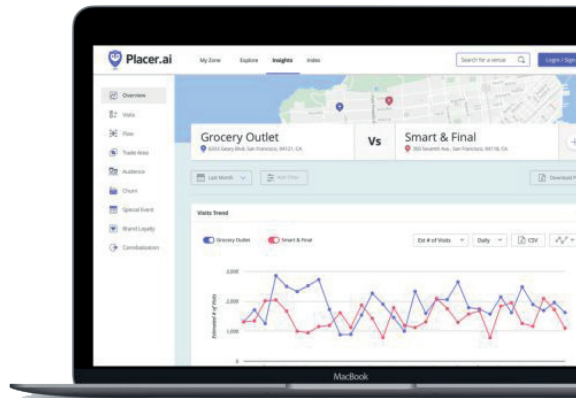
This approach isn't just applicable in a pandemic but could give retailers greater adaptability by enabling them to sell in locations where they don't have physical stores – including other countries.



Data driven

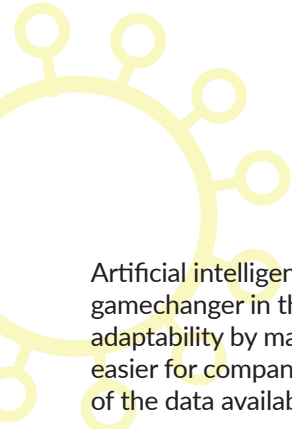
Retail is increasingly getting to grips with data in order to adapt faster to change. Data can provide new insight that in turn lowers risk and enables quick decision making.

One of the best examples of this is Nike's By Melrose space in LA where much of what's on sale is determined by local online sales data. By looking at buying patterns and engagement, Nike is able to ensure what it stocks is relevant to its local customers.



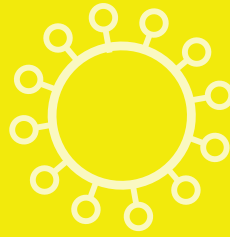
Other retailers are looking at ecommerce data to identify locations with high demand in order to determine where to open a store or pop-up. There are also companies like Placer.ai that retailers can use to get free location analytics and understand potential footfall before they open a space.

Location management platform Geoblink enables retailers to better understand the performance of every store by overlaying data about what's happening in store with data about its specific location eg footfall. This dual-context means retailers can take action to optimise each store – or identify those that they could afford to lose from their portfolio.



Artificial intelligence (AI) is also a gamechanger in the quest for adaptability by making it faster and easier for companies to make sense of the data available to them.

Using information such as sales data, trends and seasonality to predict demand can be the difference between being stuck with billions of unwanted stock and a lean operation that keeps changing stock according to customer wants.



It's not just a nice to have either. Businesses that use AI reportedly grow 30% faster than ones that don't. The benefits also massively outweigh the upfront investment. Juniper Research reported that retailer investment in AI would reach \$7.3bn by 2022. In the same period, Capgemini expects AI will deliver cost savings of \$340bn³.

Freeths' Top Tips

- Some of the examples we have discussed in this section leverage location data, in order to deliver a 'smarter' and more targeted service to consumers.
- In some cases, location data can be classed as 'personal data' and therefore attract regulation under GDPR. As with unattended retail, businesses should factor data protection considerations into the design of their location data-based offerings.
- What will you tell customers about your use of their location data (and how will you tell them)? What are your lawful grounds for collecting and using the data? Can you ensure that the location data you collect is anonymised, and avoid GDPR issues altogether?
- A business which embraces such challenges will not just avoid unwanted attention from data regulators, but also enhance its reputation amongst the marketplace.

3. Juniper Research, *AI in Retail: Disruption, Analysis and Opportunities: 2018-2022*, 2018;
Capgemini, *Building the Retail Superstar: How unleashing AI across functions offers a multi-billion dollar opportunity*, 2018

How to crisis-proof your retail business



THE FUTURE DEPENDS
ON WHAT YOU DO TODAY

The thing about crisis is that we don't usually see it coming. But just because you don't know exactly what will happen in the future, it doesn't mean that you can't put your business in the strongest position possible to deal with it.

