

Business Leaders Zoom Call Report



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For a confident future

Building Value & Profit in 2021, with Financial Wisdom

CONTRIBUTORS

Stephen Brown

MD - Euro Projects Recruitment

Tel: 01530 833825

www.europrojects.co.uk

Helen Dyke

Senior Associate Solicitor

Irwin Mitchell LLP

Tel: 0121 2145242

helen.dyke@irwinmitchell.com

www.IrwinMitchell.com

Andy McGill

Partner

Smith & Williamson LLP

Tel: 07901 108530

andy.mcgill@smithandwilliamson.com

www.smithandwilliamson.com

Sources of information

NatWest

KPMG

REC

ONS

Introduction

12th April 2021

Welcome to our latest Business Leaders Zoom Call. On the day pubs, restaurants, hair dressers and non-essential retail can reopen.

UK GDP is currently 9% below pre-pandemic levels (it's lowest trough was 24%). An economic forecast given by NatWest today suggests it could be as early as Q1 2022 or as late as Q1 2024 before the economy recovers.

The impact on sectors is currently:

Manufacturing -5%

Transport -18%

Construction -3%

Hospitality -68%

By contrast Healthcare +6%

Trade with Europe was down by 40% in Q1 of 2021, with the full impact of Brexit somewhat masked by Covid-19. A rapid UK recovery will be largely dependent upon domestic spending.

Household saving has improved among the wealthier, with lower commuting, entertainment and holiday costs.

Larger cities reliant on international travelers and commuters have fared much worse than their smaller, more self contained country cousins, with high streets in smaller cities such as Leicester experiencing a recovery of around 45% of previous trade compared with 15% to 17% for London, Glasgow, Cardiff and Birmingham. Retail Parks are 90% back, due to buying behaviour and type of store & products sold.

The road map for lifting lockdown led to substantial recruitment activity in March, with the highest rise in permanent placements in six years and a sharp increase in temporary billings. Stronger demand led to improved pay trends in March and March saw the steepest increase in vacancies since August 2018.



Helen Dyke
Senior Associate Solicitor
DDI: 0121 2145242
Mobile: 07435966985
Email: Helen.Dyke@IrwinMitchell.com
Website: www.IrwinMitchell.com



We're starting to see cases about covid related dismissals trickle through the ET system. This one examines whether a lorry driver was fairly dismissed for refusing to wear a face covering when onsite. It's a first instance decision and won't bind other tribunals, but provides a useful overview of the issues a tribunal will consider in similar cases:

In *Kubilius v Kent Foods*, the Employment Tribunal had to decide if a lorry driver was unfairly dismissed for refusing to wear a face covering in his cab, contrary to the instructions of a third party customer.

Facts

Mr Kubilius was employed as a lorry driver. Most of his work involved driving from a depot to one of his employers major clients, Tate and Lyle. From April 2020, Tate and Lyle required everyone attending their site to wear a face covering and provided these to visitors on entry.

Kent Foods had a driver's handbook which imposed an obligation on its drivers to comply with PPE instructions at a client site.

Mr K wore a face covering when entering Tate and Lyle's site, but removed it when he was sitting in his cab, parked up with the window open. One of their employees asked him to put his mask back on but he refused. A manager then asked him to comply with their on site rules, but he refused on the basis that it wasn't 'the law' and he was in his own personal space. The manager informed him that he would be banned from the site if he didn't comply with their instructions which had been put in place to help protect their staff and visitors from coronavirus.

Tate and Lyle told Mr K's employers that he would not be allowed to return to their site. Kent Foods tried to persuade their customer to withdraw the ban, but Tate and Lyle refused.

Kent Foods didn't have any alternative roles Mr K could undertake and dismissed him, without notice, for gross misconduct because of his refusal to comply with an instruction to wear PPE on a client site and his lack of remorse afterwards.

Mr K alleged that he had been unfairly dismissed and that it was not reasonable to dismiss him for not wearing a mask because:

1. Government guidance at the time said that wearing of masks was optional (the incident took place in May 2020).
2. Tate and Lyle didn't tell him when he entered the site that he had to wear the mask at all times.
3. His cab was his own environment and he had worn the mask when he got out of his lorry.

Decision

The Employment Tribunal decided that Mr K's had been dismissed for misconduct and that his dismissal was fair. Mr K had refused to comply with on site PPE instructions in breach of their drivers handbook. Plus, he'd dug his heels in and refused to admit he had been wrong.

The decision was possibly harsh, but was within the range of reasonable responses available to an employer.

Implications

This decision is not binding on any other tribunal. However, it provides a useful overview of the issues a tribunal will consider in similar cases.

The rules on face coverings encompass both legal requirements and government guidance. They have changed several times since the start of the COVID-19 pandemic. Since July 2020 people in England have had to wear a face covering when travelling on public transport, in shops and other indoor settings where social distancing isn't possible. We've therefore become much more used to wearing them than when this incident occurred.

The government published a series of sector specific guidance notes to help businesses work safely during COVID-19. In the context of people of work in vehicles (such as lorry drivers) the guidance says this:

'Face coverings are not a replacement for the other ways of managing risk, including minimising time spent in contact, using fixed teams and partnering for close-up work, and increasing hand and surface washing. These other measures remain the best ways of managing risk in the workplace and government would therefore not expect to see employers relying on face coverings as risk management for the purpose of their health and safety assessments.'

