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GENERAL COMMITTEES

Public Bill Committee

COMMERCIAL RENT (CORONAVIRUS) BILL

Fourth Sitting

Tuesday 14 December 2021

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Saturday 18 December 2021

The Committee consisted of the following Members:

Chairs: † Stewart Hosie, Mrs Sheryll Murray

† Benton, Scott *(Blackpool South)* (Con)
† Britcliffe, Sara *(Hyndburn)* (Con)
† Buchan, Felicity *(Kensington)* (Con)
† Cadbury, Ruth *(Brentford and Isleworth)* (Lab)
† Clarkson, Chris *(Heywood and Middleton)* (Con)
† Daly, James *(Bury North)* (Con)
† Dowd, Peter *(Bootle)* (Lab)
† Eastwood, Mark *(Dewsbury)* (Con)
† Fletcher, Colleen *(Coventry North East)* (Lab)
† Fuller, Richard *(North East Bedfordshire)* (Con)
† Green, Chris *(Bolton West)* (Con)
† Hopkins, Rachel *(Luton South)* (Lab)
† Malhotra, Seema *(Feltham and Heston)* (Lab/Co-op)
† Scully, Paul *(Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy)*
† Vaz, Valerie *(Walsall South)* (Lab)
† Whitley, Mick *(Birkenhead)* (Lab)
† Whittaker, Craig *(Lord Commissioner of Her Majesty's Treasury)*

Seb Newman, Sarah Ioannou, *Committee Clerks*

† attended the Committee

Public Bill Committee

Tuesday 14 December 2021

[Stewart Hosie *in the Chair*]

Commercial Rent (Coronavirus) Bill

9.25 am

The Chair: Before we begin, I have a few reminders for the Committee. Please switch electronic devices to silent or off. No food or drink is permitted during sittings of the Committee, except for the water provided. Members are encouraged to wear masks when they are not speaking, in line with Government and Commission advice. Please give one another and members of staff space when seated and when entering and leaving the room. I remind Members that they are asked by the House to have a covid lateral flow test twice a week if coming on to the parliamentary estate. That may be done at home or in the testing centre on the estate. *Hansard* colleagues would be grateful if Members emailed any speaking notes to hansardnotes@parliament.uk.

Clause 13

Arbitration awards available

Question proposed, That the clause stand part of the Bill.

The Parliamentary Under-Secretary of State for Business, Energy and Industrial Strategy (Paul Scully): As usual, Mr Hosie, it is a pleasure to serve under your chairmanship.

The clause sets out what awards an arbitrator may make following a reference to arbitration. It provides clarity to arbitrators and parties considering arbitration about the criteria for successful referral.

Seema Malhotra (Feltham and Heston) (Lab/Co-op): It is pleasure to serve under your chairship, Mr Hosie.

Subsection (3) requires an arbitrator to dismiss a reference if they find that the tenant's business "is not viable" and

"would not be viable even if the tenant were to be given relief from payment".

Will the Minister say more about what constitute viable and unviable businesses? Groups representing the hospitality sector, for example, have made it clear that the seasonal nature of their businesses should be reflected in the viability test. As well as being provided with guidance, arbitrators should also have the right level of flexibility.

Paul Scully: I am happy to give the hon. Lady that assurance. The reason why we do not have a specific definition of what constitutes viability or affordability is that businesses models vary greatly, including with seasonality, and within and between sectors. Under clause 16, which we will consider later, we include factors that the arbitrator should consider when assessing the viability of the tenant's business.

Question put and agreed to.

Clause 13 accordingly ordered to stand part of the Bill.

Clause 14

Arbitrator's award on the matter of relief from payment

Question proposed, That the clause stand part of the Bill.

Paul Scully: The Bill contains principles that are key to ensuring that rent debt is resolved in a proportionate way for tenants and landlords. The clause sets out how arbitrators must consider those principles when making an award under the Bill.

Seema Malhotra: I have a couple of questions about the clause. First, will the Minister clarify why the Government have chosen to make the repayment time under subsection (7) 24 months? Has he concluded that that will be sufficient time for businesses to repay what they owe, even if further covid restrictions are put in place? The current circumstances are a cause for concern to businesses that have seen revenues drop while costs continue. Secondly, reflecting the concerns of stakeholders including the Pubs Advisory Service, will the Minister clarify whether subsection (2) implies that the arbitrator will consider only the final proposal when making the award, or will they consider all proposals made by both parties in the round?

Paul Scully: In awards that give tenants time to repay the debt, tenants will have no longer than 24 months to do so. That recognises that additional time to repay may help businesses to recover and start to trade as normal, while ensuring that the issue of rent debts does not drag on unnecessarily. As for how it works, the scheme uses a key aspect of pension arbitration, by which each may propose a financial solution to pay protected rent, and the arbitrator will select the proposal that is most consistent with the principles set out in the Bill, assuming that one at least follows those principles. Otherwise, the arbitrator must make whatever award the arbitrator considers appropriate when applying the principles.

