

# COVID-19

## Guidance for landlords and letting agents

### **What does COVID-19 mean for landlords and letting agents, and how will my Legal Expenses & Rent Guarantee policy help me?**

This notice period has now been extended in England to 6 months, until at least the end of March 2021. In Wales, the notice period had previously been extended to 6 months until the end of September, with a further extension announced until the end of March 2021.

Alongside the introduction of the Coronavirus Act, all housing possession action was suspended in England and Wales, which after duration extensions, ended on 20th September, with county courts now hearing cases again.

A new Practice Direction 55C (PD 55C) came into place on 20th September which requires additional evidence to be submitted to the court before a hearing will take place, including:

- Claimants are required to notify the court that they wish to resume stayed proceedings after the expiry of the stay.
- Claimants will be required to provide all relevant information about the tenant's circumstances, particularly any impact of COVID-19, such as the need to shield.
- A full arrears history will need to be provided prior to the hearing, where possible.

These requirements have been introduced through a temporary amendment to the Civil Procedure Rules and will remain in place until at least 28th March 2021.

There is an expectation that landlords and letting agents have taken a pragmatic approach with tenants who have defaulted on their rent and to agree sensible arrangements, such as rent holidays, temporarily lowering monthly rent amounts and agreeing payment plans.

The government have consolidated all of their COVID-19 advice for landlords and tenants [here](#).

Your Legal Expenses and Rent Guarantee Insurance policy will still be able to help you during COVID-19. The following information provides an overview of the actions you must take if your tenant defaults, or is likely to default, on their rent payments. It is very important that you follow the stages outlined below so not to prejudice your legal position, should you need to make a claim under your policy.

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Your policy contains key terms and conditions that you must ensure you meet for cover to apply, should you need to make a claim. You should therefore also take the time to read your policy documents, so that you fully understand your obligations.

You also have access to a 24/7 Legal Helpline, which can provide you with legal advice on your circumstances, and what steps you should take. You can find the Legal Helpline number in your policy booklet.

So, what should you do if your tenant defaults on their rent?

### **Stage 1 – attempt to make a temporary agreement with your tenant**

Under the Tenancy Agreement, your tenant still has an obligation to pay their rent, despite the impact of COVID-19. There is no requirement for you to stop charging rent, but the government expects landlords to be flexible during these uncertain times and attempt to reach an agreement that suits both parties. Therefore, you must ensure you take all practical steps to reach an agreement with the tenant.

If they are facing financial difficulties as a result of COVID-19, and are unable to pay the rent, either partly or in full, then you must discuss this with the tenant at the earliest opportunity and consider a temporary agreement. Examples of this may include agreeing a rent holiday, accepting a lower rental amount for a pre-agreed period of time, or applying for a mortgage holiday in line with government guidelines.

If you do agree anything with the tenant that changes the amount of rent, or when it is due from them, to that noted in the tenancy agreement, you must ensure it is appropriately documented in the form of an Addendum to the Tenancy Agreement, and a Payment Plan letter should you agree any underpayment to be paid at a later stage. Both documents must be agreed and signed by you and the tenant. Template versions of these documents are available on our Online Legal Document service, which you can access [here](#). Once you have registered, both documents can be drafted and downloaded once completed, free of charge.

You need to be clear with the tenant that they must stick to this agreement to avoid legal action being taken against them to recover possession of the property if they fail to do so.

You should note that a key condition of the Legal Expenses policy is that you must have a 51% or greater chance of winning the case and achieving a positive outcome, which is known as 'Prospects of Success'. The prospects of a Tenant Eviction claim being successful will depend on whether you can prove that you have made attempts at reaching a compromise with your tenant, in accordance with government guidance.

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### Stage 2 – submitting your claim to us

If you have made all practical attempts to reach an agreement with your tenant, but have been unable to do so, you must now submit a claim under your Legal Expenses & Rent Guarantee policy. The quickest way to do this is by submitting your claim details to us using our online claim system, which can be found [here](#).

As part of this submission, and alongside the other documents requested, we will be required to provide evidence that the following actions have taken place:

- a. Contact with the tenant was made within 7 days following a non-payment of rent to establish why the tenant did not pay and understand their situation.
- b. Active engagement to create and agree an alternative arrangement within a month from the first non-payment of rent, which could include a payment plan, a rental holiday, or a reduced rent.

You must ensure that this is included in the 'Documentary Evidence' part of the claim submission.

Once we have received your claim submission, and after we have completed an initial insurance assessment, we may arrange for a specialist mediation service provider to take over all negotiation with the tenant and attempt to reach an agreement, or ask you to attempt mediation directly with the tenant. This is a further step we have introduced to the process to help reach an agreement with the tenant and avoid the need for formal legal action.

Mediation is a mandatory part of the claims process and we may refer you to online mediation for you to conduct directly with your tenant or pass your claim to a formal mediation service. Please ensure you include a completed copy of the mediation form, which is available as you enter your claim details on the online claim system. If you do not provide a completed copy of this form, your claim will be delayed.

You must ensure that you submit a claim to us with all required documents within the time frame referred to in your policy booklet, otherwise your claim may be declined.

### Stage 3 – initiation of the eviction process

If the mediation service is unable to reach an agreement with the tenant, we will instruct a specialist law firm to initiate the eviction process by issuing a notice for possession. You should not attempt to issue your own notices at any point, as this may prejudice your position.

