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What Duties Do Landlords Have in Relation to Potential Coronavirus Infections in England and Wales?

The Coronavirus continues to spread throughout China and around the world, leaving many questions as to who is responsible for what and whether there are any obligations to address or limit exposure or infection. For landlords in England and Wales, much depends on how much control they have over their property. If it is a single let property, with no services being provided by the landlord, it is unlikely that the landlord has any obligations to the tenant or other occupiers of the building.

If on the other hand, there is more than one tenant and/or the landlord is providing services such as cleaning or other maintenance services, the situation should be analysed on a case-by-case basis, as the capacity in which a landlord is acting is an important consideration. Where, for example, a landlord is acting as a property manager or as an employer, they are likely to have more obligations rather than if they were acting solely in the capacity of a landlord.

At the time of writing, there are no material recommendations from the applicable regulatory bodies, the Department of Health and Social Care and Public Health England, relating to landlords. However, this is a fast-developing situation so will need to be actively monitored.

The Coronavirus and General Health and Safety

Health and safety duties are generally either based on actual control (and the ability to implement measures) or presumed control implied by law. In the case of legionella for example, the law effectively imposes a default duty on landlords to address legionella risks at a property. Legionella, however, is a disease that is fostered and grows in waterborne systems (i.e., the plumbing systems of a building) and addressing water quality and contributory risk factors is something that the landlord (as opposed to a tenant) can usually control.

The situation with the coronavirus is arguably different. First, while outbreaks are a health and safety matter, they are potentially outside the scope of normal health and safety good practice. That is, whatever the construction of the building or the management of the infrastructure of the building, this will not have any effect or impact on the coronavirus, which is passed human to human and is not linked to buildings or their infrastructure *per se*.

As the Health and Safety Executive (the usual day-to-day regulator for health and safety matters in England and Wales) [notes on its website](#) (in relation to the historic SARS outbreak), it lacks general competency in relation to potential outbreaks: the “*HSE does not have the remit to provide advice to the general public about their risk of being exposed to SARS*”. The corollary of this assertion is that the HSE does not set standards when it comes to responding to potential outbreaks. Such standards are set by dedicated public health bodies such as Public Health England and the Department for Health and Social Care.

That is not, however, to say that health and safety law does not have a role to play. The relevant law is the [Control of Substances Hazardous to Health Regulations 2002 \(COSHH\)](#) – this is a set of regulations produced under the UK’s general health and safety law, the [Health and Safety at Work etc Act 1974](#). COSHH can apply with respect to viruses (such as the coronavirus or SARS). However, a key element for COSHH to apply is where “control” is exercised and, through it, there is an ability to effect change in the health and safety circumstances at a location. While the operator of a hospital would undoubtedly have duties under COSHH (for example in relation to how health workers could be exposed to a virus), with respect to something like SARS or coronavirus exposure, a landlord may not actually be in a position to exercise any such degree of control over tenants at their property.

A landlord is unlikely to be able to have sufficient “control” to be able to impose strict hygiene regulations or control the movement of persons for example, in the way in which the owner of a hospital can (where the occupiers are employees and patients).

Capacities in Which a Landlord is Acting

The situation could be different where a landlord is providing services above and beyond the simple provision of a rental property. For example, a landlord may also be operating in capacities other than as bare landlord – it could be acting as an employer, or it could be acting in a property management capacity. In such cases, the landlord would likely have obligations in respect of their own employees that attend at the property to provide any of the services and in respect of other persons likely to be present in parts of a property under their control (such as common or retained parts).

However, it is important to note that this is different from landlords having obligations solely in their capacity as landlord. For example, it does not seem likely that a landlord who has no active role in the management of their building, and who is solely providing rental units, would have any obligation under COSHH purely in its capacity as landlord.

In the case of something like student accommodation, a distinction could be drawn between a pure landlord and (assuming it is a different entity) the entity providing services at the property or actually running the property. Any relevant duties under COSHH would likely only attach to the latter entity. The landlord (again to the extent it is not involved in day-to-day management) would likely not need to conduct a risk assessment to assess the risk connected with a viral outbreak, nor would they be required to seek third-party assistance in doing so. Were the landlord to be operating in more than one capacity, it would need to consider and then satisfy the duties applicable to each capacity.

The Applicable Duties

If an entity is potentially subject to duties under COSHH (for example, as an employer), the question arises as to what duties could apply in respect of the coronavirus. The answer will differ depending on whether there is simply a general risk or whether there is a specific infected person or a potentially infected person identified as having been present at a property. Only if there is a specific potential risk must more detailed action (beyond keeping a watching brief on developments from Public Health England as mentioned elsewhere in this GT Alert) be considered. In the case of a specific infected person or potentially infected person, the COSHH framework (and other existing health and safety guidance) is arguably much less relevant than other sources of official guidance.

This is because, as noted above, the Health and Safety Executive does not regard itself as having any remit in this area. Further, it is likely that the applicable public health authorities would want to exercise primary responsibility so as to both manage and be aware of the wider public risk. Finally, it may not be the case that a purely private sector entity, such as an environmental consultant who could normally be approached by a landlord to address environmental hazards, would have the expertise (or the willingness) to deal with a viral outbreak.

The appropriate sources of guidance are therefore the Department of Health and Social Care and Public Health England. Public Health England's responsibilities include protecting the nation from public health hazards and preparing for and responding to public health emergencies. Public Health England has issued [general recommendations](#) on the coronavirus.

Existing Guidance and Appropriate Action

As mentioned, while at the time of writing, there are no material recommendations for landlords, managing agents or employers, the UK threat level from the coronavirus has, however, been raised from "low" to "moderate".

In relation to a property where a specific case of the coronavirus has been identified, entities involved (be they landlord, managing agent, or any other entity operating at the property) should make direct contact with Public Health England and follow the specific requirements promulgated by the Department of Health and Social Care and Public Health England. This could include, for example, co-operating with the authorities to restrict public access to the building, providing details of individuals present at the property at relevant times, and allowing decontamination and clean-up activities to be undertaken. In relation to recently identified cases in the UK, the Department of Health has stated that the government is "*using tried and tested infection control procedures to prevent further spread of the virus*".

This may also mean suspending the provision of those services that require attendance at the property that the landlord or that other entity would normally be providing until relevant incubation periods/clearance from appropriate authorities have been obtained. The primary duty is, however, to follow the recommendations of the public health authorities.

More generally, landlords could consider other steps connected with their perceived responsibilities to their tenants. This could include, for example, the provision of information in the form of notices or hand-outs, although there is presently no obligation to do so. The content of such notices, to the extent they contain substantive advice, should be considered carefully. It may, for example, be prudent to liaise with Public Health England or else to solely provide that further information and guidance should be sought from Public Health England.

Landlords who are employers, as with any other employer, would also have duties to their staff in relation to risks posed from infectious diseases. As noted above, the [guidance provided by Public Health England](#) should be followed in the first instance.

Finally, it would be prudent to appoint a responsible person to keep abreast of on-going developments including through keeping a close watch on any changes to Public Health England's existing recommendations. Where any recommendations appear to be applicable, they should be implemented.

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