



Hybrid working in a Covid-impacted world

There are few employers that have not had to change employment working practices since March 2020. As we now move to an easing of Covid 19 restrictions some of these changes are being adopted on a longer term basis. The move to a formal hybrid working model with employees no longer required to work permanently and/or full time at a set location is becoming the norm.

Hybrid working arrangements impact not only employment related operations but have wider business consequences. Whether you have already moved to a hybrid model or it is part of your future plans, we have summarised the key issues that organisations should be considering.

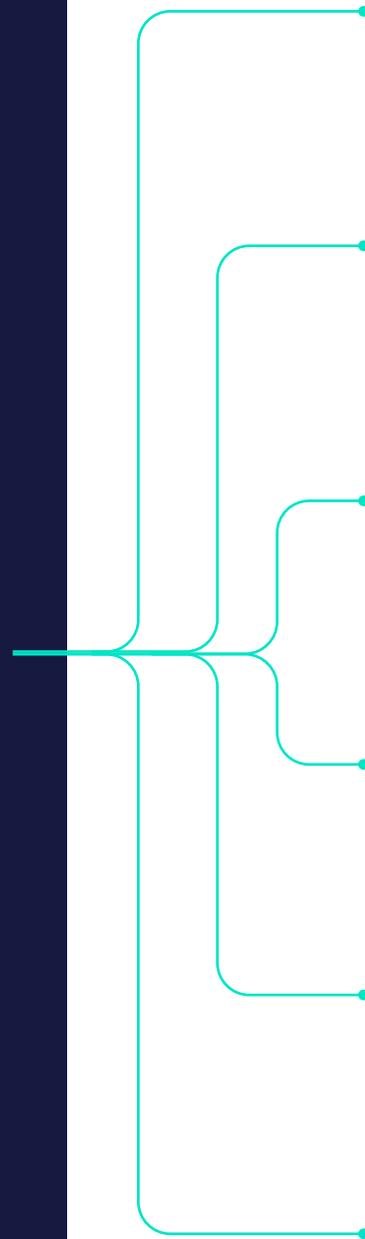
[Click below to view our interactive hybrid working mind map.](#)



Interactive diagram

Click on the aqua sections to find out more

Hybrid working in a Covid-impacted world



- Where is the defined place of work?
- Flexibility and consistency of approach
- Output v presenteeism
- Cost impact on employer
- Implications of working from home

- Effective collaboration & communication
- Reviews and KPIs
- Management training needs

- Confidential information
- Autonomy of working
- Employees more open to external approaches
- Empty premises
- Returning to office

- Outsourced services minimised (e.g. facilities/catering/security)
- Contract amends/terminations - TUPE issues?
- Impact on attractiveness to attend the office

- How are you approaching your excess office space?
- Can you use current situation to renegotiate lease terms?
- Are there break clauses in the lease?
- Can you assign, underlet or surrender your lease?
- Ability to change the use of the premises

- Rent Moratorium
- Re-gear the lease
- Business grants
- Business rates relief



Changes to working practices

Different working practices may require changes to be made to employee's terms and conditions of employment. Consultation on these changes is key, as employee expectations on how they should be implemented for them as individuals may not always align with what the employer can accommodate, and without a clear hybrid working framework and understanding, employee relations may be adversely impacted.

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Where is the defined place of work?

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Output v presenteeism

Cost impact on employer

Implications of working from home

Where is the defined place of work?

- The employment contract will state the employee's place of work and a change to this needs to be agreed with the employee in most circumstances.
- The new work place could be home, office, public workspace, hybrid mix, client site but the contract will need to state the arrangements.

Flexibility and consistency of approach

- Where individual employee arrangements are bespoke this may impact on the ability to interact with colleagues and third parties at required times.
- Consider the need to have teams working together at some points during the week.
- Approach flexible working request in accordance with the legislation and ensure any refusal is based on clear business reasons.

A fair and consistent approach taking into account business need is vital

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Output v presenteeism

- Employers are likely to move to an output and outcomes orientated approach rather than reliance on traditional timekeeping in accordance with contract set hours.
- The move towards flexi hours with attendance/ log on during core hours of operations will be attractive and efficient for many employers.

Cost impact on employer

- Multi location working will create the need to carry out risk assessments in each location and ensure tools required to do the role are suitable for each location. Additional investment in portable IT hardware may be needed and could be a reason not to permit alternative locations.

The final nail in the coffin of the 9-5 day?

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Implications of working from home

- Security issues: personal, data protection, cyber crime.
- Environment of employee – is it appropriate, safe, private?
- Consider planning laws: office use is presumably ancillary to main residence? Are there any restrictions in mortgage conditions?
- If the premises is a flat, are there any obligations/ restrictive covenants in the lease regarding the use of the premises?
- Employee wellbeing issues: potential for deterioration of health.
- Supervision and development risks due to lack of physical visibility.

