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POST PANDEMIC COMMERCIAL LEASES

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THE CORONAVIRUS ACT 2020

As a consequence of S.82 of the **Coronavirus Act 2020**, forfeiture of non-payment of rent in commercial leases was suspended until 30 June 2020. On 18 June 2020, this time period was extended to 30 September 2020 and subsequently to 31 December 2020 and then to 25 March 2021. On 9 March 2021 it was extended to 30 June 2021 and on 16 June 2021 this was further extended to 25 March 2022 in England. On the same day it was announced that the inability to make a statutory demand or serve a winding up petition was extended from 30 June 2021 to 30 September 2021 if the reason for arrears was the pandemic. This was further extended to 31 March 2022. The Welsh Government followed suit in extending the periods on 26 August 2021. Some tenants seem to be under the impression that this this gives rise to a rent holiday and that the rent has been suspended. This is not so. The rent will still be due and after the moratorium period will once more be available. Commercial Rent Arrears Recovery might be available in relation to occupied premises (see below). It might also be possible to draw down from any rent deposit with the agreement of the tenant that the rent deposit account will be topped up at a later stage, thus alleviating any cash flow problems. The section also allows a demand for rent to be made without waiving the right to forfeiture for non-payment of rent but not for other breaches. S.82 only applies to commercial leases within the **Landlord and Tenant Act 1954** and so will not apply to leases of six months or less in duration or to licences. Forfeiture other than for non-payment of rent is also still available, for instance for disrepair and for breach of a keep open clause.

It might be suspected that the biggest problem in relation to forfeiture for non-payment of rent when it becomes available, or for other breaches, might be the difficulty in finding the new tenant, especially at the same rent, in the current climate. In addition, there are major issues in relation to business rates liability. For the year 2020/21 the retail, hospitality and leisure sectors can claim full business rates relief regardless of the Rateable Value of the premises (in Wales this will not apply if the Rateable Value is more than £500,000). In England business rates relief for the above sectors was extended by the budget of 2021. Until 30 June there was full business rates relief for retail, hospitality and leisure sectors and 1 July 2021 until 31 March 2022 there is two-thirds relief. There is a cap of £2 million per business if the premises was required to close on 25 January 2021 and £105,000 for other premises. Full business rates relief continues in Wales for the hospitality, retail and leisure sector until 31 March 2022. However, if the premises are empty for more than three months (or six months for industrial units and warehousing) then with exceptions full business rates liability will once more be due. A landlord may think it expedient to at least temporarily forego rent rather than effect forfeiture due to the business rate implications. Alternatively, the tenant may wish to exercise a break clause. Many breaks will have a condition precedent that the tenant must give up vacant possession. With social distancing this may not be possible. What the attitude of the courts may be in this circumstance is yet to be seen.

Rent

There will be no reduction in the rent unless there is a force majeure clause which is unlikely. Moreover, rent suspension provisions usually only apply in the event of damage or destruction. Likewise, most insurance policies which cover rent only apply in relation to damage or destruction. The tenant may opt into a provision covering closure due to a notifiable illness.

If the landlord closes the premises then there may be a possible claim for breach of quiet enjoyment or derogation from grant. However, the lease will probably contain provision that the rent must be paid without deduction or set off and a separate claim would have to be made.

Since 1 March 2020, Commercial Rent Arrears Recovery was only available if there were 90 days of rent arrears and not, as previously, 7 days. On 18 June 2020, the level of rent arrears was extended to 187 days. This was subsequently extended to 366 days. This has now been increased 554 days. It was due to come to an end on 30 June 2021 but this has now been extended to 25 March 2022. Commercial Rent Arrears Recovery is not available for unoccupied premises.

Commerz Real Investmentgesellschaft v TFS Stores [2021] EWHC 863

TFS Stores had been closed during the various lockdowns. Since April 2020 it had not paid any rent. The landlord sued for non payment of rent. In a summary judgment the High Court found for the landlord. Although Commercial Rent Arrears Recovery is suspended it was clear that this did not stop the landlord from suing for the arrears.

The tenant also argued that the landlord had not adhered to the Government Code of Practice for commercial property relationships during the Covid 19 pandemic. The Court held that this is merely voluntary.