If the tenant does not vacate the property once the notice period has expired, legal proceedings to regain possession of your property can begin.

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At the expiry of the eviction ban, the standard period between issue of the claim to the court and hearing has been suspended, due to the large volume of backlog cases and the expected increase in new possession claims. This will likely mean that the amount of time to gain vacant possession of the property will increase.

Rent Guarantee payments can only be made if you have followed the guidance above, as summarised below:

- You have actively engaged with your tenant to agree a temporary arrangement, if the tenant is unable to make their rent payments, either full or in part.
- You have been unable to reach an agreement with the tenant, and you therefore submit a claim to us under your Legal Expenses & Rent Guarantee policy.
- Our formal mediation service is unable to reach an agreement with the tenant, and we have therefore issued notice for possession to the tenant.

If these steps are taken, rent payments will be made to you, subject to the limits of indemnity stated in your policy documents, and subject to your claim meeting all other terms and conditions of the policy.

### **What does this all look like in practice?**

The following is a simple example of a tenant who is struggling financially as a result of COVID-19, and some scenarios as to what might happen next.

The tenant contacts you to let you know that they are in financial difficulty and cannot pay their rent this month of £1,000. After establishing the tenant's situation and what they can afford to pay, you agree a payment plan.

This allows the tenant to pay a reduced rent payment of £500, for a 3-month period, with the underpayment of £1,500 owed by the tenant being spread across the following 6 months of the tenancy agreement. So, for 3 months the tenant is required to pay £500 per month, and then a monthly amount of £1,250 for the 6 months that follow.

#### *Example 1*

The tenant pays the reduced amount for 2 months, however defaults on the payment plan on month 3. A claim is made to Arc Legal and the eviction process is initiated.

The first rent payment made under the policy pays out £500, which is the last month of the 3-month payment plan agreed. Every month thereafter, and subject to the policy indemnity, a rent payment of £1,250 is made under the policy, which includes the underpayment owed by the tenant, for 6 months, after which the rent payment will revert to the original amount of £1,000.

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### *Example 2*

The tenant pays the reduced rent of £500 for 3 months. From month 4 onwards, as per the agreement, they are due to pay their usual monthly rent of £1,000, plus the additional £250 to cover the underpayment. However, in month 4, the tenant can only afford £1,100 which they pay to you. A claim is made to Arc Legal and the eviction process is initiated. Note, there are limits to the insurance policy and court eviction process where rent arrears are less than one month.

In addition to the above, you may also find the following Q&A's useful:

#### **I don't want to evict my tenant; will my policy pay my rent?**

No, the policy will only provide Rent Guarantee cover if we have accepted a claim under the Tenant

Eviction section of cover, as per the process outlined above.

#### **If I do agree a temporary arrangement with my tenant, does this impact my insurance?**

If you and the tenant agree a temporary arrangement, such as a payment holiday or reduced rental amount, this is not an insured event and does not need to be notified to us. Please ensure however that you put in place the addendum to the Tenancy Agreement and Payment Plan letter where appropriate, as outlined above.

As notified above, you should only submit a claim to us, if you are unable to reach an agreement with your tenant.

Please note that the policy will not cover any shortfall in rent arising for a payment holiday or an agreement for the tenant to pay a reduced rent amount on a temporary basis.

#### **I still need to pay my mortgage. Is there anything I can do?**

Several mortgage lenders have agreed to offer payment holidays, where needed, due to COVID-19 financial difficulties, including buy-to-let mortgages. You should contact your mortgage lender for further information.

If you can organise a mortgage payment holiday, it is expected that the benefit of doing so will be reflected in a temporary agreement with your tenant, for example agreeing a rent payment holiday.

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### **What other changes might come into force?**

There have been several changes since the Coronavirus Act and other guidance was introduced in March, and therefore further changes and extensions to the measures could continue.

It is important therefore that you continue to monitor the situation to keep on top of any changes. You can also contact the Legal Helpline if you need some advice.

### **Do I still need to carry out repairs to my property?**

Yes, you still need to meet the requirements of the tenancy agreement, which includes making sufficient repairs, where it is safe and reasonable to do so, and in line with government guidance, which can be found [here](#).

However, the government is urging that landlords and tenants take a pragmatic common-sense approach to non-urgent matters that are affected by the restrictions put into place due to COVID-19. to non-urgent matters that are affected by the restrictions put into place due to COVID-19.

### **What about my legal obligations to provide regular gas and electrical safety inspections?**

Landlords should continue to carry out all scheduled inspections and tests where required, and again, where safe and reasonable to do so.

If an inspection does take place, you are still required to issue documentation to the tenant, either by post or email where appropriate (and available).

You need to make every effort to comply with existing gas safety regulations and electrical safety regulations. You must be able to demonstrate that you have taken all reasonable steps to comply with the law, so ensure you keep copies of all correspondence with tenants and contractors.

You can read the latest guidance for landlords and Gas Safe engineers and inspectors from the Health and Safety Executive [here](#).

This guidance has been prepared by Arc Legal Assistance in partnership with Shoosmiths Solicitors. It is for information purposes only and does not constitute legal advice. You should contact the Legal Helpline for legal advice that is specific to your circumstances.