

COVID-19 – FURTHER GUIDANCE

We issued a bulletin addressing the growing COVID-19 crisis just over two weeks ago. Since then things have moved at pace, with most businesses implementing working from home protocols for staff. This culminated in the Prime Minister's broadcast last night, imposing restrictions on peoples' movement for an initial period of three weeks. This bulletin gives some further guidance on issues Members should consider whilst these different working arrangements are in place.

'BUSINESS AS USUAL'?

Maintaining 'business as usual' will be hugely challenging for many, in what is now a time of national emergency. Where does a Member stand if, through no reason of its own, it finds itself unable to carry out instructions on behalf of a client? The key will be whether the Member can demonstrate that it has taken all reasonable steps to seek to do so. It will not just be a question of what the Member has done in its efforts to carry out the client's instructions but also the extent to which those steps are documented. As with any potential professional indemnity exposure, the quality of the defence to any allegation will depend on the story told on the file.

MANAGING EXPECTATIONS

As the situation develops, some Members may wish to issue statements to reassure clients about service levels. Such statements should be limited to confirmation that the Member's Business Continuity Plan has been activated and that reasonable steps will be taken to maintain usual levels of service. This may also include confirmation that staff are working remotely and provide alternative contact details, where necessary. Detailed explanations of Business Continuity arrangements do not need to be provided, as they are a matter for the Member.

We would recommend that you avoid making statements that could be construed as a firm commitment to provide levels of service that may become impractical or impossible to deliver in this period of uncertainty. Realistically, things will take longer to get done, and properly checked by others, where teams are not sitting together in an office. Ordinarily, you would not be expected to take steps beyond what is reasonable to maintain service levels and statements should not be made which might extend that liability. This message should be shared with staff, whose natural instinct may be to over-promise when seeking to reassure clients who contact them directly. Where difficulties are being experienced handling any piece of business ensure that the client is kept updated. This will avoid a client, after the event, being able to assert that they may have acted differently had they been kept fully in the picture.

TEAM WORK

While some people working at home may be used to doing so, for others it will be unfamiliar territory and may seem isolating. More junior members of staff may feel exposed when not able to confer with more experienced colleagues, in the usual way. The current unprecedented level of remote working raises a number of challenges, not least from a supervisory and peer review perspective.

We would recommend the following:

- Continue to operate as a team, as far as possible. Speak regularly with colleagues rather than relying on e-mail exchanges. Have regular team meetings, either by telephone or, where possible, using a video conferencing facility.
- Issue clear guidance where procedures have to be adapted, to ensure proper checking and sign-off can still take place and is recorded on the file.
- Ensure that junior members of staff feel adequately supported and are encouraged to seek guidance from their peers, where necessary.

AVOID FALLING VICTIM TO SCAMS

Sadly there are those that seek to exploit the current situation, with cybercriminals reportedly targeting employees' workplace e-mail accounts with phishing e-mails. Like other types of phishing e-mails these messages lure the recipient into clicking on a link or providing personal information. One doing the rounds apparently asks employees to click on a link setting out the company's new 'Communicable Disease Management Policy', in light of the coronavirus outbreak. If employees click on the fake company policy, malicious software is downloaded.

Employees should be reminded of these simple steps that can be taken to avoid falling victim to these scams:

- Trust your instincts if an instruction seems suspicious, and keep abreast of the most common scams.
- Phishers are less likely to use an individual's name and so be alert to generic greetings, such as Dear Sir or Madam, which may signal a message is not genuine.
- Be alive to unusual typographic errors, random capitalisation of letters and unusual remarks. Spelling and grammatical mistakes are hallmarks of these messages.
- Hover over the URL to check email addresses or links. It will be obvious that some web addresses are not legitimate although bear in mind that phishers can create links that very closely resemble legitimate addresses.
- Be alert to any message that seeks to create a sense of urgency and insists that you must act now. The aim is to pressurise the recipient into clicking on the link, with little further thought.

SUPPORT

The current situation is continuing to cause much uncertainty and disruption to businesses. As advised in our last bulletin, Members should maintain a clear record of any alternative steps taken, or processes put in place, to deal with this disruption. This will help to evidence, after the event, that Members have taken all reasonable steps to continue to service their clients' needs.

The Griffin team remains available to provide liability advice, in the usual way, on any matter which may have a professional indemnity implication if it were not handled properly. We can be contacted on our usual phone numbers or by email, so please do stay in touch.

In the usual way our advice is from a professional indemnity risk management perspective and we strongly advise Members to stay up to date with the latest Government advice.

This bulletin is for general information purposes only and does not provide a comprehensive or complete statement of the law relating to the issues discussed nor does it constitute legal advice. In addition, by its nature, this bulletin may be superseded by subsequent regulatory or legal developments. Professional advice should be sought where appropriate in relation to any particular circumstances.

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