

Back to business: Resolving Covid-19 commercial rents and arrears challenges

Confederation of British Industry (CBI) position paper

1. Decisions on commercial rent arrangements should optimise towards reopening and getting all parts of the economy back to business

- 1.1. The CBI has welcomed the historic financial support provided by government to help businesses deal with the UK's worst recession in more than 300 years. As the pandemic unfolded, this was the right thing to do to protect jobs, while necessary economic restrictions prioritised the nation's safety.
- 1.2. Building on the success of the UK's vaccination programme, the government's 'roadmap out of lockdown' published in February 2021 set out steps towards reopening the economy while continuing to protect public health, allied with extended financial support.
- 1.3. With good progress so far, 88% of businesses are expected to be open by the end of May, according to the ONSⁱ. However, some sectors continue to be restricted or fully closed.
- 1.4. The combination of a phased reopening, cautious easing of social distancing restrictions and successful vaccination programme means the time to be planning for government support to be withdrawn. This includes lifting the moratoria protecting commercial tenants from eviction and statutory demands while their operations have been impacted by Covid-19.
- 1.5. More than a year after they were introduced, the CBI agrees with government's ambition to exit a blanket ban on commercial rent protections on 30 June 2021. As far as possible, the commercial property market should now be getting back to normal market behaviours, and tenants that can pay rent should be.
- 1.6. The protections have allowed many tenants and landlords to negotiate existing and future lease arrangements to the benefit of both parties, as well as investors and lenders.
- 1.7. Many tenants have continued to pay as much rent as possible during the pandemic. Many landlords have supported occupiers by offering discounts, deferrals and other concessions.
- 1.8. However, the CBI recognises that the measures have enabled some firms that have not been forced to closed, or have been largely unaffected by coronavirus restrictions, to withhold rent payments and avoid negotiating with landlords. While this is a minority of cases, any future measures should prevent wilful avoidance.

2. Future rent agreements and any future protections should now be targeted to businesses in the hardest-hit sectors

- 2.1. The effects of the pandemic will continue to be felt beyond 2021, with some businesses still yet to reopen. Many firms, including those that are now open, face difficult months to come, even with the lifting of coronavirus restrictions. The CBI believes some businesses merit a phased exit from the commercial rent protections.
- 2.2. **The CBI recommends that businesses in the most extreme financial difficulties should continue to be protected for a further six months.** This would most likely be firms in

hospitality, leisure, and accommodation sectors, and supply chains to sectors such as international travel. This would be similar to Option 3 in the government's Call for Evidence.

- 2.3. We propose that the existing measures should be amended from 30 June 2021 to apply to businesses that can demonstrate a fall in revenue of 30% or more during the six months to 30 June 2021, due to government-enforced coronavirus restrictions.** This 'revenue test' should be applied on a premise-by-premise basis, and compared to a pre-pandemic trading periodⁱⁱ. This would allow for individual tenant-landlord conversations, and for protections to lift on premises where revenues are higher. This would also remove protections from businesses that have not been closed by government-enforced restrictions. This extension of protections would run to 31 December 2021 and only apply to commercial rents due from the most recent 'quarter rent day' (24 June 2021) onwards. It would exclude protection for non-payment of service or insurance charges.
- 2.4. Occupier firms should make the necessary financial information available, including the impact of online revenues, to demonstrate the level of revenue reduction on their business.
- 2.5. With almost nine in 10 business already open, this strikes a balance between lifting the existing commercial rent protection measures on 30 June 2021 for a majority of firms, while providing time-limited additional breathing space for those firms most affected by ongoing government coronavirus restrictions, such as in hospitality and leisure sectors.
- 2.6. This approach would also allow landlords to prioritise conversations with tenants that are best in a position to pay, while establishing a more certain outlook for the return of commercial rents and the payback of arrears. Landlords should also make necessary financial information available to demonstrate their financial position to tenants, and the impact rent shortfalls are having and anticipated to have.
- 2.7. Apart from businesses that meet the 'revenue test', normal market activities should resume for commercial rent payments due from the most recent 'quarter rent day' (24 June 2021).** This includes full rent payments, insurance and service charges, and the use of eviction notices, statutory demands and Commercial Rent Arrears Recovery.
- 2.8. Businesses that meet the 'revenue test' but which are now open should be paying as much rent, insurance and service charges, as possible.
- 2.9. Where targeted protections remain in place for an occupier business meeting the 'revenue test', creditors should refrain from pursuing action through County Court Judgements.
- 2.10. If the next step in the government's roadmap out of lockdown on 21 June requires businesses to remain closed, or for some businesses to re-close, the 'revenue test' period could include the extended period where government-enforced restrictions remain in place.
- 2.11. Towards the end of 2021, the government should review whether a further, more tightly targeted extension for businesses meeting the above 'revenue test' over the six-month period from July to December 2021 would be necessary, to protect jobs at long-term viable businesses that remain in severe financial difficulty. Such a step could be required, for example, where consumer confidence has yet to return in specific sub-sectors or locations.