Run through different scenarios

One of the best ways to prepare yourself for the future is to practice for it.

It may sound silly but imagining different scenarios and how your business would respond to them will help you identify weaknesses and points of vulnerability.

For example, what would you do if your head office couldn't open? What about if half your workforce called in sick at the same time? What if your servers went down?

Scenario planning will also highlight points of high reliance in your business. For example, is international travel essential to your model? Do you rely on a delivery partner to fulfil ecommerce orders? Do staff need access to a specific system to be able to work? Can your product only be made in a specific place?

What will happen if those things are suddenly unavailable? Can you continue to run your business? If the answer is no, you may need to ask yourself if you're overly reliant on certain things – and whether you can build more flexibility in.

Some jobs are less flexible by their very nature such as manufacturing. However, you can still look at ways to build in adaptability. Would it be better to have two smaller sites, for example, rather than one large one so that if something happens to one you have lost 50% capacity rather than 100%?

Can the work be done from other manufacturing premises or does it require specialist equipment? Can you identify a few other locations where you could temporarily shift activity on a short-term rental basis if needed?

There is no such thing as too much in scenario planning. The ongoing coronavirus pandemic has made that clear. Imagine all of the worst things that could happen even if they seem unlikely. That way you won't overlook anything.

It's also important to bear in mind that not all crises have a global impact, but they can still affect your business.

For example, a terrorist attack in a major city will disrupt your operations in that location on a short-term basis. But the psychological impact on shoppers may last a lot longer, which could mean footfall is reduced for some time. Therefore, you may need to ramp up your ecommerce operations in that area.

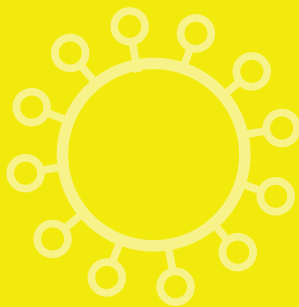


The extent of business disruption can also vary based on the affected location – even when it's the same type of crisis. For example, if a town or city was to flood then it may be that the impact is contained to certain stores in your portfolio. However, if a flood ended up damaging the servers that you use to run your entire operation you might find that your whole business suffers.



Scenario planning is adaptable by nature. Even if that exact scenario doesn't happen you can easily adapt the plans you do have to the situation in question. For example, your evacuation plans in the case of a fire may largely be applicable if a terrorist attack were to happen in your location.





What if...?

Asking yourself 'what if' is a great way to think through possible scenarios that could impact your business.

For example:

What if...

- ... there was a major terrorism attack?
- ... your business experienced a cyberterrorism attack?
- ... there was a flood?
- ... there was a fire?
- ... there was a pandemic?
- ... your servers were destroyed?
- ... war broke out?
- ... a tornado or earthquake hit?
- ... there was a mobile network outage?

You don't have to solely focus on specific crises. You can also think about general scenarios that could be caused by a variety of things.

What if...

- ... you couldn't open your stores?
- ... you couldn't access your head office?
- ... you had no staff available to work?
- ... the government banned a certain material you use in your products?
- ... your supplier went bust?
- ... your two biggest competitors teamed up?
- ... road traffic was banned?

**EMERGENCY
BREAK GLASS**



Assess your risk

The words 'risk assessment' are familiar to every business.

When it comes to crisis-planning, risk assessment falls into two categories – what are the biggest risks and what are the most likely ones.



These are two separate things. For example, a tornado could wipe out your server but so could a member of staff by accident. The latter has a far greater probability of happening unless you know that your server is located in an area with a high chance of tornados. In which case you may want to reduce that risk by moving them to another location.

