

Covid-19 : Commercial property – Guidance for tenants

During the current lockdown, commercial tenants can take advice to help manage the significant cost of their lease when they are receiving little or no income from trade

The coronavirus lockdown has had an immediate, withering effect on most businesses. Enforced closure or serious curtailment of trading activities has seen income evaporate while overheads stay as they were.

Commercial leases carry significant costs for tenants, whether that be rent, insurance premiums common/service charges and more day-to-day matters like repairs and decoration. So, tenants are looking at these outgoings with concern.

There is in our view some hope for tenants who feel these costs are now unmanageable, provided that the issue is approached sensibly.

Emergency legislation extends time for tenants to settle arrears

The key point of the Coronavirus (Scotland) Act (CSA) for commercial tenants is that it extends the amount of time a tenant has to settle arrears of rent or other monies. CSA provides that a tenant must be allowed 14 weeks to pay before the landlord can terminate the lease (previously the period was 14 days).

Whilst CSA delays termination of leases, it does not release tenants from their obligation to comply with the terms of their lease. So, apart from the new 14-week timescale, no other provisions of a lease changes and all obligations to pay rent and service charge, to maintain the premises, etc remain live and enforceable. In short, everything has changed and yet nothing has changed.

This will be a benefit for tenants facing cashflow issues, but it's not all good news for tenants, as:

The emergency legislation is temporary

It is initially to run only to 30 September 2020, although there is scope for the Scottish Government to extend the provisions for up to an additional year. There is though also an ability for the Scottish Government to terminate any part or all the legislation at an earlier time, or otherwise to temporarily suspend part or all (although we don't see that happening – if anything it's more likely that CSA will be extended).

It delays lease terminations, but doesn't freeze tenants' obligations

The legislation prevents a lease being terminated for at least 14 weeks after notice of arrears is given, but it doesn't take away the tenant's obligation to comply with its lease. For example, if after receiving an arrears notice a tenant continued to fail to pay rent for the whole 14-week period, as well as the lease potentially being terminated the tenant would be liable to pay the amount mentioned in the arrears notice plus the rent for the 14 weeks since then (plus interest and other damages).

All obligations, financial and non-financial (e.g. repairing obligations), continue to be due as normal. All that is different is how quickly a landlord can move to terminate a lease for non-payment.

Technically a landlord is still able to take direct legal action against tenants for non-payment, stopping short of terminating the lease; Sheriff Officers are though observing a request from the Scottish Government not to enforce payment orders. While that protects tenants in the short-term, it is not a legal restriction and could be lifted in future.

All of the above leaves both landlords and tenants in a very difficult position. A landlord needs a rental income to survive but a tenant needs to cut costs in light of many areas of commerce essentially having been switched off.

Early communication with landlords advised

If you think that your lease outgoings are going to cause you serious problems, our advice is simple – engage with your landlord, and do so early. This is the proverbial elephant in the room but early communication with your landlord should offer a better chance of getting a sympathetic ear than simply stopping payments (because at that point you have no choice). And do take legal advice on the terms of your lease as that will give you a clearer position on where you stand and give you the best chance of making a proposal to your landlord that's likely to stick to the wall.

Lindsays Commercial Property team can help you with all of this.

Additional considerations for tenant businesses

There are some other options and aspects which tenant businesses should look into at the same time as taking advice on the lease terms.

Insurance

Tenants should speak to their insurance broker about whether their own insurance policy offers any business-interruption protection that can be called upon just now.

A tenant whose premises have been closed by the lockdown should check with the landlord what the landlord's policy says about the property being left unoccupied. Insurance policies usually have automatic exclusions if the property is left empty and both the tenant and the landlord should understand what the insurance company's terms are.

Rates relief

Tenants should check what support is available with their rates advisor or the rates authority. Tourism, hospitality and retail sectors have 100% relief for a year and additional support in the form of grants for smaller operators in these fields. There are also grants available for businesses across the spectrum receiving the Small Business Bonus Scheme or Rural Relief.

Coronavirus Job Retention Scheme (Furlough)

Government support is available to cover 80% of each laid-off employee's wages, up to a maximum of £2,500 per month. Lindsays' Employment team will be able to assist with any queries you might have regarding eligibility of your business and its employees.

Coronavirus Business Interruption Loan Scheme (CBILS)

Borrowing facilities of up to £5 million are being made available to qualifying viable businesses with a turnover up to £45 million. These are provided through a range of prominent lenders. The scheme is run by the government's British Business Bank, which will cover the first year's interest payments and lender fees.

Coronavirus Large Business Interruption Loan Scheme (CLBILS)

Businesses with a turnover in excess of £45 million can apply for loans of up to £25 million - £50 million (dependent on turnover) through a range of prominent lenders.

Bounce Back Loans

Available from 4 May, online applications can be made for loans between £2,000 and £50,000. The loans will be interest-free for the first twelve months, and no repayments will be due in the first year. The application process is simpler than that for CBILS and it is hoped Bounce Back Loans will see funds released to business more readily than has been the experience with CBILS.

It is important to note that each of CBILS, CLBILS and Bounce Back Loans are lending schemes and any amounts borrowed will need to be repaid.

For further guidance and support, get in touch with your usual contact or:

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