The tenant also argued that the landlord should have insured against notifiable disease. This claim failed as there is no such term in the lease and it would not be implied.

Bank of New York Mellon Limited v Cine-UK Limited [2021] EWHC 1013

This involves further summary judgments in relation to Cine-UK, Sports Direct, Mecca Bingo and Deltic, a night club chain. The main question for the Court was whether rent suspension provisions covered pandemic. The Court decided that they did not but merely covered physical damage or destruction. The Court also decided that the contract had not been frustrated as the leases were for between twelve and thirteen years and the maximum closure was likely to be 18 months. For another case where a 25-year lease was not frustrated due to Brexit see ***Canary Wharf v European Medicines Agency [2019] EWHC 335.***

The tenants also argued that the landlord was not out of pocket because they could claim off their business interruption insurance. The Court held that this was irrelevant as it was open to the tenants to have taken out business interruption insurance (see below).

On 22 September 2021 the Court of Appeal gave leave to appeal this case.

London Trocadero (2015) LLP v Picturehouse Cinemas [2021] EWHC 2591. The tenant had a lease of a cinema in the Trocadero Centre in London. A company in the same group, Gallery Cinemas, also had a lease and the holding company, Cineworld, were guarantors. Rent had not been paid since June 2020 and the arrears were £2.9 million. This was due to the various lockdowns.

The landlord sued and the tenant argued that there must be an implied term that the rent would not be due in these circumstances. This failed. The tenant also argued that there was a partial lack of consideration as they were legally unable to run a cinema. This also failed as the basis of the lease was the premises and not the cinema business. Finally, the tenant argued that the case should be

adjourned until the ring-fencing provisions come into force next year (see below). This also failed. This case is due to be heard by the Court of Appeal.

Note: ***FCA v Arch and others [2021] UKSC 1*** The High Court held that certain business interruption insurance policies would cover closure through lockdown. On 15 January 2021 the Supreme Court confirmed the first instance ruling. The FCA has now issued detailed guidance on various business interruption insurance policies and their effect. In ***TKC London v Allianz (2020)*** this case made clear that there would be no claim if there was no business interruption insurance within the policy.

Note: On 16 June 2021 the Government announced that legislation will be introduced whereby night clubs and other members of the hospitality sector would have their rent ring-fenced whereby the landlord would have to shoulder some of the burden in relation to rent arrears. We do not yet know the detail. More details were provided in August 2021 although the Government's intentions are still rather vague. Any arrears accrued during restrictions on trading and until 25 March 2022 will be ring-fenced in relation to forfeiture of non-payment of rent. Arrears outside this period may give rise to forfeiture. For the ring-fenced rent arrears, the Government will introduce a legally binding Code of Practice to replace the voluntary Code from June 2020 (see above). If the landlord and tenant cannot settle claims there will be binding arbitration. These provisions will apply to England and Wales.

On 9 November 2021 the Government produced a new **Code of Practice on Commercial Property Relations** following the COVID-19 pandemic. This came into force with immediate effect.

On the same day the **Commercial Rent (Coronavirus) Bill 2021 – 2022** received its first reading in the House of Commons. The Welsh Government are also adopting the legislation which will come into force on 25 March 2022. Protected rent debt will be ring-fenced. This includes rent, service charge, interest, VAT and insurance rent where arrears fell due during a period when legislation required the tenant to close the premises or cease trading whether in whole or in part. This will include, for instance, shops which were open for collection or pubs and restaurants with limited or at seat service. It will include times when premises could temporarily reopen.

If the rent debt is protected then the parties should negotiate how much payment should be made. If there is no agreement either side can apply for arbitration within six months of the legislation being passed. If the tenant's business is not viable and would not be viable if relief was granted then the claim cannot be heard. If it would be viable, arbitration can write off the debt, give further time to repay including in instalments, or reduce interest.

During the six-month period (which may be extended) the landlord cannot take action against the tenant for forfeiture, CRAR, or winding up. The landlord will not be able to drawn down on rent deposits or issue debt claims. If an application is made in relation to debt the court must stay proceedings between 10 November 2021 and the date the Act is passed. Current proceedings will continue, but the tenant may apply for relief within six months of the Act being passed and the debt will not be able to be enforced.

