

Report on Government's call for evidence on commercial rents



In April 2021, the UK Government invited the views of the property industry to help answer the question of how to deal with rent arrears that have accrued during the pandemic. Last week, the Government published its [analysis of the survey here](#).

Key points

- The call for evidence appears to have been engaged with by both landlords and tenants alike. While returns were received from approximately three times as many tenants as landlords, that might be expected given a number of large scale institutional landlords such as pension funds will have responded.
- Of interest is the make-up of tenant respondents. Five digit SIC codes were requested to enable the characteristic of the main business activity of responding tenants to be identified. The five largest categories of respondent were, in order: pubs and bars, licensed restaurants, fitness centres, unlicensed restaurants and cafes, and other recreational activities. This seems to reflect the greater impact of the pandemic upon those sectors relative to, for example, retail.
- The differing perception of approaches to the Code of Practice is very stark. The report states that over 50% of tenants believed 0-20% of landlords were engaging in the spirit of the Code. Landlords, in comparison, perceived [the majority of their tenants were engaging with the Code](#).

Where landlords and tenants agree

There are some interesting areas where landlords and tenants responses appear to mirror one another.

For example, on the question of whether the Code was effective the majority of tenants appeared to say it was not. That view was shared by around 50% of all landlords who responded. The predominant reason was the voluntary nature of the Code.

It is also interesting to note that the biggest bar to successfully negotiating an agreement on how to deal with Covid arrears was said, by both landlords and tenants, to be the willingness of individuals to engage.

The 6 alternative options

The survey proposed 6 alternative options, which are set out below alongside an indication of active support and active opposition for each.

It is important to stress that respondents were able to tick multiple options, supporting or objecting to as many as they wished. The figures below also only show those who were actively in support and actively against each proposal, not those who were indifferent or did not respond.

Option	% In Favour	% Against
1 Allowing current protection to expire	34%	57%
2 Allow the moratorium on forfeiture to expire but retain the insolvency and CRAR restrictions	19%	62%
3 Having bespoke measures which flex the protections afforded, depending on the impact Covid has had on tenant's business	62%	Figure not presented
4 Encouraging increased formal mediation	40%	43%
5 Non-binding arbitration	25%	51%
6 Binding arbitration	49%	27%

The greatest divides

Perhaps unsurprisingly there were also significant differences between landlords and tenants.

80% of landlords expressed option 1 as their preferred option. Around 90% of tenants expressed it as their least preferred.

Binding arbitration was the least preferred option for landlords with 50% actively against it. By contrast it was the most supported option by tenants, with close to 60% support.

Where next?

That landlords and tenants have differing views on the way forward is not at all surprising and therefore neither is the clear indication that intervention *will* be the direction of travel. That tells us no more than was in [the Government's June 2021 press release](#).

Similarly, there is nothing identified in this report to give an indication of what any legislative intervention might look like.

The report does state that the Government will publish a series of principles which it will seek to codify in a revised Code of Practice. This will allow landlords and tenants time to negotiate. No timescale has been given for



the publication though and we do not know from the findings what it may look like.

Given the concerns raised by both landlords and tenants over the voluntary nature of the Code, it will be interesting to see how the Government intends to address this specifically.

For now, it continues to remain a case of watch this space.

If we can help you think through your options and negotiations, please [get in touch with our team](#).

Written by



[Nitej Davda](#)

Partner