COVID 19 and Solicitors

As the impact of COVID-19 starts to really take effect, there is clearly a high chance that solicitors' firms all over the country will be affected – either directly as a result of staff absences or indirectly as a result of others with whom they have dealings being affected. As with all risks, firms must take steps to ensure that the impact upon clients and potential clients of the firm is as low as possible.

Much has already been written elsewhere as to the general medical and practical steps in relation to COVID-19. Here we plan to look purely at what firms should be giving thought to from a management and regulatory point of view and providing signposting to some of the resources that might be useful.

As at the time of writing the Solicitors Regulation Authority (SRA) has yet to issue any guidance to firms on the regulatory aspects of dealing with COVID-19 other than to provide notification of which of their events they are cancelling. If any definitive statement is forthcoming, we will include a link to it.

What should firms be doing?

The question for many firms is whether they need to be doing something positive or should they just hunker down and hope that it passes them by.

Given that both they and their clients could be affected by COVID-19, hunkering down is not really an option. At the very least, firms need to take steps to plan how they will cope with client issues if key staff become infected – especially small firms and sole practitioners who may not have the resources internally to be able to absorb additional workloads. However, contingencies as to how transactions could be affected if clients become infected or how they will simply go about seeing clients in a safe way will need to be considered.

Indeed, doing nothing is not only not an option but not a logical choice. It is better to have plan that you did not need to implement than not have one that you need all of a sudden.

A starting point for all firms, then, is to:

- appoint someone within the firm to act as the central point for all actions that need to be taken. It would be useful if they had a second in command in case they are the ones affected, but obviously the smaller the firm the harder this will be to arrange;
- undertake a risk assessment to work out how at risk the firm is and what steps are required to mitigate the potential risk to the firm;
- have a business continuity plan which is made known to all potentially affected staff, and
- take any preliminary steps that are needed to ensure that the firm's processes are adequately robust.

The most likely direct impact upon firms is going to be in relation to staff – for example whether to insist they come to work, whether to put into effect facilities for home working, how to cope if staff are absent, how to protect staff from infection and in many cases how to pay staff if the firm is no longer able to continue to function.

The Law Society has produced an online guide to help firms to cope with some of these issues which can be found at https://www.lawsociety.org.uk/support-

services/advice/articles/coronavirus-advice-and-updates/. This contains links to Government Guidance as well as helpful information for conveyancers, those visiting police stations, litigators etc.

So, what else can firms do to help cope?

A starting point is to take action to reduce the risks of exposure in the workplace and ensuring that everyone is kept up to date on what those actions are. This could range from the simple actions advocated by the government such as encouraging staff to wash their hands regularly through to working out ways that some, if not all staff, can work from home. Other suggested actions include:

- ensuring that the firm has an up-to-date record of emergency contact details for all personnel and making sure that everyone knows what is expected of them and what to do in the event that they believe that they may have contracted the virus. Self-isolating is all very well provided you don't have a complicated completion to arrange the following day.
- Ensuring that senior staff and managers know what to do if employees are unable to come to work – for example who else can undertake tasks of that nature, how to contact clients, what matters are urgent, and which can be put on hold;
- training all personnel in relation to any relevant processes, for example how to report in if they are sick and issues such voluntary quarantine, sick pay and what to do if a colleague develops the virus;
- limiting face-to-face contact wherever possible so that staff are not put in harm's way. You might want to consider electronic communication methods, for example; and
- reviewing travel arrangements for staff and ensuring that those who have to go to places where they might contract the virus – e.g. court and public buildings, overseas offices etc. – know what to do to reduce the potential impact.

So far as overseas working is concerned, this is likely to prove the most problematical and firms are recommended to consult the Travel Advice issued by the Foreign and Commonwealth Office (FCO) (https://www.gov.uk/guidance/travel-advice-novel-coronavirus).

In terms of management and supervision, firms would be well advised to review who in the firm does what, the skills they possess and whether or not they have any experience in areas of work other than their main area. Firms may have no option but to allow staff to take over from colleagues who have contracted the virus – even if they would not normally have done so. Bear in mind, however, the COVID-19 is not an excuse for poor quality work, negligence, lack of basic skills or losses incurred by clients.

Firms will also need to:

- keep track of the amount of work that the firm is undertaking. This works from two directions – making sure it has sufficient work to pay the bills but not so much that it would not be able to cope were a significant number of staff to be affected;
- put in place contingency arrangements – possibly including reciprocal arrangements with other firms – in case the firm is unable to deal with the matters it has on, or does not have staff with the right skill set, to address the needs of clients;

- make sure clients are warned that potential issues might arise, that contingency arrangements have been made and to get client consent to arrangements being implemented should a problem arise;
- work out which matters that the firm is handling are critical and likely to need immediate action to be taken no matter what the position as to staff absences and which matters are less critical and able to be put on hold;
- ensure that there is adequate supervision - if managers and partners are away due to illness who is going to supervise the work of junior staff?
- put in place arrangements so that more than one person in the firm is aware of urgent matters so that they could, if it were required, take over;
- where possible arrange for home working so that staff who are self-isolating can still deal with their workload – this might involve changes to systems, technology updates and revised working practices;
- ensure that those staff planning to work from home continue to be conscious of the need for confidentiality;
- appoint “deputies” for those who undertake key roles such as COLP, COFA, MLRO and MLCO; and
- make sure that they are not forced into unsafe or illegal practices simply because a client wants to capitalise on the situation.

Finally, firms will need to be aware of what is happening around them, of the time scales for dealing with COVID-19 and of the arrangements that others are making in order to deal with the crisis. This could involve monitoring the courts or other public bodies with whom the firm deals and being aware of other firms that might have issues of their own that could have an impact. Wherever possible, firms should be building a degree of flexibility into their processes and transactions and be making sure that clients aware of the potential for problems to arise. It is vital also that clients are made aware of the importance of telling the firm as soon as possible if they become affected or have issues arising from the virus so that other parties or the courts can be warned.

Resources available

- The Law Society - Coronavirus advice and updates - https://www.lawsociety.org.uk/support-services/advice/articles/coronavirus-advice-and-updates/
- Coronavirus (COVID-19): UK government response - https://www.gov.uk/government/topical-events/coronavirus-covid-19-uk-government-response
- COVID-19: guidance for employees, employers and businesses - https://www.gov.uk/government/publications/guidance-to-employers-and-businesses-about-covid-19
- Coronavirus (COVID-19): courts and tribunals planning and preparation - https://www.gov.uk/guidance/coronavirus-covid-19-courts-and-tribunals-planning-and-preparation
- COVID-19: prisons and other prescribed places of detention guidance - https://www.gov.uk/government/publications/covid-19-prisons-and-other-prescribed-places-of-detention-guidance
- COVID-19 and residential conveyancing transactions - https://www.lawsociety.org.uk/support-services/advice/articles/covid-19-and-residential-conveyancing-transactions/

- COVID-19: guidance for households with possible coronavirus infection - https://www.gov.uk/government/publications/covid-19-stay-at-home-guidance
- COVID-19: residential care, supported living and home care guidance - https://www.gov.uk/government/publications/covid-19-residential-care-supported-living-and-home-care-guidance
- COVID-19: guidance on social distancing and for vulnerable people - https://www.gov.uk/government/publications/covid-19-guidance-on-social-distancing-and-for-vulnerable-people
- HMRC Coronavirus Helpline - Telephone: 0800 015 9559 Monday to Friday, 8am to 8pm Saturday, 8am to 4pm
- CLSA Covid-19 Advice Note - https://www.clsa.co.uk/index.php?q=clsa-covid-19-advice-note-update-16-march-2020

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