

COVID commercial rent debt rules update for landlords and tenants

11 January 2022

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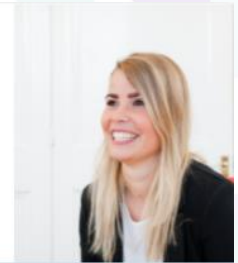


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Today's agenda

Outline for today:

- Nick Southwell – The New Code of Practice and draft Commercial Rent (Coronavirus) Bill
- Megan Bullingham – Arbitration and other methods of enforcement
- Q&A

The new Code of Practice and draft Commercial Rent (Coronavirus) Bill

Nick Southwell
Partner

The new Code of Practice - purposes

The new Code is intended to assist landlords and tenants in resolving disputes relating to rent owed as a result of premises having been closed or having had businesses restricted by the pandemic. It seeks to do this by:

- Explaining the scope and contents of the upcoming Commercial Rent (Coronavirus) Bill
- Providing best practice for landlords and tenants
- Promoting good practice within landlord and tenant relationships, particularly regarding the negotiations process
- Providing the principles set out below

The new Code of Practice - behaviour

The new Code sets out more explicitly the following behaviours to be exhibited by landlords and tenants:

- transparency and collaboration
- a unified approach
- acting reasonably and responsibly
- a swift resolution.

The new Code of Practice - principles

The following principles should be considered by landlord and tenant when considering rent owed as a result of premises having been closed, either due to restrictions or because it was not deemed viable to remain open, during the COVID-19 pandemic:

- Preservation of viable businesses
- Preservation should not be at the expense of the solvency of the landlord
- Affordability

The new Code of Practice – viability and affordability

The points below set out how viability and affordability should be considered during negotiation:

- Settlement of rent debt
- Business must be viable
- Consider both the tenant and landlord position
- Impact on landlord
- Evidence
- Multiple debts
- Restructuring, borrowing, or the taking on of further debts
- Service charge

The Commercial Rent (Coronavirus) Bill

The new regime, if enacted as drafted, will ring-fence certain “protected rent debts” and require parties to work together to agree terms for payment or, if resolution is not possible, to refer the matter to binding arbitration.

In the meantime, it is proposed that the moratoria under the Coronavirus and Corporate Insolvency and Governance Acts 2020 be further extended and expanded in order to prevent landlords taking action in respect of the protected debts until either that arbitration process has been completed, or the deadline to make a reference has passed.

The Commercial Rent (Coronavirus) Bill

The main thrust of the draft Bill is to enable parties to agree relief for tenants, so that businesses remain viable going forward. However, the Bill is more balanced than the previous restrictions under the Coronavirus Act and tenants are once again reminded that, where it is affordable, they should aim to meet their rental obligations. The Government has made it clear that preservation of a tenants' business viability should not come at the expense of a landlord's solvency.

The Commercial Rent (Coronavirus) Bill

The Commercial Rent (Coronavirus) Bill applies to rent debts where:

- The tenant was mandated to close their premises or cease trading; and
- The lease is a business tenancy, as defined by Part II of the Landlord and Tenant Act 1954; and
- The rent accrued during the “ring-fenced period”. This is the period from 21 March 2020 (when the first restrictions on businesses were established) until the end of the relevant restrictions for the business in question. For example, for nightclubs in England, the end date is 18 July 2021.

The Commercial Rent (Coronavirus) Bill

If passed, any debt claims that include “ring-fenced” arrears and which are issued between 10 November 2021 and the Bill coming into force will be stayed.

Specifically:

- all ring-fenced debt under these claims, and any County Court or High Court judgement made in respect of them will fall within the scope of the binding arbitration process (see below).
- Landlords will not be able to issue debt claims for ring-fenced arrears altogether until the end of the arbitration application period or the arbitration process.
- Landlords will be prevented from petitioning for bankruptcy of a business tenant based on a statutory demand for any ring-fenced debt served on or after 10 November 2021 and before the Bill comes into force.
- Landlord will not be able to draw down on tenancy deposits to cover ring-fenced arrears.

Arbitration and other methods of enforcement

Megan Bullingham
Litigation executive

Arbitration

The process will be split into stages

- Pre-application “letter of notification”
- Counterproposal
- Application to arbitration
- Hearing
- Notification
- Fees

Other methods of enforcement

Going forward however, before issuing proceedings landlords will need to consider whether rent is a protected debt. If so, as well as the restrictions on forfeiture, CRAR and the issue of winding up and bankruptcy petitions under CIGA, landlords will also be prevented from:

- a) drawing down on or requiring “top-ups” of tenancy deposits; and
- b) issuing debt claims for County or High Court judgments.

In short summary, if an application is made then the court must stay claims issued between today and the date the Act is passed which relate to protected debts, in order to resolve the issue (whether by arbitration or otherwise).

If you want to know more...

Today's speakers and their contact details:

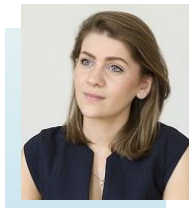
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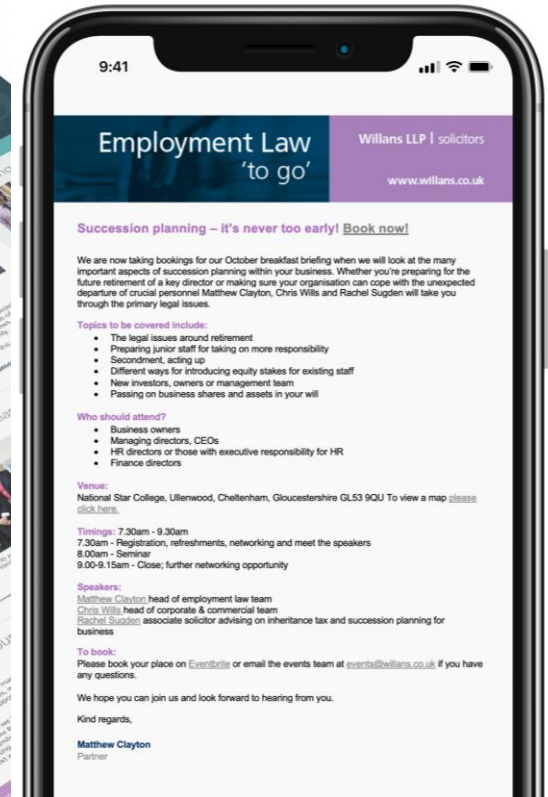
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