



Rt Hon Robert Jenrick MP  
Secretary of State for Housing, Communities and Local  
Government  
2 Marsham Street  
London SW1P 4DF

Helen Dickinson OBE  
Chief Executive  
Tel: 020 7854 8910  
Email: [helen.dickinson@brc.org.uk](mailto:helen.dickinson@brc.org.uk)

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Dear Robert,

### **BRC response to the MHCLG Call for Evidence on Commercial Rents and Covid-19**

I am writing with reference to your Department's recent Call for Evidence on next steps on commercial rents and arrears following the end of the moratorium on debt enforcement on 30 June. The BRC has responded to the online survey, but I wanted to add to that response with a proposal that will help move the conversation forward and would provide a strong basis for a lasting solution.

The issue of commercial rent arrears is probably the last significant outstanding business concern arising from the pandemic.

The Government responded incredibly positively on a range of business issues at short notice last year. The almost-immediate announcement of the 100% business rates relief for the worst affected sectors and the rapid development of the Coronavirus Job Retention Scheme, followed by the various loan and grant schemes, largely met the stated objective of 'putting an arm around' the UK economy, and undoubtedly protected thousands of otherwise viable businesses from bankruptcy, and hundreds of thousands of jobs from being needlessly lost. The Government deserves plaudits for these rapid and effective responses.

We also welcome the action to provide short-term protection to commercial tenants through the various forms of debt enforcement that have been temporarily stayed. The Code of Practice was another positive development, although concerns about the relative lack of protection it affords tenants have sadly been supported in recent court judgements. To be clear, we are supportive of the text and intent of the Code; the issue is rather its lack of legal weight.

However, we have always recognised the Code and debt enforcement protections as mechanisms to encourage landlords and tenants to reach agreement, rather than being fully fledged solutions to the problem of inability to pay rent in full due to the impact of Covid-19. The Call for Evidence is therefore also welcome as an expression of intent to resolve the outstanding issue of rent arrears.

Suite 60, 4 Spring Bridge Road, Ealing. W5 2AA  
+44 (0)20 7854 8900  
[info@brc.org.uk](mailto:info@brc.org.uk) | [brc.org.uk](http://brc.org.uk)

British Retail Consortium - a company limited by guarantee  
Registered in England and Wales No. 40572  
registered office: 100 Avebury Boulevard, Central Milton Keynes, MK9 1FH

As you will know, this is not an insignificant problem. The BPF estimate that by 30 June, some £7.5bn of commercial rent will be in arrears. Remit Consulting estimate that of March 30, some £5.3bn of commercial rents arising since March 2020 were unpaid, of which half (£2.8bn) were in the retail sector. Non-essential retail England was closed for longer than it was open in the 2020/21 financial year (closed for at least 29 out of 52 weeks, and longer in some areas with higher restrictions), with the retail industry as a whole losing some £22bn in sales during that period.

Even those parts of the industry that were able to remain open didn't necessarily trade profitably; for example Sainsburys has just announced a loss of £261m for 2020/21 after having invested over £450m in Covid-secure measures.

Retail is now reopening across the UK, and early signs of in-store consumer spending are positive. This spending is not felt uniformly across retail, however, and it remains to be seen whether it will be resilient or short term. Even if it is maintained for several months it is highly unlikely to make up for the trade lost during the recent periods of closure.

This means that, for those retailers that have been unable to pay their rent in full, future trading at best will allow arising liabilities to be met but is unlikely to enable full and early repayment of arrears built up since March 2020. A mechanism therefore needs to be put in place that takes account of occupiers' ability to pay, seeks an equitable solution between them and their landlords, and which gives sufficient time for new rental arrangements to be put in place.

The worst outcome of all would be a 'cliff edge' on 1 July when all tenant protections are suddenly withdrawn with nothing to replace them. This would result in a mass of landlord rent recovery action which would almost certainly cause many businesses to enter a CVA or administration, threatening tens of thousands of jobs. This would not be in the interest of any of the parties involved.

The BRC therefore proposes the following solution to the rent arrears issue. It incorporates elements of some of the six options put in the Call for Evidence, and importantly should cost the Government relatively little to implement. It is also similar to other proposals put forward by parts of the property industry, and so I'm sure would have traction with a broad range of occupiers and landlords.

The BRC's proposal is as follows:

- All rent arrears arising during the period of forfeiture (24 March 2020 to 30 June 2021) are ringfenced, and the current protections that apply are extended
- In addition, to ensure that tenant protections are meaningful, arrears are also protected from County Court Judgements. Without including this protection, rent arrears would not be ringfenced in practice
- All new rental and service liabilities that arise after 30 June are payable and not protected from landlord enforcement
- Landlords and tenants have six months after the end of the moratorium, to 31 December 2021, to agree an arrangement to pay down all arrears from this time

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- After 31 December, if no agreement has been reached, both parties must go to binding adjudication
- Adjudication is based on the principles of the Code of Practice

The moratorium ends in eight weeks and retailers are already concerned about what, if anything, will replace it. In order to provide confidence to businesses so that they can plan for investment, it is imperative that Government rapidly review the above proposal, and submissions to the Call for Evidence, and confirm its intentions as urgently as possible, even if legislation and details take some further time to be finalised.

I strongly believe that the above presents the best and most equitable approach to the problem of outstanding rent arrears. Retailers want to be given the opportunity to trade their way out of debt. This mechanism gives them the space to be able to do so.

I look forward to your response and hope to meet with you and your officials to discuss the proposal in more detail in the coming days.

Yours sincerely

A handwritten signature in blue ink that reads 'Helen Dickinson'.

**Helen Dickinson OBE**  
**Chief Executive**