



Government Extends Protections for Commercial Tenants until March 2022

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In the same week as the Government confirmed their extension to the 'roadmap out of lockdown' until *at least 19 July 2021*, they have yesterday announced extensions to protections giving rise to:

1. The ongoing ban on commercial evictions for lease arrears and commercial rent arrears recovery action (CRAR) now until 25 March 2022.
2. The ongoing suspension of winding-up petitions (unless grounds are established for non-payment due to factors other than COVID) and statutory demands (and other COVID related amendments to insolvency legislation) until 30 September 2021.

The protections in favour of commercial tenants unable to meet their rent liabilities during the pandemic commenced in April 2020 and were due to *finally* end 30 June 2021 after a series of extensions. Furthermore, there had been anticipated a return to the use of winding-up petitions and statutory demands against business debtors from the end of this month following the original "Freedom Day" of 21 June 2021.

The Government Protections

These ongoing protections prevent commercial landlords from forfeiting leases on grounds of non-payment of rent or taking control of tenant's goods to be sold to cover unpaid rent (CRAR). Furthermore, landlords have been unable to take enforcement action in respect of sums owing to them under a lease using statutory demands and winding-up petitions (except in the latter case where COVID had not been the reason for non-payment of the debt).

The intended effect of these protections has shielded commercial tenants from landlord action at a time when they have been unable to trade or otherwise impacted by the ongoing social distancing measures.

These extensions to the protections will be a welcome relief to commercial tenants (and in the case of winding-

up petitions and statutory demands, businesses that are otherwise struggling even if not occupying under a lease). This can be said particularly in the case of businesses in the hospitality (including nightclubs), leisure, retail and arts industries who have been hardest hit by the pandemic situation.

However, spare a thought for the landlords who in some cases have received little to no rent from their business tenants since the final quarter of 2019 (or in some cases, before that).

Timeline of the Protections

The Government had intended to lift the protections in place on several occasions previously (30 June 2020, 30 September 2020, 31 December 2020, 31 March 2021 and most recently 30 June 2021). However, with the ongoing pandemic situation, the Government wish to continue their support to the most vulnerable businesses and sectors and avoid an outcome where landlords could take drastic measures which would have serious implications for the economy and lead to a tsunami of business failures and insolvencies. From the outset of the pandemic, the Government has strived to avoid this outcome at all costs.

Tenant Restructuring

Ahead of the planned lifting of restrictions previously, landlords have experienced requests by commercial tenants seeking rent concessions and waivers either informally or through a formal insolvency process such as a CVA or administration; the tenant's objective being to restructure their rent liabilities and property portfolio to rescue the tenant or safeguard the business.

The use of a CVA as a tool to restructure a business tenant's rent liability has been brought into recent focus with the example of New Look, where the arrangements were unsuccessfully challenged by landlords.

Similarly, we have seen the Court sanction a "Restructuring Plan" (being a newly introduced procedure) in the [case of Virgin Active](#) with the effect that the tenant's liabilities were compromised despite vehement opposition from landlords.

Impact on Landlords

There remains an ongoing conflict between the Government's desire to protect the economy and the commercial tenant's need to stay afloat, compared with the business objectives of landlords.

Commercial tenants desperately need to weather the ongoing storm until they can resume trading or operate profitably. That will take far longer in the case of some sectors. It is questionable when the hospitality, retail, leisure and arts sector will be able to operate at the levels enjoyed pre-March 2020.

For other commercial tenants, their trade may be better than ever. The protections in place now are universal for

the benefit of all commercial tenants and prevent landlords from taking the necessary enforcement action for non-payment of rent.

Does the question arise as to how landlords will ever recoup their losses from their business tenants for this period?

Existing Code of Practice and intended New Legislation

The Government introduced in June 2020 a voluntary [Code of Practice](#) to help landlords and commercial tenants in respect of rent payments during the pandemic. This Code encourages the parties to act transparently, in good faith and reasonably.

However, the Code has been widely criticised for lacking teeth (since it is voluntary) where rent bills continue to rise and protections remain in place for commercial tenants. Understandably many landlords' patience is wearing thin, particularly where a business tenant has no plan or prospect of settling the significant arrears that have accrued. Not all landlords are motivated by the desire to keep a tenant (even if it is unable to pay any rent) to avoid empty property rates. Some parts of the commercial lettings market are ripe for new letting opportunities and many landlords simply want to take back possession and move forward with a new tenant representing a better covenant prospect in the longer term.

The Government recently called for evidence from the business community and industry networks as to how to best tackle these conflicting issues. Taking stock of the ongoing but necessary curbs on landlords, they have announced plans for new legislation to specifically deal with (on a ring-fenced basis) accrued rent arrears for business tenants that had to stop trading during the pandemic. This legislation will effectively force landlords to negotiate with their business tenants to agree to rent waivers or long-term repayment plans in respect of rent sums accruing in any period of forced closure. Any breakdown in the negotiations will result in the parties defaulting to a binding arbitration process. The Government have made it clear that businesses that can pay rent, must do so, and tenants must start paying their rent as it falls due as soon as restrictions change enabling them to open their premises for trade.

These Government protections represent just one part of a larger picture. It is not clear whether some commercial tenants who have been unable to pay rent for now a significant period will ever clear that debt and the other debts they have accrued without using a formal restructuring or insolvency process. This may indirectly increase the volume of business insolvencies at a time when the Government is trying to manage the risk of mass business failures. The hope would be that any increase in the insolvency statistics would reflect procedures focused on achieving a rescue or restructuring outcome for business tenants rather than terminal failures.

Where does this now leave landlords and commercial tenants?

Many commercial tenants who are struggling have no choice but to continue to take the life-ring of support as available from the Government, including under these protections. However, businesses must now make a plan to deal with the growing rent bill and seek appropriate advice and support from professionals who can discuss the various options for entering negotiations with landlords. They should, where applicable, explore options for otherwise restructuring their liabilities to safeguard their ultimate survival and long-term viability.

In the meantime, pending the lifting of the restrictions, landlords must seek advice to assist in working with their business tenants to encourage a proactive, sensible and constructive dialogue to protect their position and commercial objectives. Each relationship will be driven by different factors negotiations will result in outcomes specific to a particular scenario.

If a business tenant succumbs to a formal insolvency, the implications for a landlord will depend on the applicable insolvency procedure and circumstances. With appropriate advice and support from our [insolvency law specialists](#) at Lester Aldridge, landlords should be encouraged to act proactively but reasonably to protect their position and take necessary and proportionate steps to maximise the prospect of recovery where possible.

For more information and support, if you are either a landlord or business premises or a commercial tenant affected by these matters [Kate Stewart](#), Head of Property Litigation.