

Code of Practice for Commercial Property Relationships during the COVID 19 Pandemic

19 June 2020



Ingrid Saffin

Partner

T: +44 (0)1483 252630

Ingrid.saffin@crsblaw.com



Claire Timmings

Legal Director

T: +44 (0)1483 252582

claire.timmings@crsblaw.com

Will the voluntary code published today lead to greater landlord and tenant co-operation to address rent payment issues caused by COVID-19?

The impact of COVID-19 has severely affected both landlords and tenants. Most commercial tenants' ability to pay has been seriously diminished by the lockdown with forced closure of their properties and the resulting loss of income.

These cash flow problems have led to many tenants being unable or unwilling to pay their landlords, who in turn face breaching their banking covenants and liquidity issues.

With the next quarters rent due on 24 June the big question is what will landlords and tenants do as lockdown is gradually eased but income remains limited with non-essential shops having only started to open from 15 June?

The moratorium on forfeiture, introduced in the early stages of the lockdown, resulted in a number of different approaches taken by tenants. Some stopped paying rent and service charge altogether, others negotiated monthly rent payments, deferred rents or even a complete rent holiday.

In good news for tenants, with the government has announced today that the deadline for the moratorium is being extended to 30 September.

The Government is also rushing through Parliament legislation to restrict the service of statutory demands and winding up petitions, limiting the landlord's ability to recover unpaid rent through insolvency process.

These measures will help save some businesses but what else can be done to address the ongoing rent payment issues between commercial landlords and tenants?

The overriding message from the Government throughout the crisis is that we are all in this together.

With that in mind and in consultation with leading business, property and retail bodies such as the British Retail Consortium and Revo, the Government has today issued a Code of Practice for commercial property relationships during the COVID-19 pandemic. The Code sets out a framework to encourage greater responsibility and collaboration between landlords and tenants, encouraging them to resolve issues pragmatically and agree terms where possible.

The Code is voluntary, but it is likely to have reputational consequences for those not following it.

The Code advocates that if a party can pay then it should pay. If it can't pay in full (or at all), it should pay what it can when it can. Since landlords have to make out of pocket payments for service charge and insurance, these sums should be paid by tenants in priority to rent.

During the lockdown many occupiers have questioned the visibility of charges that have been expended for services and requested reductions in service charge to reflect decreases in expenditure, which some but not all landlords have tried to address.

Traditionally landlords and tenants are reluctant to share information and data particularly financial information. The Code seeks to encourage both parties to be more transparent, so as to ensure that agreements can, where possible, be reached. If they cannot, then a suitable third party should be involved to help resolve differences.

The Code also sets out suggestions on how concessions and agreements can be reached.

The Code will apply until 24 June 2021, which it is hoped will be long enough to take us through the current situation, the move out of the lockdown and the return to more "normal" trading conditions.

It will be interesting to see if Code leads to more open and transparent collaboration or if legislative action will still be necessary to ensure compliance.

Whilst the Code will not replace any lease obligations, it is likely to be seen as a persuasive instrument to encourage better behaviour and co-operation.

A final word of caution. If rent concessions or lease re-gearing arrangements that landlords and tenants may agree to see them through the current crisis and its aftermath, whether agreed as a result of the Code or otherwise, are not properly documented this may well lead to breaches of banking covenants and adverse consequences on the ability to operate break rights, amongst other things. Suitable legal advice should always be obtained.

This is for general information purposes only and is not intended as specific legal advice. For any specific legal advice on your concerns you should contact: Ingrid at Ingrid.Saffin@crsblaw.com and Claire at Claire.Timmings@crsblaw.com.

Ingrid Saffin as Partner and Claire Timmings as Legal Director, in the Retail, F&B and Leisure focus group of Charles Russell Speechlys LLP.