

# COMMERCIAL CLIENT UPDATE

Your Law Firm's Legal Update for Commercial Clients

SUMMER 2022

## Renters Reform Bill 'will make evictions easier'

**The Renters Reform Bill is designed to drive up standards in the private and socially rented sector, but it will also make evictions easier for landlords in certain circumstances.**

The Bill is designed to help the 4.4 million households privately renting across England by extending the Decent Homes Standard to the private rented sector for the first time.

New measures will also protect tenants by scrapping so-called 'no fault' Section 21 evictions - that allow rogue landlords to terminate tenancies without giving any reason. It's estimated that 22% of those who moved in the past year did not end their tenancy by choice.

However, the Bill will also strengthen landlords' grounds for repossession making it easier for them to evict tenants who are wilfully not paying rent, or who are repeatedly engaging in anti-social behaviour, bringing down neighbourhoods.

Tenants in social housing will also benefit

from major reforms. The Social Housing Regulation Bill will make all registered social housing providers subject to a tough new regulatory regime, with failing social landlords facing unlimited fines if they fail to meet the standards expected of them.

A new Private Renters' Ombudsman will be created to enable disputes between private renters and landlords to be settled quickly, at low cost, and without going to court. The ombudsman will cover all private landlords letting properties and make sure that when residents make a complaint, landlords take action to put things right.

The Bill will also introduce a new property portal to help landlords understand their obligations, give tenants performance information to hold their landlord to account, and help councils crack down on poor practice.

The government will shortly publish a White Paper setting out more detail on its proposals and will continue to work with the sector to develop the Renters Reform Bill.

We shall keep clients informed of developments.

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# Busiest time for business insolvencies since 2012

**The first quarter of this year was the busiest for corporate insolvencies since 2012, according to the latest figures.**

It's feared there may be worse to come because of rising inflation, increased fuel costs, and reduced consumer spending. The increase in interest rates is also likely to have an adverse effect on business viability.

Data from the Insolvency Service shows there were 4,896 underlying corporate insolvencies in Q1 2022 – an increase of 6.1% from Q4 2021's figure of 4,615,



and a rise of 112% on Q1 2021's figure (2,309).

There were 32,305 personal insolvencies in Q1 2022 – an increase of 16.8% from Q4 2021's figure of 27,668, and an increase of 14.2% on Q1 2021's figure of 28,298.

Christina Fitzgerald, President of insolvency and restructuring trade body R3, said: "This has been the busiest quarter for corporate insolvencies since 2012 as firms who have struggled with the economic consequences of the pandemic are now having to deal with the sharp rise in inflation.

"The figures reflect the tough climate businesses have been operating in over the last quarter. At a point where many businesses needed a return to normality, rising fuel and energy costs have put them under additional strain, and the effects of the increased cost of living has prevented the spending boom many were hoping for from happening."

Businesses are advised to keep a tight rein on credit control and take action quickly to ensure invoices to customers are paid on time to maintain cash flow and prevent debts building up.

Please contact us for more information about the issues raised in these articles

## Insurance company wins £80m contract dispute with IBM

**IBM has been ordered to pay an insurance company £80m following a contract dispute.**

It had agreed to provide Soteria Insurance Ltd with an IT system over a 10-year period. After a series of delays, Soteria refused to pay a "milestone" invoice presented by IBM.

Relying on the non-payment, IBM terminated the contract, and the IT system was never delivered.

Soteria alleged that IBM had wrongfully repudiated the contract and sought £132 million in damages for wasted expenditure flowing from the repudiation.



At trial, the judge found that IBM had wrongfully repudiated the contract, but that Soteria was unable to claim for wasted expenditure because of an exclusion clause.

Soteria appealed against the judge's construction of the exclusion clause.

The Court of Appeal ruled that the judge had been entitled to find that Soteria had

disputed the invoice in good faith and that IBM could therefore not rely on the non-payment to justify its termination of the contract.

However, she had erred in construing the exclusion clause as precluding the buyer from recovering its wasted expenditure.

The contract defined "losses" widely and carved out specific types of loss in respect of which liability was excluded: "loss of profit, revenue [or] savings".

The clause did not exclude a claim for expenditure wasted because of the other party's repudiatory breach.

However, because of a contractual cap on damages, it was limited to recovering only £80.5 million.