Human error is generally one of the most likely risks you'll have to deal with. We all make mistakes sometimes. In many instances these aren't going to have major repercussions, but it's vital that you think about where you are most reliant on people and what would happen if they got it wrong.

There's a risk that a shop assistant will put in the wrong price but it's not going to collapse your business overnight.

There's a higher risk to your business if a store isn't locked up properly at night. There's an even higher risk if someone was to take your ecommerce site offline.

Likewise, it's important to have a sense of where your business is most at risk ie where you have the most to lose. For example, a cyberterrorism attack may have a significant impact as might the failure of your servers. Being unable to trade from your stores may be another.

These are likely to be scenarios where there is a very low risk that they could happen, but if they did they could have a catastrophic impact on your business. It's therefore essential that you at least consider them. Again, recent history has taught us that things can change quickly and dramatically!



Always bear in mind what you actually need to run your business. By identifying the essential elements, eg equipment, you can prioritise these elements in your risk assessments.





Create policies and plans

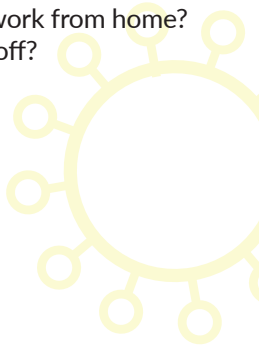
After the 'what if', comes the 'what to do'.

Once you've thought about the different things that could happen to your business, you can put in place the policies and plans needed to keep yourself going in the event of a crisis.

Identify the key steps that should be taken in the event of certain crises. You may just want to focus on those that are most likely to happen to your business.

This might include staff policies that outline what is expected from employees during a crisis.

Do they need to come into store?
Do they need to work from home?
Do they get time off?



Freeths' Top Tips

- Review employee terms and conditions to ensure they enable you to implement your plans in the event of a crisis. Following recent experiences, many employers will be looking to build greater flexibility into their employment contracts.
- You may also want to take this opportunity to review your current working practices to ensure they are sufficiently agile to deal with future issues. For example, allowing employees who can work from home to do so on a more permanent basis is one way of minimising disruption in the event of a future crisis.

Advance planning gives you a place to start if the worst happens. You won't lose time wondering what to do. Or damage your business by making kneejerk reactions to what's happening around you. It might be that you don't follow the plan to the letter but mapping out the steps means you have a clear picture of what you can skip if needed.

Being adaptable to crisis does not mean you need a separate plan for every possible eventuality though. A lot of the steps may be the same in the case of many scenarios. It simply means putting enough flexibility into your business that you can continue to operate under almost any circumstances.

Don't keep your plans to yourself. It's important that key stakeholders such as store managers know how to respond during a certain situation. It may also be that they have thoughts on how to improve your plans.





Look at where you can repurpose assets

When thinking about how your business would respond in a crisis it's important to consider what assets you have and how they could be repurposed.

For example, you might have a series of lockers in locations outside your stores that customers can use to collect items ordered online. If your stores had to close these would become key transaction points. Or they could be repurposed to allow for returns.

You may have stores that when closed can still be used as dark spaces for fulfilling ecommerce orders from. Or as temporary mini warehouses.

You may have a situation where staff can't come into work but can continue to sell to and support customers remotely. This could either be by taking queries over the phone or via livestreaming. Or it may be that customers can't come into store but staff can. In this case, livestreaming could be a way for customers to still shop that physical space.

It may even be that there is an opportunity for you to repurpose assets even if you are not directly affected by the crisis. For example, if a non-competitive company were to lose their servers you could potentially turn your ecommerce site into a mini marketplace to also sell their items.

The key is to not think of your assets purely in terms of the way you use them now or what they were originally designed for.

Don't forget your supply chain

When disaster strikes it's easy to focus in on your core business and protecting that. However, it's important that you don't lose sight of all the supporting elements, such as your supply chain, when it comes to crisis planning.

