

GUIDANCE NOTE

TENANTS IN FINANCIAL DIFFICULTY

APPROVED FOR CLIENT USE | APRIL 2024



At Curtis Banks, we understand that tenants may find themselves in financial difficulty at some point. This guidance note explains a number of options that may be considered if a tenant is unable to pay their rent to the SIPP.

The increase in inflation and living costs are affecting businesses, with many finding that their operating costs are increasing to the point that it has a knock-on effect on their ability to pay the rent on their leased business premises.

Some of these businesses will be tenants of properties held in pensions - potentially the business owners' own pensions. The ability to have a connected company occupying a property held in a SIPP or SSAS is one of the main reasons why clients choose this investment option. Very simply, it allows their business to pay rent into their pension: the rent is normally deductible from the trading profits of the company, and received into the pension tax free.

Clients may wonder what happens if a tenant (connected or otherwise) is struggling and may not be able to pay the rent at all.

It's essential for all tenants, but perhaps most importantly for connected tenants, to engage with their provider as soon as a problem arises. There are solutions available to tenants, some of which we have explained below. Once aware of a potential problem, we can work with the parties involved to find a solution that works for both the tenant and pension while meeting all necessary regulations.

Points to consider

Before addressing the potential solutions, there are a couple of important points to consider:

- If the tenant is connected, we will require a qualified valuer to advise whether the proposed course of action is considered fair and reasonable in the market. This step is required in order to satisfy HMRC regulations regarding connected tenancies. Where valuer advice is required, the fee payable would be paid from the SIPP and recharged to the tenant.
- If the tenant is unconnected to the client(s), the client(s) can decide how they wish to proceed with the tenant's proposed course of action.
- It's important to note that some providers may not offer or be able to support all the below options, so please check with your provider before conversing with your tenant.
- The below options must be formally and legally documented with the help of a solicitor.
- Unless otherwise agreed and documented, the terms of the occupational lease would be unchanged and unaffected aside from the rent.
- Tenants may need to provide us with evidence of their financial hardship in order to proceed with some of the below options.

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- A lease is a legally binding document, so both Curtis Banks as landlord and tenant have obligations to ensure that the terms of the lease are complied with and (for tenants) that the rent is paid. There are potential tax charges in HMRC regulations if a connected tenant fails to pay rent on a SIPP-owned property.

Potential solutions

Rent-free periods:

This is quite self-explanatory: in essence, a landlord grants a period of rent-free occupation to the tenant, after which time the tenant would be expected to restart rent payments as per the lease agreement.

A rent-free period wouldn't alter the other terms of the occupational lease.

Rent concession:

The term 'rent concession' covers an array of topics; however, in this case we're referring to a reduced rent for a prescribed period. For example, if the annual rent is £10,000, a landlord may agree to accept £5,000 for the next year, after which time the annual rent would revert to the original £10,000.

Rent concessions can be shorter term; for example, on a monthly or quarterly basis.

It's important to note that a rent concession is temporary, and for a defined period. After this time, the terms of the occupational lease would be reinstated.

Lease surrender (and re-grant):

In some circumstances, a landlord may agree a more permanent solution with the tenant. Lease surrenders formally and legally bring the lease to an end for both the landlord and tenant. Unless there is an immediate re-grant of a new lease, then the tenant must vacate the premises and the landlord can source another tenant.

In some circumstances (for example if the landlord and tenant agree that the rent can be revised for the balance of the term, but no other terms are changing) a document called a Deed of Variation can be added to the lease. This may

provide a cleaner and more cost effective solution than creating a whole new lease. It's important to note that with a connected tenant, we may need a qualified valuer to advise whether either party would need to pay a surrender premium for bringing the lease to an end earlier than the previously agreed term.

Payment plans:

A payment plan is where the tenant continues to pay the annual rent as per the terms of the lease, but also settles any arrears in addition to this. They may make monthly or quarterly payments against the arrears.

Summary

In summary, it's vital for tenants to get in contact with us as early as possible if they are running into difficulty paying the rent, so that we can help to find a solution that works for both tenant and landlord. For connected tenants, it's even more important for this early engagement, to avoid potential tax charges for unpaid rent. We understand that the cost of living is adding extra daily challenges for businesses and our [Property Credit Control Team](#) are happy to discuss the above options with you in more detail.

Ultimately, if a tenant (connected or otherwise) gets into financial difficulty and is unable to make the agreed rent payments, early and continued engagement with the landlord is essential in order to avoid a potentially contentious situation.

Contact Details

If you'd like to speak to us about anything on this fact sheet, please contact us on:

T 01473 296 939

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This information is based on our understanding of current legislation, including (but not limited to) FCA, PRA and HMRC regulation. It does not constitute any form of advice.