Question put and agreed to.

Clause 14 accordingly ordered to stand part of the Bill.

Clause 15

Arbitrator's principles

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss new clause 1—*Review of awards*—

"(1) The Secretary of State must no later than three months following the day on which this Act is passed conduct a review to assess whether sections 15 and 16 of this Act have been interpreted consistently by approved arbitration bodies.

(2) In conducting a review under subsection (1), the Secretary of State shall have regard to published awards.

(3) If a review under subsection (1) identifies material inconsistencies in the interpretation of sections 15 and 16 of this Act, the Secretary of State must issue further guidance or amend existing current guidance to arbitrators about the exercise of their functions under the Act."

This new clause would require the Secretary of State to conduct a review of awards to assess whether sections 15 and 16 of the Act have been interpreted consistently and publish or amend guidance as necessary.

Seema Malhotra: New clause 1 is a probing amendment. It would require the Secretary of State to conduct a review of awards to assess whether sections 15 and 16 of the Act have been interpreted consistently and to publish or amend guidance as necessary. We have heard issues raised about the interpretation of viability of businesses and making sure there is enough experience with arbitrators to ensure a consistent approach to resolving rent debt. In tabling the new clause we are seeking a review. It is helpful to know if the Secretary of State is seeking feedback on how the system is working and whether there are inconsistencies identified, which may require further guidance to be given to arbitrators about the exercise of their functions under the Bill. That is in the interest of strengthening the regime and trust in it among tenants and landlords alike. I would be grateful for the Minister's comments on what feedback process he is expecting to see otherwise, so that we can make sure there is learning through the system and that it works effectively.

Paul Scully: We are committed to the principles in the Bill. That is why we have included them in the legislation. We will require arbitrators to follow them in their work. Arbitration bodies will only appoint arbitrators that are considered suitable to carry out arbitration as set out in the Bill. These bodies also have the power to oversee any arbitration when an arbitrator is appointed.

The arbitration system is designed to be a quick, effective and impartial solution to rent debts that cannot otherwise be resolved. Requiring a review of the arbitration process within three months of the Bill being in force could slow that process down. It may add additional steps and requirements for arbitrators who have already proven their suitability and impartiality for the role. It may postpone the appointment of arbitrators, further delaying cases if arbitration bodies must await the findings of the review before acting.

If new or revised guidance were required following a review, it would take additional time to produce and would not be in place for many cases referred to arbitration. We currently expect that all applications to arbitration would be made within six months and that cases should be resolved as soon as practicable afterward. Under the Bill's provisions, the Secretary of State can also request a report from approved arbitration bodies covering the exercise of their functions under the Bill, including details on awards made and the application of the principles set out in the Bill on arbitrations they oversee.

There is a requirement for arbitrators to publish details of awards made, including the reasons behind it. That will show how arbitrators have applied the principles in the Bill to come to their decision. If there is any need to revise the guidance, for example to clarify or add new information for arbitrators, the Secretary of State is already able to do so. In summary, the Bill already contains several ways of monitoring the application of its principles. If the need arises, guidance can be updated to ensure that arbitrators have the information required to carry out their work. I do not believe that a required review would benefit the aims of the Bill. Therefore, I hope the hon. Member will withdraw her new clause.

Seema Malhotra: On the basis that there are other mechanisms that the Minister will—I use the word will—be using to ensure that there is feedback from the system, we will not push the new clause to a vote today. However, I do think it will be important to keep this under review. I expect that on Report in the new year, when circumstances might be different, we may want to look again at some of these amendments.

Question put and agreed to.

Clause 15 accordingly ordered to stand part of the Bill.

Clause 16

ARBITRATOR: ASSESSMENT OF "VIABILITY" AND "SOLVENCY"

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause is important because it relates to the key principles of viability and solvency that underpin the arbitration process. Arbitrators must ensure that an award maintains or restores a business's viability as long as it is considered that it would be preserving a landlord's solvency.

Seema Malhotra: Subsection (2) lists factors to which an arbitrator may have to have regard when assessing landlord solvency, so far as the information is known. Could the Minister confirm whether further details about this evidence will be released by the Government? Again, I am just asking about consistency in the arbitration process.

Subsection 3 states that the arbitrator must disregard the possibility of either party borrowing money or restructuring their business. We support this measure and think it will contribute to ensuring that the arbitration process is fair. However, if would be helpful to hear some clarification on the regulations outlined in clause 16, and what further guidance will be forthcoming.

Paul Scully: I have talked about the fact that in this clause there are a number of factors when assessing the viability of a tenant's business. I would also point the hon. Lady to the code of practice, which is not only for the use of the arbitrator, but for people who fall outside the scope of the Bill. It contains a non-exhaustive list of evidence that can be considered when determining viability and affordability, including existing and anticipated credit debt balance; business performance since March 2020; the tenant's assets, some of which may be liquid, others of which may be plants or machinery; the position of the tenant with other tenancies; insolvency of a major customer; unexpected retentions or knowledge of a lack of working capital; or loss of key personnel or staff redundancies. Further factors can be found in annex B of the code of practice.