If your business isn't able to trade at its normal level, then what does this mean for your suppliers? Do you need to pause or cancel orders? Do you need to divert supplies elsewhere? For example, if the crisis is localised then you may be able to send more stock to other operational locations.

You should also consider how quickly pivots can be made in your supply chain. Can you quickly jump onto new trends? Can you use your manufacturing sites to make a new product line?

During Covid-19 we've seen a host of companies from fashion brands to cosmetics giants to beer brewers pivot to produce hand sanitiser, masks, gowns and PPE.

In some cases, it may be your supply chain rather than your business that is impacted by crisis. It's therefore worth considering what you'd do if part of, or all of it, was taken out of action. Could you secure more capacity via another manufacturer?

Do you need to pause or halt promotions or shopping events due to reduced stock? Can you make better use of the stock you do have by using your stores as ecommerce fulfillment points?



Freeths' Top Tips

- **Logistics agility** – consider running dual systems so that you can mitigate credit risk issues or risks associated with disruption due to contamination or local lockdowns.

We have seen an emerging market trend to put in place new arrangements with at least two providers. This is particularly popular in luxury where products are high value so restocking a new supplier in full is not an option. Having two suppliers in different areas with reasonable stock holdings provides balance and greater certainty of continued supply.

- **Be proactive** – compliance with government health and safety guidance is generally the responsibility of the employer, but you will suffer if your suppliers are out of action. Make clear what standards you expect them to adhere to and gain written commitments where possible.

Customers increasingly expect brands to be aware of the activities and ethics of their supply chains. We have advised on the legal and brand risk associated with a potential outbreak in our client's warehouse and expect to see further queries of this nature as lockdown eases.

- **Adhere to contractual notice requirements** – if you plan to exercise a force majeure clause or suspension, make sure you do so in accordance with contractual provisions.

Are you legally protected?



If the worst happens, it's comforting to know that you have legal protection. It may also be the difference between your business weathering the storm and your business folding.

It's unlikely that many businesses had cover expressly built into their insurance policies for a pandemic like Covid-19. Yet, a payout in a situation like this could be what keeps a business alive.

When considering any insurance policy, you should think about the purpose of purchasing it. Insurance is designed to provide financial support when unexpected situations arise causing losses that you cannot afford. You should consider it as a risk transfer process and think *"What can I not afford to happen?"*.

As Covid-19 has demonstrated, think carefully about situations where your entire business is affected. It may never happen, but if it does, you will know that you have the support to keep you going.

Likewise, few retailers would have ever banked on having to close all their stores at the same time. As such, they wouldn't have thought to push for leases and contracts that gave them flexibility in such a scenario.

See how you can share risk

Colliers International has found that 79% of UK property owners believe that the Covid-19 pandemic will permanently change how retail property is leased and the terms on which it is occupied⁴.

With change already expected, there is the opportunity now for retailers to shift their rental models to something more favourable – both now and in the case of future crises.

If possible, retailers should be considering turnover-based rents which help to share the risk with landlords. New Look is one retailer who is currently looking to shift its 500 stores to a turnover-based rental model.

AllSaints has recently been successful in shifting rental payments to be based partly on turnover.

In some cases, it is operators who are pioneering a shift in rental models. Boxpark, which runs multi-retailer sites using shipping containers as mini stores, is offering an option of fixed-term leases or turnover-based rent to potential tenants.

4. Colliers International, May 2020

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You can also look at opportunities to build in rent suspension provisions in the case of national or global disasters. Again, this will help to reduce your risk and minimise costs should you be unable to conduct your business as usual.

Other options for sharing risk might include looking at whether you can legally introduce pop-ups from other businesses into your retail spaces.

Freeths' Top Tips

- Seek more flexibility in new leases in terms of user and the ability to share space with other operators.
- Engage with Landlords at an early stage in any plans to repurpose existing retail space.
- Consider the impact on turnover rent of online sales that may be connected to the physical retail stores.
- Negotiate rent suspension provisions in new leases to cover future forced closure of the Premises.