Working from home warrants a full and regular audit before it can be approved

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Impact on team dynamics and engagement

For changes to be effective, a different approach and mind-set to the engagement and management of employees needs to be prioritised. Communication with colleagues and management has moved from the traditional face to face interaction and new ways of working will require a new toolkit of communication and business etiquette.

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Effective collaboration & communication

Reviews and KPIs

Management training needs

Effective collaboration and communication

- Geographically disparate workforces will create challenges with team dynamics and maintaining a corporate culture. More regular communication will be needed to check in with colleagues and to ensure expectations are understood.
- Communication etiquette and protocols should be considered such as when to use video calls, to avoid Zoom “fatigue” and over zealous monitoring.

Reviews and KPIs

- It will be more difficult to undertake ad hoc performance management where physical visibility is absent. A more structured approach to positive performance management should be undertaken for hybrid employees.
- Traditional KPIs may need to be revisited e.g. timekeeping, office visibility, and a move to output based KPIs.

Cultural changes in communication styles and performance assessment will need attention

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Management training needs

- Managing remote employees requires a different skill set and training should be given to managers to ensure they maintain contact, set and track objectives and continue to support and develop their employees.
- Hybrid working is unlikely to be a success if it falls down due to inferior management styles. A hybrid working management policy should be considered to provide a consistent approach and allow employees to understand the changes to management styles that may be needed.

Are managers equipped to support their remote teams?

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Effective collaboration & communication

Reviews and KPIs

Management training needs



Risk issues: insurances, liabilities, business protection

Out of sight employees may not be out of mind, but the ability to contain business risks within one environment has been lost. Understanding and assessing where those risks lie and how they can be managed in a hybrid working organisation requires time, financial and cultural change investment.

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Confidential information

Autonomy of working

Employees more open to external approaches

Empty premises

Returning to office

Confidential information

- Data protection and confidentiality policies need to be revisited to ensure security of information regardless of where the individual is working.
- Employees will need to be made aware of what is permitted in respect of transporting both hard and soft copy information between the office and other work location on a regular basis.
- Confidentiality risk assessments should be carried out in the same way as WFH health and safety assessments are carried out.

Autonomy of working

- More experienced employees are unlikely to suffer any drop in quality or performance of their role but less experienced, often younger employees, may feel isolated, undermanaged and under developed.
- Wellbeing check ins should be planned to avoid negative impacts of home working.

Protection of business information is critical where employees are working remotely

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Employees more open to external approaches

- Out of sight employees are more susceptible to approaches from competitors.
- The ability to take preparatory steps to leave for competitors or set up independently are also enhanced by home working.

Empty premises

- Security issues - Empty and insecure premises maybe at risk of being targeted by trespassers and squatters.
- Insurance – have insurers been notified. Check conditions of insurance policy as onerous conditions imposed when premises are empty for a prolonged period.

Property protection arrangements need to be put in place

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- Regulatory issues - health & safety file, fire risk assessments etc. may need updating.
- Air conditioning/lifts servicing/upgrade - are they up to scratch. Who's going to pay for upgrades? Check latest BSI & BESA guidance.
- Landlord's covenant for quiet enjoyment and rights granted to the tenant to use the premises for intended use – is this possible in new environment or is the landlord going to be in breach in light of any restrictions the landlord may have to impose re-social distancing?

Maximise the success of an office return

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Reduced need for external contractors

A lower employee footfall in physical premises needs to be aligned with support services that have been wrapped around the traditional office arrangements. Contract management needs to support different ways of working and whilst traditional office services may be reduced, external support for online training, home office requirements and self supported wellbeing may need to be increased.

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Outsourced services minimised
(e.g. facilities/catering/security)

Contract amends/terminations -
TUPE issues?

Impact on attractiveness to attend
the office

Outsourced services minimised

- Fewer employees in one physical location will see a reduced demand for certain facilities (e.g. canteen, office services, parking).
- Where external contractors provide these services contract re-negotiations should take place in respect of the scope of the services needed.

Contract amends/termination - TUPE issues?

- Changes related to different working methods, including hybrid working, will require updates to employment contracts to comply with section 1 ERA statements requirements.
- Changes may also highlight a reduced need for some staff e.g. office services, and lead to redundancies.
- Where external contractors have been used for office facilities and a reduced employee need leads to those services being carried out in house, there should be a review of whether this triggers any TUPE liabilities.

External contractor arrangements will need to be reviewed

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Impact on attractiveness to attend the office

- If the office is quiet and perceived to be “under-staffed” other employees may query the benefits of attending the office. Team days will encourage attendance together with specific reasons to be in the office e.g. training, meetings with internal/ external stakeholders.
- Reconfiguring the office environment may create anxiety for employees who are used to their “own” private work spaces, or consider themselves to have a “right” to a particular space. This may be relevant for employees with certain disabilities.

