

Mandatory Arbitration Process For Unpaid Commercial Rent

Commercial Rent (Coronavirus) Bill 2021

The long-heralded bill relating to a mandatory arbitration process in respect of commercial rent that remains unpaid as a result of the Covid-19 pandemic has now been introduced to Parliament. It is anticipated that the bill will be passed no later than 25 March 2022. There is also a new Code of Practice to be followed by the profession.

The provisions of the bill are not quite as wide-ranging as many landlords had feared and will only apply in the following, limited circumstances:

- The unpaid rent arose between 21 March 2020 and 18 July 2021;
- The rent relates to premises (or a part of premises) that were either:
 - Closed due to mandatory regulations made by the government under the Public Health (Control of Disease) Act 1984; or
 - Used for a business that was subject to any restriction imposed under the above Act (but not including a simple requirements relating to displaying notices or of general public application).

Where the landlord and tenant are unable to come to an agreement in respect of unpaid rent and that rent falls under the above requirements, either may refer the issue to an approved arbitrator. The Bill provides for certain nominated bodies (eg, presumably, RICS etc) to maintain a register of approved arbitrators.

An arbitration referral must be on 14 days' notice to the other party which will, in turn, have 14 days within which to respond. No referral to arbitration can be made if the tenant is subject to a voluntary arrangement or a compromise under the Companies Act. Either party may submit written submissions and either may request an oral hearing. The arbitrator's award must be delivered within 14 days.

If the arbitrator is not satisfied that the referral ticks all the boxes or that the tenant's business is viable, he must dismiss the referral. Otherwise, the arbitrator must make an award taking account of whether the tenant should be given any relief in terms of either writing off part or all of the debt or giving the tenant time to pay. There is a maximum period of two years in respect of time to pay.

The arbitrator's award should be aimed at preserving the viability of the tenant's business whilst, at the same time, protecting the landlord's solvency. This will clearly be a tricky balancing exercise and any steps taken by either party to manipulate their perceived financial positions should be disregarded.

This Bill appears to us to be a pretty fair stab at fairly trying to draw a line between the competing interests of the landlord and the tenant both of whom may have been massively prejudiced by matters outside their control. It will be interesting to see how this pans out.



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