Ensure you're covered

One of the best ways to crisis-proof your business is to make sure you're insured for as many eventualities as possible. Making sure you know what is covered is as important at the time of purchasing your insurance (if not more) as reading the policy when the time comes to make a claim.

If you haven't already, take this opportunity to look at all your insurance policies to see if they need updating or if you need to add extra coverage to your plan. This is a good practice to get into every time you renew. Things are constantly changing and it's easy for the cover that was adequate last year to no longer be sufficient today.

Make sure that you read every word carefully as it's easy for insurance policies to become invalid. There will be specific requirements when it comes to making a claim that you must comply with; for example, a common requirement is that you must notify your insurer of a claim within a certain timeframe.

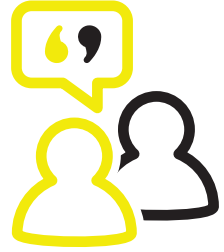
Likewise, it's worth knowing what you aren't covered for. For example, your policy may not cover 'acts of god'. Knowing exactly what this means and whether you're at high risk of experiencing one of these 'acts' and not getting a payout will help you determine if you have the right policy for your business.

Every policy will have one or more insuring clauses (i.e. what is covered) and exclusions (i.e. what is not covered), which should be read together. The policy will also have general exclusions that apply to the whole of the policy.

If you are using a broker, you should discuss with them one-off events that you think are important to your business (for example, countrywide lockdowns). If you don't understand the effect of certain clauses or exclusions, ask your broker to explain them.

Remember, your broker is acting for you!





Talk to a lawyer

If a crisis should hit your business, it's worth talking to a lawyer as soon as you can. They'll be able to help you look at your options and may be able to identify opportunities to lessen the impact.

For example, this might include reassessing your property portfolio and looking for opportunities to use lease events, such as break rights, to negotiate better terms with landlords.

H&M, for example, has suggested new terms to its landlords that would enable it to break the lease for a store with one month's notice if trading conditions do not return to the level they were at pre-coronavirus. Likewise, a lawyer may be able to advise on where you should be considering termination provisions.

Businesses must avoid running out of cash entirely by identifying problems early. There are various solutions available in the insolvency process, with newly introduced measures hoping to save more businesses impacted by the current pandemic.

Options include administration, new moratorium, CVA and restructuring plans before the final point of liquidation. One of the most important elements of any restructuring at the moment is the need to consider medium-term flexibility rather than a short-term fix. If this does happen businesses will end up in the same position in a couple of years' time.

If you purchased your insurance through a broker, your broker should be able to inform you whether the policy provides you with cover. Your broker should also be able to contact your insurer on your behalf to make and progress any claim. If your insurer rejects cover, it's worth talking to a lawyer about the merits of complaining to the Financial Ombudsman Service or issuing a claim against the insurer.

As the current litigation progressing through the courts (including the FCA test case on business interruption insurance) proves, insurers do not have the last word on whether a loss is covered.

It may be possible to reduce your expenditure by terminating or changing contracts (using force majeure clauses, termination for convenience or negotiation). Freeths have certainly been busy doing this; anything to help the bottom line.

In addition, against the backdrop of the current turmoil, some businesses are capitalising on the opportunity to snap up brands at good prices and reposition them digitally.

You should also review inventory and relationships with third party resellers and consider how best to manage routes to market where you have excess stock and resellers who may be incentivised to “product dump”. Always ensure conversations are compliant with relevant competition regimes.

This was a particular concern for one of Freeths’ high-end sportswear clients, whose ranges are very seasonal. The company worked closely with its wholesale network to manage excess stock from Q2, to avoid stock dumping damaging their brand.

