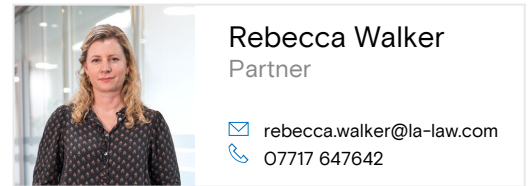




What Can Landlords do to Fight Back Against CVAs?

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We have seen Pizza Express, New Look and now Aspinall of London propose CVAs in the last couple of months. Each one has sought to compromise the rights of landlords over any other creditor. [Rebecca Walker](#), a partner in our Restructuring & Insolvency team, asks what landlords can do to fight back.

CVAs have been all the rage since 2009, when we started to see big high street names using them as a tool to reduce their rent burden and “right-size” their property portfolio. In the retail and casual dining sectors in particular, CVAs are now so common they have become the stuff of nightmares for landlords.

Not only this, but landlords are also completely hamstrung by the temporary COVID-19 support measures put in place by the government, which are preventing landlords from evicting non-performing tenants, forfeiting leases, issuing winding up petitions for rent arrears or exercising other rights such as Commercial Rent Arrears Recovery. While these measures were intended to be a short term solution to deal with the shock of the pandemic, they have now been extended to 31 December 2020.

Let’s not forget, [real estate](#) makes up a large proportion of investment funds, which our pension providers buy into. Putting landlords in a straight-jacket is not something that serves the interests of the average tax payer. So what remedies do landlords have? How can landlords fight back?

Well, there are currently no restrictions on landlords seeking to challenge a CVA. CVAs require the approval of 75% in value of the creditors of the tenant company who vote on the proposal. It then binds all unsecured creditors. In most cases, the vote is carried by creditors whose rights are not being affected by the CVA. To address this imbalance, disgruntled creditors are permitted to apply to court to challenge a CVA if (amongst other things) the CVA has unfairly prejudiced their interests.

So what counts as unfair prejudice? This is complex and we recommend you seek specialist advice if you are thinking of challenging a CVA. Generally speaking, you have to show that either landlords have fared worse under the CVA when compared with other creditors or that landlords have fared worse under the CVA than they would if the tenant company were to enter some form of insolvency process. To give some examples that have gone through the courts:

- Stripping landlords of the benefit of a parent company guarantee **is** considered to be unfairly prejudicial

where no compensation is offered to landlords for the loss of that guarantee (*Powerhouse* and *Miss Sixty*).

- Reducing rent due to landlords and not reducing debts owed to other creditors **is not** considered to be unfairly prejudicial if the reduced rent being paid to landlords under the CVA is still at or above market rate (*Debenhams*).

So what should landlords do if considering mounting a challenge to a CVA?

- **Seek advice.** Legal advice is essential if you wish to understand your rights under a CVA proposal and whether you have a shot at mounting a successful challenge. As CVAs are principled on insolvency law (rather than property law), you should seek the advice of an insolvency specialist. However, you may also need the advice of property specialists (to give you a steer on what the market rent is for a particular premises) and insolvency practitioners (to advise you on how you might fare should the tenant company enter, say, administration).
- **Act quickly.** Landlords have 28 days from the date on which the decision of the tenant company's creditors was reported to the court and the creditors. This is tight considering the legal groundwork that has to be covered in order to mount a challenge. Don't wait for the vote on the CVA proposal to pass before considering your rights. Act as soon as you receive a copy of the CVA proposal.
- **Form a challenger group.** The legal fees in mounting a challenge may be too much for one landlord to bear, so you may wish to consider joining forces with other landlords. Contact other landlords by writing to them at their addresses published in the back of the CVA proposal. If you are member of the British Property Foundation, contact them to see if they are aware of any other landlords who wish to challenge.
- **Beware differing agendas.** If you do manage to form a challenger group, make sure all the landlords have the same agenda. Some landlords may wish to use the threat of a challenge to negotiate a better deal (which is what happened with the *House of Fraser* CVA); others may wish to press all the way to court in order to set a precedent that might give them a strategic advantage over other tenants considering proposing a CVA.

If you have any questions in relation to the content of this article or wish to discuss a matter relevant to you, please get in touch with [Rebecca Walker](#) or our Restructuring & Insolvency solicitors by calling [0344 967 0793](tel:03449670793) or email online.enquiries@LA-law.com.