

Covid-19 rent arrears – the questions that remain

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21 February 2022

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Unfortunately there is still much uncertainty. By way of recap, the Commercial Rent (Coronavirus) Bill will only apply to businesses legally required to close/cease trading during the ring-fenced period applicable to the sector. It will not cover those businesses whose trade was affected in other ways.

For those businesses, we must look to the Code of practice for commercial property relationships following the COVID-19 pandemic which states that tenants are to pay in full if they are able to (while maintaining the viability of their business). Where this is not possible, tenants are to negotiate with their landlords considering the behaviours, principles, affordability, and viability statements outlined within the Code.

So, where does this leave a business that could have opened, but chose not to as they deemed it to be in the best interests of their business? The reduction in the affordability of rent could be argued to have reduced due to the tenant's own actions (in choosing not to open) which the landlord may deem unjustifiable. However, it may be that the tenant can argue that they are only viable now because they did not open.

Many businesses were affected by decreased footfall. During the relevant ring-fenced period, Government intervention at the relevant time will need to be considered. It remains to be seen if tenants that did not take part in 'Eat out to help out' will be negatively viewed and to what level tenants will need evidence that they did all they could to mitigate rent arrears whilst keeping their business viable.

Then there are the effects on trade post the relevant ring-fenced periods, for example from the impact of Plan B on trade during the Christmas period 2021 and closures due to outbreaks of COVID amongst staff. As it stands, any rent arrears from this period will be dealt with in the usual manner. Arguably, more needs to be done to address the impact of later restrictions; including safeguarding the sector against any restrictions still to be faced if freedom is not quite here.

The guidance within the Code as it stands is vague and open to wide-ranging interpretation. Our view is that commercial tenants should continue to try to negotiate any rent arrears with their landlords and try to settle these between themselves!

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