## Law to resolve Covid rent debts takes effect

**A new law to resolve commercial rent debts accrued because of the pandemic has now come into effect.**

The Commercial Rent (Coronavirus) Act 2022 provides a legally binding arbitration process for eligible commercial landlords and tenants who have not already reached an agreement.

It's designed to resolve disputes about certain pandemic-related rent debt and help the market return to normal as quickly as possible.

The law applies to commercial rent debts of businesses including pubs, gyms and restaurants which were mandated to close, in full or in part, from March 2020 until the date restrictions ended for their sector.

Debts accrued at other times will not be included. Business Minister Paul Scully said: "Landlords and tenants should keep working together to reach their own agreements where possible using our Code of Practice to help them, and we've made arbitration available as a last resort.

"Tenants who can repay their rent debts in full, should do so, and when they cannot, landlords should try to share the burden, so we can all move on. The

government encourages commercial landlords and tenants to negotiate their own agreement where possible, so that an arrangement to resolve debt is mutually agreed."

The general moratorium on commercial evictions and restrictions on Commercial Rent Arrears Recovery (CRAR) has now ended, but eligible firms remain protected for the next 3 months during which arbitration can be applied for or until the conclusion of an arbitration.

The moratorium has provided firms with breathing space to negotiate how to address the cost of commercial rent debts caused by the pandemic before the new law came into place.

## Director breached his duties when claiming expenses

**A director who used company money for his own private expenditure was found to be in breach of his fiduciary duties under the Companies Act 2006.**

The director, Mr McDermott, joined Hamuel Reichenbacher Ltd in 2011.

In 2012, he acquired a 40% shareholding.

An accompanying agreement with the



other company director was drawn up to last for a maximum of five years.

It governed his employment and office as director, including remuneration.

The relationship turned sour and Reichenbacher pursued 21 claims against McDermott relating to the terms of his employment, the use of company money for his alleged private expenditure and his failure to account for items of the company's property when required to do so.

The court found McDermott to be an unreliable witness.

He had presented a receipt for a vehicle service to the company for payment having knowingly altered it to conceal that it related to the service of his wife's car.

He had claimed reimbursement for his wife's mobile phone charges, a tyre-fitting package for her car and for private fuel yet had not been able to establish that she acted as his private secretary.

There were clear breaches of duty to declare personal interests and of duty to act within his powers.

The company was entitled to repayment of £24,000 taken as alleged pension provision and to payments allegedly in lieu of holiday.



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# Ban on work exclusivity clauses to be widened

**The government is to widen the ban on employment exclusivity clauses, which restrict staff from working for multiple employers.**

In 2015, exclusivity clauses were banned for workers on zero hours contracts, where employers are not obliged to provide any minimum working hours and the worker is not obliged to accept any work offered.

The change provided more workers with the option to take on additional work, with the number of people on zero hours contracts having a second job rising.

Now the ban is to be extended to contracts where the guaranteed weekly income is on or below the Lower Earnings Limit of £123 a week.

An estimated 1.5 million workers are earning on or below that amount and the new reforms will ensure that workers in this group that have exclusivity clauses are able to top up their income with extra work if they choose.

The reforms are designed to give workers more flexibility over when and where they work to best suit their personal circumstances such as childcare or study, including the option of working multiple short-hours contracts.

It's hoped the reforms will benefit

businesses by widening the talent pool of job applicants to those who may have been prevented from applying for roles due to an exclusivity clause with another employer.

Business Minister Paul Scully said: "By extending the ban on exclusivity clauses, we are putting more control into the hands of the lowest paid, giving them the freedom to decide who they work for and how often, including the option to top up their pay packet if they wish.

"While not everyone will want a second job, the reforms will remove red tape that prevents those who want to do so – for example, gig economy workers, younger people, or those from disadvantaged backgrounds facing barriers to entering the labour market.

"By giving more workers the option to take on additional work on short hours contracts, the reforms could also help increase businesses' confidence to create jobs with contracts which suit them and their current circumstances."

Legislation for these reforms will be laid before Parliament later this year.

The proposals follow the conclusion of a consultation launched by the government in December 2020, which sought views on extending the ban on exclusivity clauses beyond zero hours contracts to workers on lower earnings.

We shall keep clients informed of developments.