

Commercial rents and Covid-19: Call for evidence

The government announced that it would be launching a call for evidence to help monitor the overall progress of negotiations between landlords and tenants for paying or writing off outstanding rents. This call for evidence has now been published.

08 April 2021

Please note: the information contained in this legal update is correct as of the original date of publication.

We mentioned in our article on 11 March ([click here](#)) that the government had extended again (or was likely to extend again) until 30 June 2021 the restrictions on the various landlord's remedies for non-payment of rent introduced since the start of the pandemic (forfeiture, exercise of the statutory procedure known as Commercial Rent Arrears Recovery (or CRAR) and serving statutory demands and presenting winding-up petitions). At the same time, the government announced that it would be launching a call for evidence to help monitor the overall progress of negotiations between landlords and tenants for paying or writing off outstanding rents. This call for evidence has now been published.

The government wants to gather more evidence to understand how landlords and tenants are responding to the build-up of rent arrears and to understand how landlords and tenants are adjusting existing lease terms to reflect the period of recovery that many tenant businesses will need once trading restrictions are lifted. This evidence:

"...will inform government policy regarding the exit from the existing measures and any need for additional measures to preserve viable businesses and the jobs that they provide."

The government has made it plain that if there is evidence that productive discussions between landlords and tenants are not taking place and that this represents a substantial and ongoing threat to jobs and livelihoods, it will not hesitate to intervene further.

The government is looking for a wide range of views from business representative organisations, commercial landlords, lenders and investors (and their representative organisations), commercial property professionals and anyone with an interest in (or connection to) the commercial property market in England. The government is particularly interested in the views of SMEs (including small commercial landlords, independent businesses and sole traders with leased premises).

The questions in the call for evidence vary depending on the identity of the business responding and its interest in the commercial property sector. Amongst other things, there are questions on rent negotiations, the current restrictions on forfeiture (and associated measures) and the voluntary commercial landlord and tenant Code of Practice (which the government published last summer). There are also questions on the six possible options that the government will consider to protect viable businesses and jobs after 30 June. These options are:

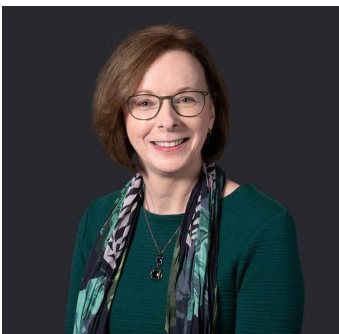
1. Allow the existing measures to expire on 30 June.
2. Allow the restriction on forfeiture to expire on 30 June, but retain the restrictions on CRAR and the insolvency measures for a period of time.
3. Target for a limited period of time the existing measures to businesses based on the impact that the pandemic has had on their business (e.g. those businesses that have been forced by the government to close since March 2020).
4. Encourage increased formal mediation between landlords and tenants, where a trained, neutral third party guides landlords and

tenants to resolve their dispute in a fair and sustainable way (rather than imposing a solution on the parties).

5. Non-binding adjudication between landlords and tenants by an accredited adjudicator, who would propose a fair and sustainable settlement between the parties. Whilst not binding on the parties, adjudication could be required before parties in particular sectors or groups of businesses can take their dispute to court.
6. Binding non-judicial adjudication between landlords and tenants. Landlords and tenants in particular sectors or groups of businesses must enter a binding adjudication process (unless an agreement has already been reached). Both sides would submit an evidence-based proposal for settling rent arrears and an accredited adjudicator would decide on which proposal is adopted based on a prescribed set of principles.

You can reply to the call for evidence from [here](#). The deadline for replying is 4 May.

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