



Commercial Rent (Coronavirus) Act 2022

2022 CHAPTER 12

PART 2

ARBITRATION

Arbitration awards

13 Arbitration awards available

- (1) This section sets out the awards open to the arbitrator on a reference under this Part.
- (2) If the arbitrator determines that—
 - (a) the parties have by agreement resolved the matter of relief from payment of a protected rent debt before the reference was made,
 - (b) the tenancy in question is not a business tenancy, or
 - (c) there is no protected rent debt,the arbitrator must make an award dismissing the reference.
- (3) If, after assessing the viability of the tenant's business, the arbitrator determines that (at the time of the assessment) the business—
 - (a) is not viable, and
 - (b) would not be viable even if the tenant were to be given relief from payment of any kind,the arbitrator must make an award dismissing the reference.
- (4) Subsection (5) applies if, after making that assessment, the arbitrator determines that (at the time of the assessment) the business—
 - (a) is viable, or
 - (b) would become viable if the tenant were to be given relief from payment of any kind.
- (5) In that case the arbitrator must resolve the matter of relief from payment of a protected rent debt by—

- (a) considering whether the tenant should receive any relief from payment and, if so, what relief, and
- (b) making an award in accordance with section 14.

14 Arbitrator's award on the matter of relief from payment

- (1) This section applies where the arbitrator is considering how to resolve the matter of relief from payment of a protected rent debt as required by section 13(5).
- (2) Before determining what award to make the arbitrator must consider any final proposal put forward to it by a party under section 11.
- (3) Where both parties put forward final proposals under section 11—
 - (a) if the arbitrator considers that both proposals are consistent with the principles in section 15, the arbitrator must make the award set out in whichever of them the arbitrator considers to be the most consistent;
 - (b) if the arbitrator considers that one proposal is consistent with the principles in section 15 but the other is not, the arbitrator must make the award set out in the proposal that is consistent.
- (4) Where only the party making the reference to arbitration puts forward a final proposal under section 11, the arbitrator must make the award set out in the proposal if the arbitrator considers that the proposal is consistent with the principles in section 15.
- (5) Otherwise, the arbitrator must make whatever award the arbitrator considers appropriate (applying the principles in section 15).
- (6) An award under this section may—
 - (a) give the tenant relief from payment of the debt as set out in the award, or
 - (b) state that the tenant is to be given no relief from payment of the debt.
- (7) Where an award under subsection (6)(a) gives the tenant time to pay an amount (including an instalment), the payment date must be within the period of 24 months beginning with the day after the day on which the award is made.
- (8) In subsection (7) “the payment date” means the day specified in the award as the day on which the amount concerned falls due for payment.
- (9) An award giving the tenant relief from payment of a protected rent debt is to be taken as altering the effect of the terms of tenancy in relation to the protected rent constituting the debt.
- (10) Subsection (9) means, in particular, that—
 - (a) the tenant is not to be regarded as in breach of covenant by virtue of—
 - (i) non-payment of an amount written off by the award, or
 - (ii) failure to pay an amount payable under the terms of the award before it falls due under those terms;
 - (b) a guarantor of the tenant's obligation to pay rent, or a former tenant who is otherwise liable for a failure by the tenant to pay rent, is not liable in respect of anything mentioned in paragraph (a)(i) or (ii);
 - (c) a person other than the tenant who is liable for the payment of rent on an indemnity basis is not liable—
 - (i) to pay any unpaid protected rent written off by the award, or

- (ii) to pay an amount payable under the terms of the award before it falls due under those terms;
 - (d) any amount payable under the terms of the award is to be treated for the purposes of the tenancy as rent payable under the tenancy.
- (11) In this section “final proposal” means—
 - (a) the revised formal proposal put forward by a party under section 11(4), or
 - (b) if there is no revised formal proposal put forward by a party, the formal proposal put forward by the party under section 11(1) or (2).

15 Arbitrator’s principles

- (1) The principles in this section are—
 - (a) that any award should be aimed at—
 - (i) preserving (in a case falling within section 13(4)(a)), or
 - (ii) restoring and preserving (in a case falling within section 13(4)(b)), the viability of the business of the tenant, so far as that is consistent with preserving the landlord’s solvency, and
 - (b) that the tenant should, so far as it is consistent with the principle in paragraph (a) to do so, be required to meet its obligations as regards the payment of protected rent in full and without delay.
- (2) In considering the viability of the tenant’s business and the landlord’s solvency for the purposes of subsection (1), the arbitrator must disregard anything done by the tenant or the landlord with a view to manipulating their financial affairs so as to improve their position in relation to an award to be made under section 14.
- (3) For the purposes of this section, the landlord is “solvent” unless the landlord is, or is likely to become, unable to pay their debts as they fall due.

16 Arbitrator: assessment of “viability” and “solvency”

- (1) In assessing the viability of the business of the tenant, the arbitrator must, so far as known, have regard to—
 - (a) the assets and liabilities of the tenant, including any other tenancies to which the tenant is a party,
 - (b) the previous rental payments made under the business tenancy from the tenant to the landlord,
 - (c) the impact of coronavirus on the business of the tenant, and
 - (d) any other information relating to the financial position of the tenant that the arbitrator considers appropriate.
- (2) In assessing the solvency of the landlord, the arbitrator must, so far as known, have regard to—
 - (a) the assets and liabilities of the landlord, including any other tenancies to which the landlord is a party, and
 - (b) any other information relating to the financial position of the landlord that the arbitrator considers appropriate.
- (3) In making an assessment under subsection (1) or (2), the arbitrator must disregard the possibility of the tenant or the landlord (as the case may be)—

- (a) borrowing money, or
- (b) restructuring its business.

17 Timing of arbitrator’s award

- (1) Subject to subsection (2), the arbitrator must make an award under section 14 as soon as reasonably practicable after—
 - (a) where both parties have put forward a final proposal, the day on which the latest final proposal is received, or
 - (b) otherwise, the last day on which a party may put forward a revised formal proposal (see section 11(4)).
- (2) Where an oral hearing is held (see section 20), the arbitrator must make an award within the period of 14 days beginning with the day on which the hearing concludes.
- (3) The period in subsection (2) may be extended—
 - (a) by agreement between the parties, or
 - (b) by the arbitrator where the arbitrator considers that it would be reasonable in all the circumstances to do so.
- (4) In this section “final proposal” has the same meaning as in section 14(11).

18 Publication of award

- (1) This section applies when the arbitrator has made an award on a reference under this Part.
- (2) The arbitrator must publish the award together with the reasons for making it, subject as follows.
- (3) The arbitrator must exclude confidential information from anything published under this section, unless the arbitrator has been notified by the person to whom it relates that the person consents to its publication.
- (4) In subsection (3) “confidential information” means information which the arbitrator is satisfied is—
 - (a) commercial information relating to a party or to any other person the disclosure of which would, or might, significantly harm the legitimate business interests of the person to which it relates, or
 - (b) information relating to the private affairs of an individual the disclosure of which would, or might, significantly harm that individual’s interests.