THE CORPORATE INSOLVENCY AND GOVERNANCE ACT 2020

This received Royal Assent on 25 June 2020 and came into force on 26 June 2020. Amongst other things it temporarily bars the making of a statutory demand if the reason for any debt is the Coronavirus pandemic. Likewise, in similar circumstances a winding up petition cannot be made. These provisions are back dated to 27 April 2020.

The Act has also introduced the concept of a Restructuring Plan whereby creditors can apply to restructure a business, for instance in relation to rent by a 75% majority. In some respects, this is similar to a Company Voluntary Arrangement, but will be overseen by the Court and applies to secured, and not merely unsecured, creditors.

Re Virgin Active Holdings [2021] EWHC 1246

The Act introduced the concept of Cross-Class Cram Down whereby dissenting classes of creditors or members may be bound by a restructuring plan if they have not agreed with the plan but would be no worse off. In the present case the creditor landlords had to accept a reduction in rent in relation to various gyms where the tenants have been severely impacted by the pandemic.

The background was as follows. Virgin Active operate a chain of health clubs which were forced to close for extended periods in 2020 and 2021. Three of the group's lease holding companies launched interconnected restructuring plans under the new legislation. Virgin Active grouped its creditors into seven separate classes, each of which would have a different restructuring plan. The first class involved secured creditors. Their security would remain, but with amongst other things, an extension of the loan period by three years and a deferral of interest payments. The various landlords were classed as A to E. Class A landlords would receive 100% of future rent and accrued arrears. Classes B to E landlords would have all unpaid rent released in return for a payment of 120% of the estimated return on a hypothetical administration. Class B landlords would be entitled to full contractual rent up to three years following sanctioning of the plan. Classes C to E would receive no rent but there would be the benefit of break clauses.

Unsurprisingly, the secured creditors and Class A landlords voted 75% in favour of the plan. Classes B to E plus the unsecured creditors voted against. The High Court decided that the five dissenting classes could be required to accept the plan and Cross-Class Cram Down would be imposed upon them. This can be the case if none of the members of the dissenting class would be any worse off than they would be in the event of the relevant alternative, being whatever the court considers would be most likely to occur if the plans were not sanctioned. The judge decided that the most likely alternative would have been administration and liquidation. Although the case depends very much on its facts, it is worrying for landlords, in particular, as secured creditors may be able to dictate to them.

COMPANY VOLUNTARY ARRANGEMENTS

Lazari Properties Limited and others v New Look [2021] EWHC 1209 Company Voluntary Arrangements were introduced by the **Insolvency Act of 1986** as a process whereby a company's liabilities may be restructured if 75% in value of the creditors are in favour. If it is approved, creditors are bound by the scheme whether or not they voted in favour. There is a 28-day window to object on the grounds of unfair prejudice or material irregularities.

Here New Look entered into a CVA in September 2020 following a previous one in 2018. Various landlords challenged this on the grounds of:

- the arrangement was outside the Insolvency Act;
- there were material irregularities;
- and thirdly, the landlord suffered unfair prejudice.

Whether there was jurisdiction under the Act the landlords objected to the fact that different classes of creditor were treated differently and there was no give and take. The landlords also claimed that there was no ability to change proprietary rights. In relation to unfair prejudice the claim was that it would not be right that some creditors who would not be affected would impose their will on others who would be. The current market rent was to be replaced by a turnover rent. Also, there was to be a 3-year concession period in relation to rent and a release of keep open clauses within the lease.

It was held that on the correct interpretation of the legislation such a scheme was possible and was not unfairly prejudicial. This is not an all encompassing test but everything depends on the fairness of the case. The case is now to be heard by the Court of Appeal.

Carraway Guildford (and a Nominee) Limited and others v Regis and others [2021] EWHC 1294 This case followed on three days after New Look in May 2021. Regis entered into a CVA in October 2018. Certain landlords challenged the CVA on the grounds of material irregularity and unfair prejudice. Regis subsequently went into administration and this terminated the CVA but the landlords pursued the claim arguing that the nominees had breached their duties and should pay their fees back.