Make the office an attractive option

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Reduced office space and landlord negotiations

Hybrid working may mean that an organisation no longer requires as much traditional office space as was required pre-pandemic. There could be opportunities for an organisation to reduce their property footprint and/or re-purpose their existing space. Therefore, it is important that organisations are pro-active and familiar with the critical terms and key dates contained in their leases.

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How are you approaching your excess office space?

Can you use current situation to renegotiate lease terms?

Are there break clauses in the lease?

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Ability to change the use of the premises

How are you approaching your excess office space

- Can you re-purpose the use of the premises?
- Can you share with a group company? What does the lease say?
- Will the landlord agree a surrender of the lease?
- Can you underlet part of your office space? What does the lease say?
- Are you going to sit tight in case you need to expand back into the space?
- Is the lease in the name of an SPV? If so, it may be possible to put the company into Liquidation.

Using excess office space efficiently

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Can you use the current situation to renegotiate lease terms?

- How long is left on your lease(s)?
- What is the market like? Realistically, is it going to be possible to find a third party willing to take on any of the lease(s)?
- Are any of the leases inside the 1954 Act so the tenant has security of tenure? If the landlord intends to redevelop, the tenant maybe entitled to compensation at lease expiry. Can the tenant hold out so as not to forgo compensation due? If so, this may give the tenant additional leverage when negotiating with the landlord a surrender or re-gear.

Take advantage
of renegotiation
opportunities

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Are there break clauses in the lease?

- What are the key dates? When does the break notice need to be served by?
- Check carefully the pre-conditions that need to be complied with, to ensure that, when exercising the option to break the lease, it is fully effective.
- Seek professional advice – solicitor and surveyor.
- Allow plenty of time if you need to carry out works to the premises before the break date to ensure compliance with pre-conditions.

Break clause considerations

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Can you assign, underlet or surrender your lease?

- Surrender - How likely is the landlord willing to agree to a surrender? Is the tenant willing to pay the landlord the rent, service charge and insurance rent for the remainder of the term to save on business rates. The landlord may get a windfall, but is then liable for business rates.
- Assignment - What does the lease say about assignment? What are the pre-conditions? What is the market like for premises in that sector of that size and location?
- Underletting - What does the lease say about underletting? Can you underlet part or just the whole? What are the pre-conditions? What is the market like for premises in that sector of that size and location?
- Group Sharing – Does the lease permit sharing of the premises with a group company without obtaining the consent of the landlord? How wide is the definition of group company? Are there any other pre-conditions?

Disposing of excess space

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- Dramatic changes to the Town and Country Planning (Use Classes) Order 1987 as from 1 September 2020 make it much easier to change the use of premises between offices, retail and restaurants/cafes.
- Can the landlord re-purpose the use of the building for say, residential use? If so, the landlord may be more flexible when negotiating with the tenant in relation to a surrender or re-gear of the lease etc.
- New Permitted Development rights come into force on 1 August 2021 permitting change of use from commercial/business (Class E) to residential use (Class C3).

Time for a change of use?

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Saving rent and investing in new opportunities

Whether an organisation is looking to reduce their property footprint and downsize or re-purpose the use of existing space, there may be opportunities for saving on the rent and other financial liabilities arising out of their leases and potentially, to invest the savings elsewhere in the business.

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Rent Moratorium

- Are you up to date with your rent and other financial liabilities in lease and if not, have you had constructive conversations with your landlord about how to proceed?
- Government has recently announced that rent moratorium has been extended to 25 March 2022.
- What does this actually mean?

Re-gear the lease

- Is the landlord open to a re-gearing of the lease?
- If extending the lease term, this will be a deemed surrender and re-grant which will have Stamp Duty Land Tax implications, although overlap relief may be available.

Rent reviews and extending the lease

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Rent Moratorium

Re-gear the lease

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Business grants

- Are business grants available which may assist with the rent and other financial liabilities in the lease whilst premises are forced to close and the tenant cannot operate/trade.
- What sector are you in? Is it a sector that has been particularly adversely affected by the pandemic, e.g. retail, hospitality, tourism?

Business rates relief

- Who's eligible to claim? Landlord or Tenant?
- Are you eligible for small business rates relief? What is the rateable value of the property?
- Is retail relief available? Applies to shops, restaurants, cafes, bars, pubs and the hospitality sector.
- Is property relief available? This is usually for a period of 3 months.

External financial support

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Contact

Many employers have had to accept and adopt new working practices, especially in relation to hybrid working. We would be happy to discuss how the issues highlighted within this document may impact your business, and we can support you with implementing measures to maximise future business performance and minimise the risk of employee claims.

For more information or to make an enquiry, please contact Rebecca Thornley-Gibson, Partner, by clicking the link below.

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