Question put and agreed to.

Clause 16 accordingly ordered to stand part of the Bill.

Clause 17

TIMING OF ARBITRATOR'S AWARD

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause establishes the timeframe for making awards, requiring arbitrators to make an award as soon practicable or, in the case of a normal hearing, within 14 days.

Seema Malhotra: We recognise that both businesses and landlords will benefit from prompt solutions to rent debt. Can the Minister explain why a different time frame is appropriate for the making of the award depending on whether an oral hearing is held or not? It would also be helpful if he could explain what

"as soon as reasonably practicable"

means in this context. What would be a reasonable period of time for the award to be made?

Stakeholders have suggested to us that under the pubs code, awards and adjudications can take up to a year to be published. Presumably the Minister can confirm that this would certainly not be reasonable. He has talked in general terms about time limits before, but given that there is no stipulated time limit under clause 17(1), what recourse would the parties have where no award is forthcoming in a timely manner?

Paul Scully: Although the applicant making a reference to arbitration must submit a formal proposal, there is the option for the respondent to also submit a formal proposal. Both parties also have the option to submit revised proposals. In addition, some cases may be more complex than others, and the arbitrator may need to ask for further information. The Bill therefore provides that the arbitrator must make the award as soon as reasonably practicable, which will allow for any additional work required because of the complexity of the case. I assure the hon. Lady that we are indeed hoping and expecting such cases to be resolved within a matter of months rather than, as she described in relation to the pubs code, anywhere approaching a year.

When there is a long period, there is a clear date on which the hearing concludes and evidence has been given, so that is why the Bill provides that the arbitrator has 14 days from the day on which the hearing concludes to issue such an award. Some cases that go to oral hearings may have added complexities, so the arbitrator may need more than 14 days to consider arguments, facts and evidence that have arisen. There is a discretion there for the arbitrator to extend the time limit if they consider that it would be reasonable, in all circumstances.

Mick Whitley (Birkenhead) (Lab): Will there will be any retrospective payments? In the bundle of evidence some companies submitted, they say that they have been pressed for their outstanding debt. If this Bill goes through, does that mean that any retrospective payments will be made by the arbitrator?

Paul Scully: I will write to the hon. Gentleman if I am getting this wrong, but I think the arbitrator can take the whole situation into account, including what has been paid and the evidence that has been given, when making the final judgment. I will write to the hon. Gentleman if that is not as full an answer as he wants.

Question put and agreed to.

Clause 17 accordingly ordered to stand part of the Bill.

Clause 18

Publication of award

Question proposed, That the clause stand part of the Bill.

Paul Scully: The arbitrators will be required to publish awards and the reasons for making them in the interest of transparency, but they will also be required to exclude confidential information for anything published, unless notified by the person to whom the information relates that they consent to its publication. Landlords and tenants can ask for confidential information to be redacted.

Seema Malhotra: We support the clause and the exclusion of confidential or personal information that may cause harm or concern. Labour believes that the arbitration process established under the Bill should be subject to appropriate transparency, with appropriate safeguards for commercially sensitive or other confidential information. The publication of awards should also support a consistent approach being taken across cases heard under the regime.

Question put and agreed to.

Clause 18 accordingly ordered to stand part of the Bill.

Clause 19

Arbitration fees and expenses

Seema Malhotra: I beg to move amendment 4, in clause 19, page 12, line 6, leave out "may" and insert "must".

This amendment would require the Secretary of State to make regulations specifying limits on arbitration fees.

The Chair: With this it will be convenient to discuss amendment 5, in clause 19, page 12, line 8, after "question" insert

"and having regard to the accessibility and affordability of the arbitration process."

This amendment would require the Secretary of State to consider the accessibility and affordability of the arbitration process when specifying limits on arbitration fees.

Seema Malhotra: I am pleased to move amendment 4, which relates to limits on arbitration fees, and speak to amendment 5, which relates to the accessibility and affordability of the process. We recognise that parties have to meet their legal and other costs, but we believe that arbitration fees and expenses should be proportionate to the arrears that are the subject of the dispute, and that they should not create a significant cost for the parties. I am sure the Minister recognises the harmful effect that a high arbitration cost would have on businesses that are already struggling, and it is only those in very difficult circumstances that are going into the process in the first place.

Clause 19 gives the Secretary of State the discretion to specify ceilings for arbitration fees in secondary legislation. We believe the Secretary of State should make such regulations to provide a cap, which would be the effect of amendment 4. We have also tabled amendment 5, which

"would require the Secretary of State to consider the accessibility and affordability of the arbitration process when specifying limits on arbitration fees."

