

Rent Concessions for non residential tenants – What are the issues Managing Trustees need to consider?

Background

As Managing Trustees will be aware the current COVID-19 outbreak is having a significant impact on and causing a number of potential problems for tenants of non-residential properties. It has affected a wide range of undertakings, from shops and cafes to nurseries and pre-schools. Many Methodist churches have tenants who use church property for such purposes. We understand that some Managing Trustees are receiving requests from their tenants for help at this time, and have contacted TMCP for help and assistance in how to deal with these requests. Blake Morgan and TMCP have prepared this document to assist Managing Trustees as they decide how to deal with requests from their tenants with the understanding that Managing Trustees often want to help their tenant. Managing Trustees should also read the COVID-19 FAQs on TMCP's website ([FAQ 4 to FAQ 8](#) inclusive) which should assist you further.

Requests being made

Requests from tenants for a rent concession may take various forms but the most common are for a suspension of rent in its entirety for a fixed period or for a rent reduction for a fixed period. This does not mean that the suspended rent is written off but that it will be deferred and repaid by the tenant at a later date. Managing Trustees will have to decide whether that repayment date is the end of the period of suspension or whether they are prepared to give longer, whilst making it clear that the normal rent due is to be paid at the end of the suspension period.

Until a rent concession is documented, a tenant is obliged to continue to pay its rent and, unless there is a clause to the contrary in its lease, cannot just terminate the lease. Managing Trustees should reserve the right to withdraw the rent concession at any time to protect themselves should the tenant's position improve. They should also decide whether they would want to charge interest on the suspended rent at the end of the concession period and what is to be done about other payments made by the tenant under the lease e.g. insurance rent or service charge.

Other help available

It is important to bear in mind that as prudent charity trustees and in accordance with Methodist best practice, Managing Trustees are not encouraged to offer any concessions themselves. Rather, Managing Trustees should wait until they are approached by a tenant and proper investigations have been made into their financial circumstances, including whether the tenant has explored all other avenues of help available to them, before deciding whether to agree to a request. As discussed in [COVID-19 FAQ 5.1 and 5.2](#), a tenant should not be looking to the Church alone to support its operations if alternative help is available. However, some of the additional help available may take time to access in which case Managing Trustees might wish to help a tenant by giving a temporary concession. The important thing is that the tenant is aware of and has explored the other help available and applied for it where appropriate.

These alternative avenues of help available include, as of 29 April 2020, the following:-

1. The Coronavirus Job Retention Scheme;
2. The Coronavirus Statutory Sick Pay Rebate Scheme;
3. A 12-month business rates holiday for all retail, hospitality and leisure businesses in England; in Wales this will now apply only to relevant businesses with a rateable value of £500,000 or less;
4. Small business grant funding of £10,000 for all businesses in receipt of Small Business Rates Relief or Rural Rate Relief;
5. Grant funding of £25,000 for retail, hospitality and leisure businesses with property with a rateable value between £12,001 (Wales) or £15,000 (England) and £51,000;
6. The Coronavirus Business Interruption Loan Scheme offering varying values of loan depending on the size of a business;

7. In Wales only, an Economic Resilience Fund can provide grants depending on the size of the business;
8. Flexibility for payment of income tax and VAT;
9. A £750million package of support for frontline charities in the UK which will be allocated by government departments to charities providing vital services and helping vulnerable people in the current crisis. A further £370million will go to small and medium-sized charities carrying out vital work at the heart of communities;
10. Bounce Back Loans for small businesses under a new scheme announced on 27 April 2020.

We are in a very fast-moving situation and new measures are announced regularly as the Government attempts to address the key issues facing British society. Blake Morgan and TMCP are monitoring government sources and will update the advice on their own websites respectively (www.blakemorgan.co.uk) as and when new information becomes available. For the latest guidance from the Government, please go to <https://www.gov.uk/coronavirus/business-support>.

Insurance

Managing Trustees should explore with their tenant whether the tenant's insurance policy would cover its difficulty in paying rent at this time or whether their own policy will cover the issue. Tenants should also talk to their bank as to whether funding is available or the bank is willing to allow them extra time to pay loan contributions.

