

Real estate quarterly update - July to September 2021

Read more about our latest real estate update aimed at in-house lawyers (and other professionals) practising in the property and real estate sector.

05 October 2021

Cases

Monosolar IQ Ltd v Woden Park Ltd [2021] EWCA Civ 961

The court comes to a tenant's aid to correct an error in the drafting of an index-linked rent review clause.

[Read our case update](#)

Capitol Park Leeds Plc and another v Global Radio Services Ltd [2021] EWCA Civ 995

A tenant who handed back an empty shell of a building had complied with a condition of its break option to give vacant possession of the property.

[Read our case update](#)

Father's Field Developments Ltd v Namulas Pension Trustees Ltd [2021] UKUT 169 (LC)

A case which illustrates the danger of using a restrictive covenant to secure an overage payment.

[Read our case update](#)

Poundland Ltd v Toplain Ltd [Brentford County Court, 7 April 2021]

The County Court refuses to sanction the inclusion of a pandemic rent suspension clause in a non-contested lease renewal.

[Read our case update](#)

London Trocadero (2015) LLP v Picturehouse Cinemas Ltd and others [2021] EWHC 2591(Ch)

The third case this year where a tenant's defence to a landlord's summary judgement claim for pandemic rent arrears failed.

[Read our case update](#)

Legislation

Building Safety Bill

A new Bill to reform building safety regulation has been published. Some of the key provisions (as initially drafted) are as follows:

1. The people who are responsible for the safety of high-rise residential buildings will have to be clearly identifiable.
2. A Building Safety Regulator will be established to hold people to account who break the rules and who do not properly manage building safety risks.
3. The ways in which residents can raise concerns effectively will be increased.
4. Rights to compensation for substandard workmanship and unacceptable defects will be extended.
5. The limitation period for residents to seek compensation for substandard construction work under the Defective Premises Act 1972 will be increased from 6 to 15 years.
6. New measures will be introduced for seeking compensation for shoddy refurbishments which make a home uninhabitable.
7. To protect leaseholders from exploitation over remediation costs, building owners will be required to explore alternative ways to meet those costs and will have to provide evidence that this requirement has been met. Controversially though, there are no provisions actually preventing costs being passed on to leaseholders. The Bill in fact creates a new 'building safety charge', which is separate from other service charges in a lease and which can be used (in relation to higher-risk buildings) to fund costs a landlord incurs in carrying out and undertaking ongoing building safety measures (as opposed to historical remediation costs).
8. Developers will be required to join and remain members of the New Homes Ombudsman scheme.
9. The Secretary of State can provide for a new levy to be paid on applications for building control approval in respect of higher-risk buildings.

The Coronavirus Act 2020 (Residential Tenancies and Notices) (Amendment and Suspension) (England) Regulations 2021

These regulations suspend certain provisions in Schedule 29 of the Coronavirus Act 2020. The effect is that from 1 October 2021, the notice periods that must be given when seeking possession of residential properties in England revert to their pre-pandemic position.

The government does though retain emergency power to extend the notice periods again until 25 March 2022. The regulations also bring in new prescribed forms of notice for use when seeking possession under sections 8 and 21 of the Housing Act 1988.

The Corporate Insolvency and Governance Act 2020 (Coronavirus) (Amendment of Schedule 10) Regulations 2021

These regulations replace the restrictions that were in place until 30 September 2021 on the use of statutory demands and the presentation of winding up petitions.

From 1 October 2021 until 31 March 2022, the debt threshold for presenting a winding up petition is raised to £10,000 (from £750) and a creditor must give a debtor 21 days to make a proposal for paying the debt in question before a petition can be presented.

Importantly however, rent and any other sums payable by a tenant under a business lease are excluded from this process where they are unpaid because of the financial effect of coronavirus. A landlord cannot present a winding up petition for these sums until after 31 March

2022.

Consultation and guidance

Supporting businesses with commercial rent debts: policy statement

This policy statement has been published by the Ministry of Housing, Communities and Local Government and provides a bit more detail about the government's plans for legislation to deal with rent arrears accrued during the pandemic (first announced in June).

The policy statement covers the following key points:

1. The legislation will ring-fence rent arrears accrued from March 2020 for tenants affected by COVID-19 business closures until restrictions for their sector are lifted. It will also introduce a system of binding arbitration where landlords and tenants cannot agree how to deal with those arrears.
2. Ahead of the legislation being passed, the government will publish the key principles that it will seek to put in place in a revised Code of Practice (the initial voluntary Code to encourage landlords and tenants to work together to protect viable businesses was published in June last year). This will allow landlords and tenants time to negotiate in good faith using the principles set out in the updated Code.
3. The restriction on landlords forfeiting any business lease for non-payment of rent will continue until 25 March 2022, unless the legislation is passed before then. Once the legislation is passed, the restriction on forfeiture will only apply to ring-fenced arrears. Landlords will therefore be able to forfeit for arrears accrued prior to March 2020 and after the end of the period of trading restrictions for the sector in question. They will also be able to forfeit for non-payment of rent accrued at any time where the tenant's business falls outside the scope of the new legislation.
4. Tenants who have not been forced to close during the pandemic and who have the means to pay rent, should do so. In addition, tenants should begin paying rent from the point that trading restrictions for their sector are lifted (unless otherwise agreed with their landlord).
5. The government expects landlords and tenants to agree terms to defer or waive an appropriate proportion of the ring-fenced arrears. It expects landlords to share the financial burden with tenants where they are able to do so and that tenants who can pay should do so.
6. Further details on the arbitration process and how it will work will be provided in due course. It should be seen as a last resort - the government's strong preference is for landlords and tenants to reach agreement themselves using the principles set out in the revised Code of Practice. If one party is found not to have negotiated in the spirit of these principles, an arbitrator may be able to require that party to meet all the costs of the arbitration.

A copy of the policy statement can be viewed from [here](#).

Land Registry

New Form RXC – consent or certificate under a restriction

This new form has been published by the Land Registry. It can be used where a restriction requires a consent or certificate to be provided. Although not mandatory, its use is recommended as it should help to reduce the number of requisitions received in relation to such consents or certificate. For example, the form ensures that any consent given is to the registration of a disposition (as required by the Land Registry), rather than simply to the disposition itself.

The form has detailed instructions on it how to complete it. A new section (3.1.6) has also been added to Practice Guide 19 (click [here](#)) with more details about the form and how to use it.

The new form can be downloaded from [here](#).

Practice Guide 8 – electronic signatures

The Land Registry has amended section 13.3 of this Practice Guide (covering its requirements for using electronic signatures).

The amendments clarify that:

- the borrower (in the case of a mortgage) need not have a conveyancer acting for them (for most transactions, both parties have to be represented by a conveyancer);
- the dating of the relevant deed on a signing platform can be done by any party's conveyancer; and
- the certificate as to compliance with the Land Registry's requirements needs to be dated and signed by an individual conveyancer, their full name and firm must be added and the deed or deeds for which the certificate is given must be specified.

A copy of Practice Guide 8 can be viewed from [here](#).

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