That is to ensure that, when setting new limits, the Secretary of State explicitly takes into account how the limits will affect the ability of business tenants and landlords to enter the arbitration process. I hope the Minister recognises the importance of ensuring that arbitration is not too costly for either landlords or tenants, particularly as businesses are again seeing falls in revenues at this stage. There is a cross-party desire to

tackle rent debt, but we want the arbitration process to work. For that, businesses must be able to afford to enter the process.

I would be grateful if the Minister could respond to a concern raised by a stakeholder about the fees and costs that the arbitration bodies may apply. I understand that there is a £750 fee associated with a complaint under the rules of certain arbitration bodies. Would such a cost be included within the cap? I thank the Minister in advance for his response.

Paul Scully: As the clause stands, the Secretary of State will have the delegated power to make regulations specifying limits on the fees and expenses of arbitrators, but if the power is exercised, approved arbitration bodies will still have the discretion to set fee levels up to the cap limit. We have adopted a market-based approach that enables arbitration bodies to set fee levels for themselves, because they are best placed to decide, given their experience of costing arbitration schemes to make them affordable for parties and attractive enough for arbitrators to take on cases. The Secretary of State's powers are intended to be used only when circumstances determine that it is appropriate.

We have designed the arbitration scheme to be affordable, and we are working with arbitrators to agree the cost schedules, which may answer the hon. Member's question. Setting fee levels at this stage would be counterproductive, because we do not know what the market rate is while discussions are ongoing. A market-based approach is the optimum way to ensure that, on one hand, there is enough capacity in the system to deal with the case load and that, on the other hand, fees are affordable. Hon. Members have also asked that an express requirement be inserted that would require the Secretary of State to have regard to the accessibility and affordability of the arbitration process when specifying those limits. As I said, affordability is an important consideration in our discussions. It will be an important factor that will determine accessibility. We will take it into account when deciding if and how to exercise this power.

9.45 am

We have tested the cost of similar arbitration schemes currently on offer in the market, and landlords and tenants have indicated that it is affordable. We do not want to specify cost limits unless there is a need to do so. For those reasons, I do not accept the amendment 4. Amendment 5 is unnecessary. I hope the hon. Member will not press the amendments.

Seema Malhotra: I thank the Minister for his remarks, but I do not think that they approach the heart of the debate. I would like to push amendment 4 to a vote, because this is an important issue.

Question put, That the amendment be made.

The Committee divided: Ayes 7, Noes 10.

Division No. 1]

AYES

Cadbury, Ruth	Malhotra, Seema
Dowd, Peter	Vaz, rh Valerie
Fletcher, Colleen	
Hopkins, Rachel	Whitley, Mick

NOES

Benton, Scott	Eastwood, Mark
Britcliffe, Sara	Fuller, Richard
Buchan, Felicity	Green, Chris
Clarkson, Chris	Scully, Paul
Daly, James	Whittaker, Craig

Question accordingly negatived.

Question proposed, That the clause stand part of the Bill.

Paul Scully: Clause 19 concerns the fees and expenses of the arbitrators of approved arbitration bodies. We want to make sure that we have capacity and that it is affordable. If the cost does indeed prove to be a barrier, we can cap the fees to ensure that it remains affordable.

Seema Malhotra: Notwithstanding the concerns we have just raised, which we will continue to pursue, we support clause 19.

Question put and agreed to.

Clause 19 accordingly ordered to stand part of the Bill.

Clause 20

ORAL HEARINGS

Question proposed, That the clause stand part of the Bill.

Paul Scully: Being mindful of European convention on human rights considerations and the right to a fair trial, it is important that landlords and tenants have the option of a hearing. Any hearing would be in public unless the parties agreed otherwise. An oral hearing would add time and costs to the arbitration process, and the parties would be responsible for meeting those costs. This clause is important, as it gives the parties the right to an oral hearing and establishes the process for doing so.

Seema Malhotra: Labour generally supports these measures, but it would be helpful to understand whether the Minister expects oral hearings to be the exception rather than the rule. As the Chartered Institute of Arbitrators made clear in evidence about the business arbitration scheme, there was an assumption against oral hearings, with a document-only approach, which keeps costs and time low and, as it would say, allows for a more efficient process. Will guidance set out when oral hearings might be necessary or appropriate? We would like to understand more about the cost of oral hearings. Can the Minister say what he might expect the cost of oral hearings to be? Would he explain what action the Government will take to ensure that all hearings are affordable?

Paul Scully: I can reassure the hon. Lady that we would expect oral hearings to be very much the exception, because we want to make sure that we get through the process for landlords and tenants as quickly as possible. Under clause 21, the Secretary of State will provide arbitrators with guidance on the process of the scheme, including in relation to their function and exercise under the Arbitration Act 1996, as modified by the Bill.

