
THE IMPACT OF CORONAVIRUS ON THE RETAIL SECTOR. LANDLORDS OR RETAILERS? NOBODY'S A WINNER



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THE COVID-19 PANDEMIC HAS OBVIOUSLY HAD A SIGNIFICANT IMPACT ON THE RETAIL SECTOR.

Many retailers were forced to close during lockdown and have been unable to keep up with their rental payments, even since lockdown eased, footfall in retailers around the UK has been significantly lower as many customers continue to self-isolate and avoid potentially busy places.

On the flipside, landlords around the globe have struggled to receive payments from tenants and the implementation of the Coronavirus Act 2020 (the CA 2020), has had a significant negative impact too and has meant the loss of a degree of protection as they are unable to rely on contractual rights to forfeit commercial leases by peaceable entry, or by issuing court proceedings.

An overview of the changes applied to the law due to Covid-19:

FORFEITURE

Landlords have been impacted by the CA 2020, in that the ability to rely on the remedy of forfeiture based on non-payment of rent was suspended between 6th March 2020 and 30th June 2020. This period was further extended on several further occasions and the current deadline is 30 December 2020.

The Government may further extend this date into 2021, however, this has not yet been confirmed. However, whilst the moratorium is in place, a landlord is unable to exercise their right to forfeit a lease during this period.

The new amendments to the Civil Procedure Rules have meant that any forfeiture proceedings issued prior to March, have been automatically 'stayed'.

COMMERCIAL RENT ARREARS RECOVERY (CRAR)

Commercial landlords are usually able to recover arrears of rent under CRAR.

CRAR is only applicable to the rent, interest and VAT payable under the terms of a lease. If a commercial landlord wants to use this procedure, they must give a tenant 7 days' notice, after the rent becomes overdue. If the rent remains unpaid, bailiffs have permission to seize goods belonging to a tenant, in order to cover the rent arrears. However, this is limited to goods which belong to the tenant, on the premises.

The limit for recovering CRAR by a commercial landlord has been extended to at least 276 days, up to 24th December 2020. This limit is to be further increased to 366 days' rent where the notice of enforcement is given to a tenant on or after 25th December 2020.

The extension of the period provides further protection for retailers, meaning that they are able to remain in their premises for the rest of this year, without the threat of CRAR eviction proceedings during the Christmas period.

However, this extension is mainly aimed at businesses which have been directly affected by the COVID-19 pandemic, and has been implemented to help retailers, and other businesses recover from the impact of the last few months. Where possible, tenants who have not been impacted by COVID-19 and can afford to pay their rent, have been urged to do so by the Government.

THE CORPORATE GOVERNANCE AND INSOLVENCY ACT 2020 (CGIA 20)

The CGIA 20 is another measure which has been implemented in order to protect the interests of commercial landlords and their tenants. Under the CGIA 20, a landlord is unable to pursue an action for unpaid rent, which provides further protection for tenants in the lead up to the Christmas period. In addition to this, commercial landlords (as creditors) are also unable to pursue any action against tenants by filing winding up petitions or serving statutory demands for non-payment of rent. The burden of proof is on a landlord to prove that a tenant has not been impacted financially, as a result of the COVID-19 pandemic.

The CGIA has made it increasingly difficult for commercial landlords to recover unpaid rent from tenants. Landlords have been encouraged to come to an agreement with their tenants for any unpaid rent. Whilst tenants have been encouraged to keep up with their rental payments where they can.

WHAT'S NEXT?

The Courts have inevitably got an increased backlog of proceedings over the last few months and it is going to be a long road to recovery, with significant delays expected.

The Courts are very aware of the fact that a claimant, who is a commercial landlord will have faced a lot of difficulty during the pandemic, however, the consensus is that the Courts are going to be highly sympathetic towards a tenant who has faced financial hardship as a result of the COVID-19 pandemic.

Though the moratorium relating to forfeiture of a lease continues, and the time limit for using the CRAR route has continued to be extended, there is nothing preventing a commercial landlord from pursuing a debt recovery claim for rental arrears.

Commercial landlords are likely to face further hurdles ahead, and it is likely to be a long (and expensive) process in attempting to re-gain possession of their premises.

Whilst many retailers will find themselves in the same boat. They likely also have a long road to recovery. We hope the high street returns to normal and that we start to see customers behaving more confidently.

Sherrards solicitors are experts in retail and are proud members of the BRC.

To speak to one of our leading lawyers, contact the author of this piece, Mike Lewis on the details overleaf:



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