



## The Covid diaries: Day 44 - 1984

A daily fly-on-the-wall blog about running a legal business during the Covid-19 crisis.

By **Darren Isaacs** - 19 May

We have been thinking a lot about the intersection between legislation, court/tribunal decisions, and Government guidance.

It has been very interesting, sometimes frustrating, and also downright frightening, to see some of the issues unfolding on an almost daily basis in the context of the Covid-19.

To put it in a nutshell:

Legislation is law.

Court/tribunal decisions (on points of law) are law.

Government guidance is, well, not law. It may be useful, but it is not law.

Government guidance is often just the opinion of the Government, or of a particular Government agency, on a particular legal issue - and it may be legally correct or it may be legally completely wrong.

That is not intended as a criticism of the Government for issuing guidance. Most of us would normally think that it is better - far better - to have some well-thought-out Government guidance on a legal grey area, than none at all. It helps put flesh on the bones of vague laws, especially when the laws are new and we have little judicial guidance from cases having been argued before the courts/tribunals.

It can also indicate to us what relevant Government agencies consider to be the legally correct way to go about doing something. And if the relevant Government agency is the Information Commissioner's Office (ICO), or the Health & Safety Executive (HSE) - both of which have an enforcement function as well as an advisory function - then following their guidance is normally a good idea.



But, as lawyers, we do always have to take Government guidance with a healthy grain of salt - we have to try and look behind it and, on occasion, to question it.

We will no doubt all be familiar with the Government *guidance* on good public health lockdown steps to take (not law), versus the actual legal requirements set out in the lockdown *regulations* (law). The guidance and the law did not entirely see eye-to-eye, and confusion reigned.

In contrast, we have previously expressed the view in these diary entries that the recent Government guidance on returning-to-work safety measures for offices, is good (see [Day 41](#)). So a big tick from us there.

The moral of the story: pay attention to what the Government says we should do, but don't make the mistake of equating it with the law - they are often two very different things. After all, this isn't a George Orwell novel (not yet, anyway).

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