There are a number of areas, such as what evidence the parties should provide when attending any oral hearings, where there is a risk of being too prescriptive,

[Paul Scully]

as what is relevant may differ between cases. Guidance would therefore be more helpful than strict rules. However, the ability to go for an oral hearing will very much depend on the arbitrator's skills and experience, and will take into consideration the landlord and the tenant—as I said, they do have a right to a fair trial. The costs would depend on the complexities of the case.

Question put and agreed to.

Clause 20 accordingly ordered to stand part of the Bill.

Clause 21

GUIDANCE

Seema Malhotra: I beg to move amendment 6, in clause 21, page 13, line 3, leave out "may" and insert "must".

This amendment would require the Secretary of State to publish guidance on the exercise of arbitrators' functions and the making of references to arbitration.

The Chair: With this it will be convenient to discuss amendment 7, in clause 21, page 13, line 6, at end insert—

"(1A) Guidance issued under subsection (1)(a) shall provide further information as to how arbitrators should assess 'viability' and over what timescale for the purposes of section 16."

This amendment would require guidance published under this section to include information on the interpretation of "viability"

Seema Malhotra: I will speak briefly to these amendments, which relate to viability. As we have outlined several times, we are asking how arbitrators would assess viability, and what skills and experience they would have to do that. We have tabled these probing amendments to seek guidance with information on the interpretation of viability.

There is benefit in having some flexibility, while still commanding the confidence of both sides, so that judgements can be made with the information available, but there is also a question of trust. We need confidence that the definition around viability will be interpreted consistently across arbitrators and arbitration bodies. Amendment 7 would reflect the concerns of stakeholders that guidance must address the meaning of viability and the timeframe over which it would be assessed.

Paul Scully: As the clause stands, the Secretary of State already has a delegated power to issue guidance. Hon. Members have asked that amendments be made to place a duty on the Secretary of State to issue that guidance. As I have explained, it is not necessary to require the Secretary of State to issue guidance, and it is neither necessary nor appropriate to be more prescriptive in the clause is.

Clause 16 already sets out a list of evidence that the arbitrator must have regard to when assessing viability. We have also set out a detailed, non-exhaustive list of the types of evidence that tenants, landlords and arbitrators should consider when assessing the viability of a tenant's business, and the impact of any relief on the protected rent debt on the landlord's solvency in annex B of the revised code of practice.

We are in ongoing discussions with arbitration bodies and landlord and tenant representatives to gauge what further guidance they need. We want to be informed by those discussions in deciding whether further guidance is needed and, if so, what precisely it should contain. If further guidance on viability is needed, we are prepared to produce it, but that is clearly covered by the clause as it stands.

It is essential that arbitrators maintain flexibility in assessing the viability of a tenant's business, including the types of evidence required to make those assessments, so that they can be made in the context of each individual business's circumstances. If guidance is too prescriptive, there is a risk of depriving arbitrators of that necessary flexibility, potentially resulting in unfair arbitration outcomes.

Seema Malhotra: I thank the Minister for his remarks. That was a very helpful set of comments, in light of what he has also outlined in relation to the ongoing discussions, which we are pleased to hear of—indeed, we have had discussions as well—as that is important.

Looking particularly at the pubs and hospitality sector, and other businesses with great variation in income, their repayments may need to happen over a more reasonable period of time. It is helpful to know that the Minister is considering where there may be differences between sectors, and recognises a system that takes into account the circumstances of individual businesses, because they can differ in how they are affected by slowdowns and so on.

I thank the Minister for his comments. It is certainly an area that we will keep under review. We will not press our amendment to a vote today. I beg to ask leave to withdraw the amendment.

Amendment, by leave, withdrawn.

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause provides the power for the Secretary of State to issue statutory guidance to arbitrators or to tenants and landlords.

Seema Malhotra: We support the clause standing part of the Bill.

Question put and agreed to.

Clause 21 accordingly ordered to stand part of the Bill.

Clause 22

MODIFICATION OF PART 1 OF THE ARBITRATION ACT 1996

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to consider that schedule 1 be the First schedule to the Bill.

Paul Scully: The clause introduces schedule 1 to the Bill. Rather than include a detailed procedure for the arbitration process in the Bill, part 1 of the Arbitration Act 1996 will apply by virtue of section 94(1) of that Act. The long-standing arbitration procedures that are well known to arbitration bodies and arbitrators will apply to arbitrations under the Bill.

Seema Malhotra: The Minister outlined the clause and how it introduces schedule 1. We support the measures and will vote for the clause and the schedule to stand part of the Bill.

Question put and agreed to.

Clause 22 accordingly ordered to stand part of the Bill.

Schedule 1 agreed to.

Clause 23

TEMPORARY MORATORIUM ON ENFORCEMENT OF PROTECTED RENT DEBTS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to discuss the following:

Amendment 8 in schedule 2, page 19, line 3, at end insert—

"whether against the tenant or a person who has guaranteed the obligations of the tenant".

This amendment would clarify that the definition of "debt claims" includes claims against guarantors.

