

Further Guidance

Commercial Tenant and Landlord Covid-19 Rent Arrears - Annex to the Code of Practice

Overview

1. Government has produced this annex to the [Code of Practice](#) to be used by commercial tenants and landlords in discussions about rent, rent arrears and on-going lease terms. This template form is to be used during negotiations by tenants and landlords.
2. The content of this annex serves to support the principles established in the Code of Practice. The Code outlines that tenants are liable for covenants and payment obligations under the lease, unless this is renegotiated by agreement with landlords. Tenants who are in a position to pay in full should do so. Tenants who are unable to pay in full should seek agreement with their landlord to pay what they can, taking into account the principles of this code. This will allow landlords to support those tenants who are in greatest need and to maintain development activity which will contribute to economic recovery. It also means landlords should provide support to a tenant where reasonably possible, whilst having regard to their own financial commitments.
3. This annex is to be used for the issue of **rent arrears and service charges accrued due to Covid-19** and the imposed lockdowns. It is not intended to replace any existing contracts or contractual agreements made by the tenant and landlord nor resolve other disputes between landlords and tenants. We are therefore not recommending that landlords seek historic trading data from their tenants, nor to ask for personal financial information that is not relevant to the business or seek personal guarantees where none were previously provided.
4. The objectives of this form are:
 - 4.1. To provide tenants with a template on which to set out the impact that the pandemic has had on their business and to make a reasoned and reasonable offer to their landlords to address rent arrears and on-going rent payments. Landlords should take this opportunity to carefully review their tenant's offer, financial circumstances, the impact that the pandemic has had on their tenant's income, and how they can work with tenants to enable them to recover and thrive in the recovery.
 - 4.2. To provide an opportunity for tenants and landlords to reach a negotiated resolution of these issues without resort to the courts or other means of bringing leases to an end.
 - 4.3. To ensure that should a case require the courts' involvement, documentation in addition to the necessary forms to satisfy the requirements of pre-action conduct and protocols is available to facilitate a prompt outcome from the judicial process.
5. Key points:
 - 5.1. Landlords will want to consider carefully the long-term impact of tenant businesses failing and leaving their property empty and liable to business rates.
 - 5.2. Tenants should be proactive in approaching their landlord and providing sufficient information about the impact that the pandemic has had on their business to enable their landlord to make a fair and reasonable assessment of their offer. Tenants must be prepared to be as transparent as they can be in disclosing information about how the pandemic has affected their business. Agreements struck on the basis of false or misleading information are unlikely to be enforceable.
 - 5.3. However, landlords should not seek historic financial information, personal financial data or personal guarantees from tenants where none were provided when the lease commenced. The lease remains an ongoing contract between the parties and should only be varied to reflect the impact of the pandemic upon both parties.
 - 5.4. Agreements made conditional upon future rent payments or payments towards arrears of rent being honoured by tenants should be flexible enough to accommodate future trading restrictions that the Government might have to impose to manage the pandemic. Future commitments might best be framed by reference to the number of

days a business is able to trade normally, such after trading for X days the tenant will pay £y.

6. The form is split up into 2 sections:
 - 6.1. [Section 1: Commercial Tenants](#)
 - 6.2. [Section 2: Commercial Landlords](#)
7. Further information on the courts' requirements before litigation can be commenced is available at: https://www.justice.gov.uk/courts/procedure-rules/civil/rules/pd_pre-action_conduct. Before commencing proceedings, the court will expect the parties to have exchanged sufficient information to:
 - understand each other's position;
 - make decisions about how to proceed;
 - try to settle the issues without proceedings;
 - consider a form of Alternative Dispute Resolution (ADR) to assist with settlement;
 - support the efficient management of those proceedings; and
 - reduce the costs of resolving the dispute.

8.

Section 1: Commercial Tenants

9. Historic Rent Payment Record

9.1. Please use the box below to provide evidence of a positive track record regarding rent payments for these premises. This should include information showing where rent has been paid in full and on time. Where rent has been paid late please provide an explanation of the circumstances explaining why it was an isolated occurrence.