Face coverings (rather than PPE) must be worn in a number of workplaces listed here. The Health and Safety Executive says that the best ways of managing risk in the workplace remain:

- social distancing or, where that is not possible, reducing the number of people in the work area;
- insisting on high standards of hand hygiene;
- increasing surface washing;
- assigning and keeping people to shift teams;
- using screens and barriers to separate people from each other.

That said there is nothing to stop employers, as part of their risk assessment, asking staff to wear face masks to protect themselves and visitors. But, blanket policies are problematic and, if you adopt this approach, you will have to make exceptions for anyone who has a legitimate reason for not wearing a face covering to avoid discrimination claims.

In addition...

A recent case has found that menopausal symptoms which meant that a woman struggled to shop alone, stay awake when watching films and prevented her from socialising was disabled. These were all normal 'day to day' activities:

<https://imbusiness.passle.net/post/102gv6b/another-tribunal-finds-that-menopausal-symptoms-amount-to-a-disability>

In 2017, the ECJ in *King v Sash Windows* indicated that people who had been wrongly classified as self-employed could, potentially, recover outstanding holiday pay going back to the start of their engagement. The EAT has recently analysed that judgment and narrowed its reach. It found in *Smith v Pimlico Plumbers* that these type of workers can only recover compensation for accrued but untaken holiday on termination which can go back many years. But they can't receive compensation for any unpaid leave they took - unless they challenged it at the time (which most won't because they wrongly believe they are self-employed).

<https://imbusiness.passle.net/post/102gu7g/employment-appeals-tribunal-starts-to-diffuse-the-holiday-pay-time-bomb>

Our Immigration team has written a short blog about recent changes to immigration rules which make it easier for foreign businesses to send EU workers to the UK to fulfil contractual obligations owed to UK customers. It's quite a niche point, but it will impact on some businesses:

<https://imbusiness.passle.net/post/102gv46/home-office-reverses-immigration-rules-on-foreign-suppliers>

If you or your business need legal support, contact Helen for a friendly chat and support



Andy McGill Partner
Restructuring & Recovery

Keeping your business financially healthy & robust in 2021

Cash Flow

- Have a checklist to assess risk, particularly around cash flow.
- To manage cash the emphasis is on the top 80% of suppliers where you can have more impact.
- Arrange payment plans to help cash flow management (and stick to those plans to avoid being inundated with calls from people chasing up payments, quite justifiably).
- Pay your smaller suppliers to avoid lots of calls and manage your time where it counts.
- A good credit controller is key. If you are not chasing up for payment then firms will be more likely to delay
- Build relationships with your customer accounts payable to help get paid.

Borrowing / Access to Money

- Talk to the lender/funder to gauge their appetite. What we are hearing is that banks and financiers are not over keen about lending if the borrower is not so confident. So, if you are in a good business you should approach the banks/lenders and demonstrate that it is a good-plan in your individual case.
- If you borrowed a CBIL or Bounceback Loan and cash isn't under pressure, you might think it's not worth paying the interest on but it could prove useful for future investment and is already in the bank for when you might need it.

PrePack

- For some businesses this might need to be an option. This might be for businesses looking at 10 years' of debt and no return from the business.
- Statistically levels of insolvency in last 6 months down, with most businesses looking at managing their way out of it through cash flow and deferment of VAT/HMRC payments.
- Another commonly deferred creditor is landlords - if not being paid be aware of potential enforcement action with the ability to wind up the business.

Credit Ratings

- Credit reports can be out of date and a lot has happened in 12 months.
- Word of mouth is valuable. Listen to what is happening in the market and day to day; if someone promised to pay you by Friday, and on Monday you have still not received payment you need to act. There will be a reason why they've not paid.

Final words of advice

- Have you got good cash flow? Is funding the business an issue? Do you have a forecast... a rolling 13 week cash flow plan with realistic events and some realistic sensitivities, this is still a forecast and some guess work but it gives you some sense of what might be. If it looks bleak at least it gives you some time to adapt your financial management accordingly.



STEPHEN BROWN
CEO
EURO PROJECTS
RECRUITMENT



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WE ARE HERE TO SERVE AND ADD AS MUCH VALUE TO YOUR BUSINESS AS POSSIBLE.

WE ALSO DO RECRUITMENT!

IF YOU HAVE A ROLE YOU WOULD LIKE US TO HELP YOU TO RECRUIT FOR, PLEASE GET IN TOUCH WITH YOUR REGULAR CONSULTANT, ME, OR IF YOU'RE NEW TO US VIA THE DETAILS BELOW:

**EMAIL: [CUSTOMERS@EUROPROJECTS.CO.UK](mailto:customers@europrojects.co.uk)
TEL: 01530 833845**

JOIN US AGAIN...

WE ARE BACK ON 26TH APRIL DISCUSSING "LONG TERM INCENTIVE PLANS FOR KEY EMPLOYEES" AND THEN ON 10TH MAY "SUPPORTING EMPLOYEES WITH LIFE CHALLENGES"

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