That schedule 2 be the Second schedule to the Bill.

Paul Scully: The clause and schedule 2 cover a temporary moratorium on enforcement measures.

The difficulties of paying commercial rent during the pandemic are best addressed through negotiation. The Bill provides a system to resolve protected rent debt when negotiation has not worked. It has been designed to consider both parties' circumstances in the exceptional context of the pandemic. If the landlords could pursue other enforcement methods in respect of the respected rent, parties would lose the opportunity to resolve the debt by mutual arbitration applied by the Bill's arbitration system. That is why the clause introduces a temporary moratorium on enforcement measures detailed in schedule 2.

During the moratorium period, landlords may not make a debt claim, exercise the right to forfeiture or use the commercial rent arrears recovery—CRAR—power to seize goods in respect of unpaid protected rent debt. They may not recover protected rent debt from the tenancy deposit while the temporary moratorium is in place. If they have done so beforehand, the tenant cannot be required to top up the deposit in that period. If the tenant makes a rent payment without specifying the period it covers, the payment must be treated as relating to unprotected rents before protected rents.

Schedule 2 also enables the arbitrator to consider protected rents under a debt claim issued between the Bill's introduction and its coming into force, or a judgment on such a claim. It also treats rent payments made after the end of the protected period, when closure or other relevant restrictions are lifted, as for unprotected rents before protected rents.

I emphasise that the Bill's moratorium and other remedies are temporary. We want the market to return to normal swiftly. Under the clause, the temporary moratorium applies only until arbitration is concluded or, if neither party applies for arbitration, until the application period closes. The temporary moratorium also only prevents access to remedies in relation to protected rent debt. If the tenant in scope of the Bill has failed to pay rent attributable to a period before 21 March 2020 or after the protected period ended, the landlord can take action in respect of that debt. Clause 23 and schedule 2, which the clause introduces, are important to give viable businesses an opportunity to resolve protected rent debt by mutual agreement through the Bill's scheme.

10 am

Ruth Cadbury (Brentford and Isleworth) (Lab): I will speak to clause 23 and schedule 2, as well as amendment 8, which I tabled with my hon. Friend the Member for Feltham and Heston.

The clause prevents rent debts from being collected during the moratorium period, which begins on the day the Act is passed. As we have said previously, we welcome efforts to put a moratorium on the enforcement of protected rent debts, and the clause outlines a number of protections to stop landlords collecting rent arrears debts, including by preventing the making of a debt claim using commercial rent arrears recovery powers or using a tenant's deposit. The measures have been broadly welcomed by businesses and we support them.

The provisions on the moratorium period cover the period

"beginning with the day on which this Act is passed".

Last week, Kate Nicholls of UK Hospitality told the Committee that as soon as the Bill is enacted, communications should go out to ensure that commercial tenants are aware of the arbitration process. That point holds for small businesses and independent businesses. I very much hope that the Government will take steps to ensure that the Bill and the protections in it come into force as soon as possible and, equally, that tenants as well as landlords are aware of the protections.

Schedule 2 sets out in more detail the process by which landlords are prevented from making a debt claim and ensures that landlords are unable to take civil proceedings during the moratorium period. We support those provisions, although we know from the feedback we heard during the witness sessions last week the importance of ensuring that tenants are aware of the moratorium period and of the ability to enter into arbitration. Businesses absolutely need to be made aware of the measures.

The schedule outlines in further detail the various definitions used in the Bill, reaffirms that landlords are not able to make a debt claim against protected debts during the protected period, and outlines how parties can apply for debt claims to be stayed while arbitration goes on.

I want to outline the important issues that we raised about the arbitration process. The process should be fair and transparent, and it needs to have the widespread confidence and support of tenants and landlords. As the witnesses in last week's evidence sessions said, it is crucial that smaller tenants and landlords should not be made to suffer as the result of an expensive or long-running arbitration process in which they are at risk of being muscled out by the greater power of larger organisations. We welcome the arbitration process and the relief that it will bring, but the process itself needs to be fair, and it needs to ensure a balanced playing field.

Schedule 2 also outlines the fact that a landlord may not use the commercial rent arrears recovery power for protected debt, which we welcome. It also seeks to

[Ruth Cadbury]

ensure that a landlord is prevented from enforcing a right to forfeit the tenancy in relation to the non-payment of rent. Subsection 9 prevents a landlord from using a tenant's deposit. We welcome that provision as part of the wider package of protecting tenants and ensuring that landlords cannot seek to get around the spirit of the arbitration process and the protections around arrears.

Amendment 8 seeks to clarify that the definition of debt claims includes claims against guarantors. It aims to provide extra clarity about whether the protections given against county court action are also provided to the guarantors of tenancies. We have received written testimony from experts in the arbitration field and from the head lessee of the Subway chain, who express concern that guarantors and former tenants were not included in the implications of the legislation. I am sure that the Government want to see, just as we do, that the protection against rent arrears action is spread across all the businesses impacted by covid, as well as those that have given the additional support that new and small businesses so often need, such as their guarantors. Of course, many small businesses are franchisees of chains such as Subway, and its head lessee's evidence must count for a lot of organisations where there is a head lessee and a franchise system.

