

## A whole (re)new world – Forfeiture clauses in business lease renewals

---



As the immediate pressures of the COVID-19 pandemic recede, attention in the commercial real estate sector is beginning to focus on managing future pandemic risk and in particular assessing the balance of economic risk between commercial property owners and occupiers.

The recent County Court decision in *Poundland Ltd v Toplain Ltd* (unreported) which considers the impact of the pandemic on an unopposed business tenancy renewal under the Landlord and Tenant Act 1954 is a case in point.

In our Real Estate Blog series, we have already examined the inclusion of rent suspension clauses in renewal leases in the context of *WHSmith Retail Holdings Limited v Commerz Real Investmentgesellschaft MBH [2021]* and in the more recent case of *Poundland v Toplain Ltd* (unreported).

In the Poundland case, the parties agreed a rental figure for a new five-year lease however, as part of the renewal negotiations the tenant proposed a number of changes to the lease.

Aside from the request for the inclusion of a new rent suspension clause, the tenant sought to vary the existing forfeiture clause by including a proviso that the landlord could not forfeit during a lockdown period.

The Court was of the view that such a variation would significantly alter the existing commercial balance between the landlord and the tenant and therefore found in favour of the landlord.

In assessing the balance of risk between owner and occupier, the Court reasoned that the tenant's risk revolved



around trading whereas the landlord's risk revolved around the ability of the tenant to pay the rent. Imposing such a proviso would transfer or share that tenant risk during a lockdown period in circumstances where any government or central assistance that might be available would be available to the tenant and not the landlord.

This case is one of many examples of legal disputes to have arisen between commercial landlords and their tenants as a result of the business interruption caused by the Covid-19 pandemic and it is unlikely to be the last.

The Court has however been clear that the purpose of the 1954 Act is not to rewrite previously negotiated risks.

The Judge in the case of Poundland was of the firm view that it was not "the purpose of the legislation (and so the court in exercising its discretion) to approve (opposed) amendments to the lease which would result in a change to the respective risks, obligations and benefits carried and enjoyed."

Lease renewal proceedings are not an opportunity for a tenant to try to insulate itself "against the commercial and trading risks they may face in a way that would either prejudice the landlord or interfere with their long term interests."

Even though the case in question is a County Court case, and therefore not binding in precedent terms, it is a useful indicator of the Court's desire to maintain the balance of risk between the parties to a lease in the wake of the pandemic.

The Poundland decision will no doubt be welcomed by landlords across England and Wales.

## How we can help

To discuss any issues in this article, please contact our [real estate](#) team.



[Christobel Smales](#)

Professional Support Lawyer (Legal Director)