We have also seen innovative new businesses helping to solve this problem. Lost Stock is a start-up driven by Mallzee. It sells garments from cancelled orders and works directly with producers, but could be a great alternative for a retailer looking to forge new collaborations.

Your lawyer can advise on the extent it is possible to change your employment contracts and the correct process for doing this. They will also be able to advise you on how you can go about changing current working practices and the risks/benefits of doing this.

The Covid-19 lockdown has opened up the benefits and risks of agile working to employers and employees who had never previously experienced it. Going forward it is likely that more employers will be open to home working as a means of reducing office costs.

For employees, many have realised the improvements in their work/life balance that can come from not having to commute every day. We are already seeing job adverts that indicate location and home working will not be an issue for an employer.

These changes in working practices will require employers to develop different approaches to management and supervision, could see changes in the structure of the typical working week, and will make the market for the best employees even more competitive.

This all presents employers with additional risks to consider (as well as potential opportunities). Your lawyer can help guide you through these changes, which most businesses are likely to face within the next few months.

If you intend to provide a data-driven offering, then a lawyer can be a valuable teammate in steering the project.

A lawyer can advise how to innovate with your commercialisation of customer data, whilst managing your business' exposure to complaints, investigations or adverse publicity amongst data regulators, the media or the general public.



In conclusion

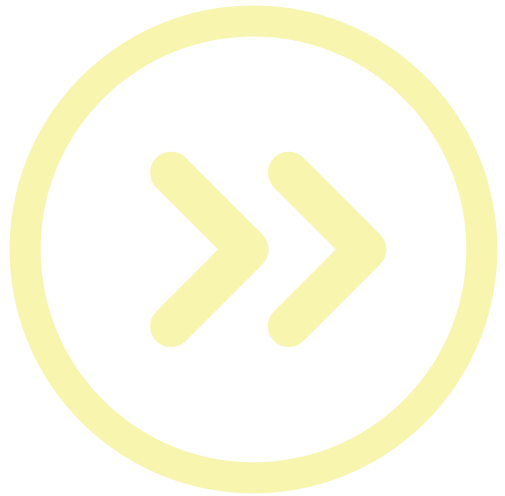
Adaptability is a journey, not a destination.

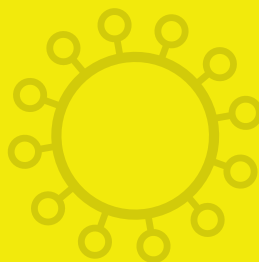
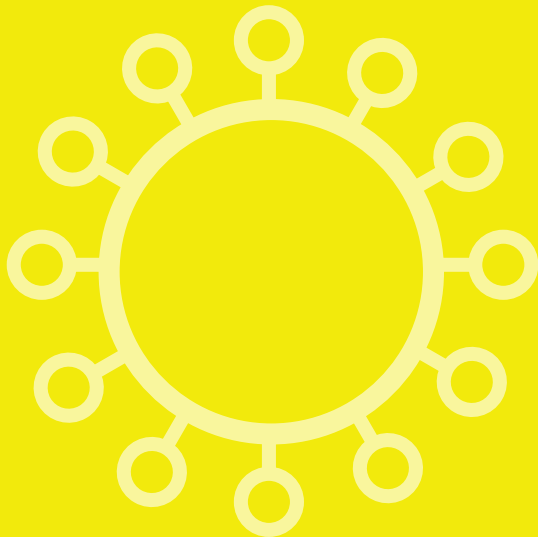
It is ongoing. It takes time. It takes work. But the benefits are more than worth it.

Above all else, embracing adaptability means you no longer have to fear change. Your business model is not reliant on things staying exactly the same. Whether it's a disruptive technology or a life changing global crisis, change doesn't have to be crippling but instead can be an opportunity.

That's important because like it or not, change is part of life. Your customer is constantly changing and adapting - sometimes in incremental ways, sometimes in sudden shifts.

An adaptable retail business is prepared for this. Can you say the same about yours?





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