We do not want to see a back door created whereby tenants are protected from enforcement but the guarantors are still liable. We also heard evidence from the guarantor of a nightclub in Surrey. We have two issues here: the guarantors and the head lessee. It is crucial that the Government ensure that the guarantors of tenants are also protected against debt claims during the prescribed six-month period. We do not want to see the common-sense measures circumvented if landlords are able to go after guarantors with no limit. As I say, the amendment is specifically about guarantors, but we also have concerns on behalf of head lessees.

Paul Scully: I thank the hon. Member for her comments. Indeed, I agree with her. She said that she wants the Bill to be passed as soon as possible, so I am speaking as quickly as I can to make sure that we can get that done.

On the communications, we have already given plenty of notice. The original announcement was in June. The policy statement and the code of practice were published. We have hosted webinars with key stakeholders, and we will continue to engage with them. The hon. Member is absolutely right. We want to make sure that this measure is known by all so that they can take advantage of it. If they are unable to settle their rent debts between themselves, we can bring this to a head quickly through arbitration and get back to a normal free market as soon as possible.

On the amendment, I can reassure the hon. Member that we will take full note of written evidence that comes in, but paragraph 2 of schedule 2 already prevents claims against guarantors. It prevents the landlord from making any debt claim in respect of protected rent within the moratorium period specified by the Bill. The provision in question is not limited to claims against tenants, so it does not need to state expressly that it covers claims against guarantors.

Question put and agreed to.

Clause 23 accordingly ordered to stand part of the Bill.

Schedule 2 agreed to.

Clause 24

TEMPORARY RESTRICTION ON INITIATING CERTAIN INSOLVENCY ARRANGEMENTS

Question proposed, That the clause stand part of the Bill.

Paul Scully: Both parties are expected to engage with the arbitration process and must comply with any award made. They may choose to settle the matter by negotiation ahead of arbitration, but other processes that enable the arbitration system to be avoided should not be available. That is why clause 24 prevents a party from proposing or applying for a company or individual voluntary arrangements or certain other restructuring arrangements with their creditors.

Ruth Cadbury: Just as we welcome the actions in clause 23, we welcome clause 24 placing restrictions on the ability of either a landlord or a tenant to enter into specific insolvency arrangements when the matter relates to protected rent debt. That is a welcome move, as we do not want to see viable companies going into insolvency because of rent arrears.

Question put and agreed to.

Clause 24 accordingly ordered to stand part of the Bill.

Clause 25

TEMPORARY RESTRICTION ON INITIATING ARBITRATION PROCEEDINGS

Question proposed, That the clause stand part of the Bill.

Paul Scully: The clause prevents either party from invoking alternative measures that have not been designed specifically for debts related to the pandemic.

Ruth Cadbury: We heard in testimony last week that the vast majority of landlords and tenants have been able to reach agreements on rent arrears, and it has generally been a productive and straightforward process. The clause ensures that the tenant or landlord cannot unilaterally start arbitration proceedings and must go through the referral process, requiring the other party also to make submissions in writing. I am interested to hear what steps are in place for businesses, and especially small businesses, when a larger landlord or tenant refuses to enter arbitration fairly.

Paul Scully: If both parties wish to resolve their unpaid protected rent debt by an alternative form of arbitration, they may agree to do so. In terms of the arbitration itself, the businesses—either the landlord or tenant—can act unilaterally.

Question put and agreed to.

Clause 25 accordingly ordered to stand part of the Bill.

Clause 26

TEMPORARY RESTRICTION ON WINDING-UP PETITIONS AND PETITIONS FOR BANKRUPTCY ORDERS

Question proposed, That the clause stand part of the Bill.

The Chair: With this it will be convenient to consider that schedule 3 be the Third schedule to the Bill.

Paul Scully: Clause 26 and schedule 3 temporarily prevent landlords from petitioning, in relation to protected rent debt, to wind up businesses in scope of the Bill or petitioning for bankruptcy for businesses that are individuals, such as sole traders, that would otherwise be viable. The clause and the schedule support viable businesses by allowing debts to be resolved by mutual agreement or by the Bill's arbitration system, which considers both parties' circumstances in the exceptional context of the pandemic. As with the other temporary restrictions in part 3, the restrictions detailed in clause 26 and schedule 3 apply only in relation to protected rent debt.

Ruth Cadbury: We welcome the measure in clause 26 as it will prevent landlords from going through a back-door method of targeting businesses unfairly. We also support schedule 3 as it will ensure that viable businesses are protected and can enter into the much-needed arbitration process. Paragraph 3 of schedule 3 ensures that bankruptcy orders in relation to rent arrears made before the day on which the Bill becomes law shall have no power. This will prevent businesses that will be helped by the legislation from being declared bankrupt, which we support as it will protect otherwise viable businesses.

