



## **Guidance on Negotiating Rent Using the Government Code of Practice for commercial property relationships during the COVID-19 pandemic**

1. The **Campaign for Pubs** is deeply disappointed in the voluntary Government Code of Practice which is supposed to deal with the issue of pub and other commercial property rents during Covid 19 (the **Covid-Rent-Code of Practice**)
2. Pub tenants have no option but to seek to use the Covid-Rent-Code of Practice and we offer them the following advice.

### **Legal Position**

3. The Covid-Rent-Code of Practice states that tenants remain liable for full rents. However, this fails to address that there is potential to make a legal challenge or defence on the grounds of the tenancy being frustrated or the rent demand being impracticable. This is uncharted territory in respect of such a unique event as Covid 19, which is the fault of neither party, and was not anticipated nor covered by the insurance of either party.
4. Frustration might arise because of a short time left on the tenancy or lease and/or the premises being rendered unsuitable as a result of restrictions. Even if you do not have the resources to mount a legal challenge, you could potentially seek to walk away maybe just forfeiting your deposit and defend an action by your Landlord for any more liability - or, if your Landlord is insistent upon you paying rent on an unrealistic payment plan, you could possibly use these arguments in defence of forfeiture.
5. You could also bring into play other factors in respect of your tenancy which your Landlord may not wish to be raised in Court. For example, a pre-existing misrepresentation or shortfall on profitability caused by your Landlord or a dispute on repairs or services that you have had to pay for. This includes using the known misrepresentation of the contents of barrels supplied under a tied agreement ("72 pints").
6. You should also be aware that there will, of course, be a cost and a risk for your Landlord to pursue the debt and they will not want a precedent if they lose. Your Landlord will also incur cost and lose revenue if you leave particularly as the pub rental market is affected by Covid.
7. In order to progress such an approach you need to consult a solicitor.
8. The Government has put in place a moratorium on forfeiture action until 30 September 2020. This time should be used for negotiation and assessing your approach.

### **Voluntary Nature of the Covid-Rent-Code of Practice**

9. The Covid-Rent-Code of Practice is voluntary but many organisations have signed in support so it can be assumed that their members will comply. This includes the British Beer and Pub Association (BBPA) which represents all the 6 regulated pub companies: Admiral Taverns; El Group/Stonegate; Greene King; Marston's; Punch Taverns/Punch Pubs; and Star Pubs and Bars.

10. Further, the fact that the Covid-Rent-Code of Practice exists and is produced by the Government to recognise the extraordinary impact of Covid 19 upon commercial agreements in itself sets the basis for a potential defence of unreasonableness if a Landlord were to seek forfeiture without due consideration of the Covid-Rent-Code of Practice.

### **Affordability**

11. The Covid-Rent-Code of Practice states that tenants should make payment of rent if they can afford to do so. You should, however, interpret this as if your business can afford to. You should not be coerced into excessive personal borrowing or investment. Indeed, your landlord should not require you divulge your personal financial situation.
12. When undertaking negotiations you should produce a forecast profit and loss for your business for the year and share that with your Landlord. Any grants you receive for your business should be recorded as income.
13. You should also put the negotiations into perspective in respect of your whole tenancy or lease - if you are seeking a 6 month rent holiday, for example, and you have a 20 year lease then this is a 2.5% reduction over the term of the Agreement.
14. It is also relevant to consider your Landlord's costs as they may also have received support from the Government in terms of furlough and grants. They may also have secured a loan interest holiday, rent and rates concessions on properties that they own and lease. It is legitimate, as appropriate, for you to ask how this impacts upon the rent and service charge they intend to charge you.

### **Negotiation**

15. The Covid-Rent-Code of Practice is regrettably unspecific on the valuation methodology for the period affected or on a percentage split on the loss of business as a result of Covid 19. It is also voluntary so ultimately you may have to revert to a solicitor if your Landlord just will not co-operate.
16. Your responsibility as a tenant is to pay rent if your business can afford it (including a reasonable proportion from Government grants) and to set out the case and proposals for a concession if paying the rent in full and on time is not possible or will cause hardship to the business.
17. Your Landlord has a responsibility to be transparent, to collaborate and to provide concessions where they reasonably can. Further, Landlords seeking to refuse concessions should be clear with their tenants why they are doing so.
18. **In order to progress the negotiation you should:-**
  - Prepare a profit and loss - and a cash flow as appropriate - reflecting your estimate of income and expenses for the whole of 2020 taking account of the closure and restricted trade - this should reflect any Government support and any rent concessions already offered. Be realistic about the trade you are likely to attract bearing in mind restrictions that will apply and the fear of the virus that may keep customers away.
  - In most cases you are likely to have some significant shortfalls. Identify when and how much these shortfalls are and prepare a case for the help you will need from your Landlord to keep your business afloat. The Guidance lists the type of concessions that your Landlord should consider.

- Write to your Landlord referring to the Government Covid-Rent-Code of Practice, enclosing your analysis of your pinch points and shortfalls and setting out what support you would like. Invite discussion in line with the Covid-Rent-Code of Practice. Compare your expected trade to that used in any forecast profit and loss used to calculate your rent.
- If your Landlord refuses to co-operate then, as detailed above, compliance with the Covid-Rent-Code of Practice requires them to communicate their reasons. You can offer to go to mediation within the provisions of the Covid-Rent-Code of Practice. You could also consider termination or forfeiture or legal action or defence as detailed above - or, if your Landlord is one of the six regulated pub companies, make a complaint to the Pub's Code Adjudicator (see below)

### **The Statutory Pubs Code (for tenants/leesses of the 6 regulated pub companies)**

19. The other avenue for complaints by tied pub tenants of the six regulated pub companies (Admiral Taverns; EI Group/Stonegate; Greene King; Marston's; Punch Taverns/Punch Pubs; and Star Pubs and Bars) is the Pubs Code Adjudicator (PCA), who are covered by the statutory **Pubs Code**. The PCA has indicated that she will deal with matters where your pub company is not acting transparently and consistently. We also consider that the clear reduction on trade from Covid-19 (both as a whole and also specific impacts of Covid could be a trigger for tenants to acces the market-rent-only option (MRO). This may be the case for all pubs (and we believe it should be, as trade has clearly been hugely detrimentally affected for most pubs) and also we believe also should be for pubs reliant upon trade that is no longer there e.g. from offices, theatres, stadiums, concert halls, etc. which has demonstrably reduced trade.
20. We would strongly advise engaging with an appropriate organisation to ensure you have proper support either on a single case basis or on the basis of membership. Support on the Pubs Code is provided at reasonable cost on a case by case basis or via membership by recommended **British Pub Confederation** organisations (The Campaign for Pubs is a member of the British Pub Confederation):
  - **Pubs Advisory Service** - email: [support@pubs.expert](mailto:support@pubs.expert)
  - **Forum of British Pubs** - email: [info@forumofbritishpubs.com](mailto:info@forumofbritishpubs.com)

### **Summary**

This advice is to assist tenants running pubs. Where tenants have complaints about how they are being treated and feel that your Landlord is not abiding by the voluntary Covid-Rent-Code of Practice we strongly advise writing to your MP, to ask them to raise this with the Government. Please do copy in the Campaign for Pubs [campaign@campaignforpubs.org.uk](mailto:campaign@campaignforpubs.org.uk).

**Campaign for Pubs**  
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