10. Turnover (Financial Year 2020/21)

- 10.1. Please use this box to provide evidence of how your business's turnover has been affected by the Covid-19 pandemic. Where possible, please compare this with your business's usual level of trading.
- 10.2. Government recognises that the national and local lockdowns enforced since March 2020 have affected businesses' ability to trade. Please indicate the number of days for which your business was forced to not open due to national and local lockdowns.
- 10.3. Please use this box to describe your best and most realistic estimate of how and to what extent you expect your business turnover to recover once the pandemic is over.

11. Rent Paid (2020/21)

- 11.1. Please use the box below to provide information of the rent you have paid since 25 March 2020. This should include details of the total rent paid and when payments were made in relation to the due date.

6.

12. Rent Arrears Offer

- 12.1. Please use the box below to provide an offer to meet as much of the rent arrears accumulated during the Covid-19 restrictions as you can. This can be expressed as a percentage of the rent arrears (e.g. an offer to pay X% of the rent arrears by a given date).

- 12.2. If you are able to offer a lump sum payment towards your rent arrears this may make your offer more acceptable to your landlord. You should bear in mind that your landlord will have expenses, possibly mortgage payments, and other costs associated with the premises and is unlikely to be in a position to accept a significant reduction on the rent due. Your offer should be the best that you can reasonably afford given the impact that Covid-19 has had on your business.

13. Ongoing Rent Offer

- 13.1. Please use the box below to provide an offer for the ongoing payment of rent. This can be expressed as a percentage of the total rent (e.g. an offer to pay X% of the contractual rent until the end of the lease).

- 13.2. Please support your offer by explaining it in relation to your anticipated turnover between now and when the pandemic is over and your anticipated turnover after the pandemic is over. You may wish to propose that your rent be an agreed percentage of your turnover so that your landlord can benefit if your trading is better than you expect.

14. Service Charges and other property fees

- 14.1. Please use the box below to provide information regarding the amount of service charges and other property fees paid since 25 March 2020.

15. Service Charge Arrears Offer

- 15.1. Please use the box below to provide an offer for the service charge and insurance premium arrears accumulated during the Covid-19 restrictions. You should normally offer to pay the full amount of service charge and insurance premium due to your landlord as this represents expenses incurred by your landlord to maintain and insure your premises. Your landlord may be prepared to waive any management fees if you are able to meet the rest of any arrears of service charge promptly. If you cannot pay the full amount now, you should offer your landlord a payment plan to clear arrears of service charge as soon as you can. Your offer should be the best that you can reasonably afford given the impact that Covid-19 has had on your business.

7.

16. Additional Information

16.1. The box below can be used for adding any additional information you think should be brought to your landlord's attention regarding your business and any measures that you have taken to preserve your business during the pandemic.

A large, empty rectangular box with a thin black border, intended for the user to provide additional information as requested in the text above.

Section 2: Commercial Landlords

17. Please use the boxes below to respond to your tenant's offer. If you are unable to accept the terms of the offer, please give your reasons here. You may wish to propose a counteroffer reflecting both your own and your tenant's financial situation. A counteroffer should address the resolution of both accrued rent arrears and the on-going rental and other obligations of your tenant under the terms of the lease.

18. Do you accept the offer proposed by your tenant? If yes, please detail any conditions for acceptance.

19. If you do not accept your tenant's offer, please state below the reasons why.

20. If you wish, you may propose a counteroffer below:

21. Once the landlord and tenant agree terms, they should be documented so that the terms agreed are properly evidenced. This should be done with the benefit legal advice.

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23. Do you accept the offer proposed by your tenant? If yes, please detail any conditions for acceptance.

24. If you do not accept your tenant's offer, please state below the reasons why.

If you wish, you may propose a counteroffer below:

25. Once the landlord and tenant agree terms, they should be documented so that the terms agreed are properly evidenced. This should be done with the benefit of legal advice.