Question put and agreed to.

Clause 26 accordingly ordered to stand part of the Bill.

Schedule 3 agreed to.

Clause 27

POWER TO APPLY ACT IN RELATION TO FUTURE PERIODS OF CORONAVIRUS CONTROL

Question proposed, That the clause stand part of the Bill.

Paul Scully: The measures in the Bill are a response to the unprecedented impacts of the pandemic and will support commercial tenants and landlords to resolve their rent debt. To ensure that we are prepared for a future situation of a further wave of coronavirus giving rise to further business closures, we are including a power to reapply the provisions in the Bill. This will enable the Government to reapply any and all provisions in the Bill so that we can take a targeted approach to respond to the specific circumstances of any future period of coronavirus.

Ruth Cadbury: Given the past few days and the news of business revenues plummeting, we of course welcome the clause. We know that many businesses are already feeling the pinch, as we have seen in the news. There is already worry and concern in the sector about staff shortages and rising supply costs, and on top of that businesses are concerned about customer numbers. The Government appear to rule out any return of covid-related support for businesses, but at least the clause offers some relief in respect of rent arrears. Although we welcome the inclusion of a power to ensure that businesses do not get punished for rent arrears in the future if they are forced to close, I take this chance to remind the Government that businesses are feeling the pinch, even if they have got over the outstanding revenue losses from the previous almost two years. We know that customers are cautious in the face of the new variant, and that businesses will be impacted, so we support the clause.

Question put and agreed to.

Clause 27 accordingly ordered to stand part of the Bill.

Clause 28

POWER TO MAKE CORRESPONDING PROVISION IN NORTHERN IRELAND

Question proposed, That the clause stand part of the Bill.

Paul Scully: The Bill will not apply directly to Northern Ireland. Instead, this enabling power was requested by the Northern Ireland Executive. It is intended to allow them to introduce the measures in the Bill at their discretion. The arbitration scheme remains an option for Northern Ireland while they assess their need for those measures. We will of course continue to work closely with our counterparts in the Northern Ireland Executive.

Ruth Cadbury: We welcome clause 28, but our comments and concerns about businesses in England and Wales apply just as much to those in Northern Ireland.

Question put and agreed to.

Clause 28 accordingly ordered to stand part of the Bill.

Clause 29

CROWN APPLICATION

Question proposed, That the clause stand part of the Bill.

Paul Scully: The Bill will bind the Crown where the Crown is a landlord under the business tenancies in scope of the Bill. I commend clause 29 to the Committee.

Ruth Cadbury: Clause 29 is a straightforward clause, setting out that the Bill binds the Crown. We have nothing further to add.

Question put and agreed to.

Clause 29 accordingly ordered to stand part of the Bill.

Clause 30

EXTENT, COMMENCEMENT AND SHORT TITLE

Question proposed, That the clause stand part of the Bill.

Paul Scully: This clause sets out the territorial extent of the Bill, which has been carefully considered, and the continued engagement of the devolved Administrations. It reflects the differing needs of each part of the UK

[Paul Scully]

and ensures that the tenants and landlords that will most benefit from this measure can access it. It extends to England and Wales, with limited provisions extending to Northern Ireland and Scotland.

Ruth Cadbury: We have nothing further to add on clause 30, Mr Hosie. However, this is the last time that we will speak in this Committee, so I will take the opportunity to thank all those who have provided expert submissions to the Committee, who have spoken in the last week and who have sent written submissions. I thank Members for their attendance, and I thank the staff who have administered the Bill so smoothly and enabled us to finish so quickly.

I conclude with an overarching point. Some of the submissions that we have received, particularly this week, from expert bodies with significant legal and other professional expertise in the area of landlord and tenant law, arbitration and settlements still express significant concerns about the detail of the way the Bill is drafted. I hope that between now and Report and Third Reading, the Government will look at their comments, meet them and address some of the detailed and expert points that they raise. I fear that they probably know what they are talking about.

Paul Scully: I echo the hon. Lady's thanks to you, Mr Hosie, to the Clerks and to everybody for making this happen. We want to ensure that we get the Bill into legislation as quickly as possible, but that does not mean that we will rush it and not have further consideration. Beyond the passage of the legislation through Parliament, we will continue to engage with stakeholders, including arbitration services, landlords and tenants, to ensure that we get it right. It is so important that we get this enacted now, so that landlords and tenants can get the benefits when they need them—now, not when it is too late.

Question put and agreed to.

Clause 30 accordingly ordered to stand part of the Bill.

Bill to be reported, without amendment.

10.18 am

Committee rose.

Written evidence reported to the House

CRCB 07 Property Litigation Association

CRCB 08 Property Bar Association

CRCB 09 Subway Realty Ltd