3. Commercial rent arrears should be dealt with separately from future rent arrangements

- 3.1. The bigger issue is dealing with commercial rent arrears accrued in the period between the commercial rent protection measures coming into force in March 2020 and 30 June 2021. One estimate puts the outstanding commercial rent debt at more than £5bnⁱⁱⁱ.
- 3.2. The CBI believes a pragmatic view on this is needed: the unprecedented impact of the pandemic on the economy and business finances means it is not feasible for creditors to expect all debt to be recovered in full.
- 3.3. The CBI recognises that for some firms the financial impact of repaying unpaid rent on top of forward-looking rent will be too high to manage immediately. At the same time, the integrity of commercial arrangements needs to be preserved as far as reasonably possible to retain confidence in the reputation of the UK business environment.
- 3.4. **To protect viable businesses, the CBI proposes to treat commercial rent arrears from March 2020 up to 23 June 2021 separately from forward-looking rent arrangements after this date.**
- 3.5. **Protections from eviction, statutory demands and Commercial Rent Arrears Recovery (CRAR) measures for commercial rent arrears accrued up to 24 June 2021 because of government-enforced coronavirus restrictions should remain in place until the end of 2021.** The existing Ministry of Housing, Communities and Local Government (MHCLG) 'Code of Practice' for commercial property could be amended to reflect this guidance.
- 3.6. For businesses that have yet to reach an arrangement on commercial rent arrears, occupiers and landlords should use this period to negotiate an agreement over arrears. Negotiations should also account for unpaid but valid insurance and service charges. Resolutions could range from, for example: a lease extension; revenue-indexed rent payments; an agreed concession for closure periods; or a repayment plan of an agreed amount.
- 3.7. As part of this additional protection, the updated 'Code of Practice' should include guidance on timeframes for arrears negotiations to take place, to ensure there is sufficient time to exchange proposals, negotiate counter proposals, and agree resolutions, and avoid the need for arbitration, as far as possible. The government could also specify a date before which businesses need to have entered into negotiations in order for the extended protections from eviction, statutory demands and CRAR to remain in place until the end of 2021.
- 3.8. To benefit from this protection, occupiers should be able to demonstrate the impact of government-enforced coronavirus restrictions on their businesses and landlords should be able to demonstrate the impact of reduced rent income on their financial commitments. The MHCLG 'Annex to the Code of Practice' provides a framework for demonstrating this impact to agree a fair and appropriate settlement.
- 3.9. The CBI recognises the role that County Court Judgements (CCJs) play in supporting landlords to collect unpaid rent in cases where coronavirus restrictions have not impacted a tenant's ability to trade. To avoid a deluge of CCJs entering the judicial system at a time

where the courts are already dealing with a significant backlog of cases, the CBI calls on businesses to refrain from using CCJs where negotiations are taking place.

- 3.10. Any occupiers that have not paid commercial rent that is due prior to 24 June 2021, and cannot demonstrate impacts to their operations from government-enforced coronavirus restrictions, risk being pursued for the debt through these and other routes.
- 3.11. The ringfencing of arrears would not apply to rent that is due after 24 June 2021. As outlined above, except for businesses meeting the 'revenue test', normal market operations for commercial rent payments should resume from 24 June 2021.
- 3.12. At the end of 2021, all protections on arrears would lift (subject to arbitration procedures). For any tenant-landlord discussions on commercial rent arrears that have not been agreed at that point, or if discussions have stalled before then, either party could apply for a binding arbitration decision. If both parties agree, further negotiations could continue.
- 3.13. This additional six months would allow government and industry to establish guidelines for binding arbitration procedures to be used as a last resort, and ensure that capacity for delivering effective arbitration is available, when and if companies enter into it.
- 3.14. The principles of arbitration should ensure: that settlements are practicable and affordable over the payback period (including the possibility of extending repayments beyond an existing lease); that they fairly reflect the impact on trading that government-enforced coronavirus restrictions and closures have had on tenants and landlords; and that they allow for arrears to be met through a flexible range of means – for example arrears could be cleared by a one-off payment on an agreed date, a series of payments, or by tracking rent payments to revenue levels.
- 3.15. Protections would remain in place while arbitration cases were being decided. Entering into arbitration should also prohibit the use of other routes to pursue debts.

Next steps

1. The CBI proposes that government amends the existing emergency legislative measures on eviction bans, statutory demands and CRAR in line with the above suggestions, enabling the ringfencing of commercial rent arrears to be dealt with separately, and targeting the extension of protections for future rent to businesses that meet a 'revenue test'.
2. Government should work with businesses and representative organisations, building on the existing Code of Practice, to establish the principles of a binding arbitration procedure for commercial rent arrears, where occupier-landlord negotiations do not reach an agreement on arrears by the end of 2021.

ⁱ

www.ons.gov.uk/businessindustryandtrade/business/businessservices/bulletins/businessinsightsandimpactontotheeconomy/latest

ⁱⁱ For example, a comparable period from a previous trading year, agreed between occupier and landlord.

ⁱⁱⁱ <https://www.remitconsulting.com/blog>