Making a decision

When deciding whether agreeing to a temporary rent concession is in the best interests of the Church, Managing Trustees need to consider the effect on the Church's financial position, in conjunction with the above matters. Managing Trustees should also consider the alternatives to not agreeing a concession. If the tenant fails to pay rent, because it is genuinely unable to, the Managing Trustees' options are limited. Taking legal action for non-payment would be expensive and non-productive if the tenant genuinely cannot pay. Currently, commercial tenants are protected from eviction if they cannot pay their rent due to COVID-19, so forfeiting the lease (i.e. taking back possession) is not an option for the time being. In any event, Managing Trustees would need to be sure that it would be in their interest to have an empty property rather than agreeing a rent concession with a tenant who will hope to recommence paying rent at the end of the rent concession period. If the tenant has paid a rent deposit, it might be possible to take the rent due out of that to cover the concession period, with the tenant making up the difference at the end of the concession period. If Managing Trustees do want to use a rent deposit then please contact TMCP Legal in the first instance.

What to do next

If, having explored all these options with the tenant, the Managing Trustees are convinced that a rent concession would be helpful to the tenant and is something with which they, acting as prudent charity trustees, could agree, TMCP working in collaboration with Blake Morgan, has established a process which can be followed by Managing Trustees. The aim of the process is to ensure that, if Managing Trustees want to agree to a request for a temporary suspension in or deferral of rent, they can satisfy themselves that they have considered all the implications for the charity and that the agreement is legally documented carefully without affecting the other terms of the lease.

TMCP and Blake Morgan have therefore produced a step by step guide (the [Non-residential Lease Concession Process Chart](#)) available on the TMCP website which will help Managing Trustees in reviewing their options and reaching a decision which is in the best interests of the Church whilst still helping the tenant.

If, having gone through this process, the Managing Trustees come to the conclusion that it is in the best interests of the Church to agree a temporary rent concession, TMCP and Blake Morgan have produced a questionnaire which Managing Trustees should complete, detailing the reasons why they are agreeing to reduce, delay or suspend the rent (the "[Non-Residential Lease \(Covid 19\) Questionnaire](#)" (Questionnaire)). The Questionnaire also allows the Managing Trustees to detail the other terms they have agreed with the tenant, including the length of time the concession will last,

what the repayment terms will be once life returns to "normal" and whether interest will be charged. The Questionnaire can be found in the Trustee Documents (password protected) area of the TMCP website. If you do not have the password then you can email or call TMCP Legal.

Once the Questionnaire has been completed, it should be sent to TMCP and Blake Morgan. Blake Morgan will consider the Questionnaire and then prepare a side letter for the Managing Trustees detailing what has been agreed. The side letter can then be signed by the parties and kept with the original lease. Blake Morgan has agreed to charge Managing Trustees £200 plus VAT for producing the side letter on the basis that the Questionnaire is completed correctly and all terms have been agreed so that there will be no further negotiation. To help to keep costs down, Managing Trustees can [contact TMCP Legal](#) if they are having difficulties in completing the Questionnaire and TMCP Legal will provide as much assistance as necessary. TMCP have trained a number of its Legal team to deal with these enquiries to ensure the same are dealt with as a priority.

Finally

It is possible that, as a quid pro quo for agreeing to a rent concession, Managing Trustees and their tenant may agree that the lease term should be extended, or the tenant may agree to give up any right it has to terminate the lease during the lease term (often known as a break clause). It is also possible that Managing Trustees might be able to claim outstanding rent from the tenant's predecessor, or direct from a subtenant. These matters go beyond the scope of this note. If such arrangements are contemplated, Managing Trustees should contact TMCP Legal and Blake Morgan, or their own solicitors, for advice. Extending the term and changing the break terms would need to be documented in a deed not a letter and might require advice from a Qualified Surveyor. This process is also not suitable for insolvent tenants.

The information provided in this note is accurate as at 29 April 2020. Please refer to www.blakemorgan.co.uk and <https://www.gov.uk/coronavirus/business-support> where you will find the most up-to-date information.