The CVA was revoked on the basis that the treatment of an inter-company loan and its preferential treatment as critical creditor was not justified. As the CVA had already terminated this had little practical effect. Other arguments as to material irregularity failed as in New Look. There had been a blanket 75% discount of future rent to landlords. This was not a material irregularity but could not be justified. In New Look there had been a 25% discount which had been justified.

Despite the finding of a breach of duty, in the absence of bad faith or fraud the court refused to order a payment of the fees of the nominees and the landlords' victory was pyrrhic.

BUSINESS RATES & EMPTY PROPERTIES AND HURSTWOOD V ROSSENDALE

Empty commercial properties pay full business rates after 3 months and empty industrial units and warehouses pay full business rates after 6 months. If there has been occupation of at least 6 weeks in these periods then the time period to attract business rates starts again. The Welsh Government intends to increase the length of occupation from 6 weeks to 6 months. Other exemptions include listed buildings, community amateur sports clubs, and premises of companies in liquidation or administration. Premises occupied for charitable purposes pay 20% business rates which the local authority may waive. Such premises will not pay business rates when empty.

John Laing & Son Ltd v Kingswood Assessment Committee [1949] I KB 344 at p350 Here, the court accepted that occupation for business rates purposes had four aspects:

1. actual occupation
2. beneficial occupation
3. exclusive occupation, and
4. occupation must not be too transient.

In ***Kenya Aid Programme v Sheffield City Council [2013] EWHC 54 (Admin*)** it was accepted that occupation by a charity for storage purposes in two adjoining warehouses could avoid business rates liability even though only 25% and 30% of the floor area was actually occupied. The Charity Commission subsequently warned charities that they should not be involved in avoiding business rates.

In ***Makro Properties Limited v Nuneaton & Bedworth Borough Council [2012] EWHC 2250 (Admin)*** the court accepted that storage of 16 pallets for 6 weeks every 3 months was sufficient to avoid business rates.

Principled Offsite Logistics Ltd v Trafford Borough Council [2018] EWHC 1687 (Admin) Empty office premises attract full business rates after 3 months but if premises are occupied for more than 6 weeks in any 3-month period business rates can be avoided. Here, POLL were given 43 day leases to occupy premises for the sole purpose of avoiding business rates. They paid a peppercorn rent and received 20% of the avoided business rates. This was held to be sufficient occupation and there need not be any specific purpose. The rates were avoided.

Hurstwood Properties (A) Ltd & Others v Rossendale Borough Council [2021] UKSC 16 In this case special purpose vehicle companies were set up with no assets. The companies would then be granted a lease of the otherwise empty premises. They would then be dissolved or go into liquidation. The dissolution or liquidation process would be drawn out for as long as possible and eventually if dissolved the lease went to the Crown under bona vacantia. Premises of companies in liquidation do not pay business rates. The schemes were based on local authority inertia as to what was happening.

The case involved the High Court originally throwing out the claim in a summary judgment against the Council for non-payment of business rates. The Court of Appeal agreed with this. However, on 14 May 2021, the Supreme Court decided unanimously that there was a case to answer. They stated

that the purpose of business rates on empty properties was to ensure that premises were not deliberately empty and the special purpose vehicle companies never intended to occupy. The device was therefore a sham and the business rates liability remained. There was a suggestion that the directors in relation to the dissolution schemes may be committing a criminal offence. There are now 55 further cases in this area due to be heard. How this impacts on other empty property avoidance schemes is yet to be seen.

Business Rates and Charities

Nuffield Health v London Borough of Merton [2021] EWCA 826 This case involves business rates and charitable relief. Nuffield are a charity but the particular premises involved was a gym. There was a membership fee to join the gym and a members' only carpark, créche, spa and refreshment area. The Council argued that there was no public benefit and therefore the premises were not wholly or mainly charitable. The Court of Appeal by a 2:1 majority decided that there was public benefit in the charity's overall activities and need not be in relation to an individual site. Charitable relief was available.

LANDLORD & TENANT ACT 1954

Renewal Terms and Coronavirus

The new lease will usually be on the same terms as the old tenancy but the court may, occasionally, sanction a change. Nevertheless, the initial assumption is that the terms will not be varied or changed. If a change is permitted then it should be adequately compensated in relation to a change in rent.

See e.g. ***O'May v City of London Real Property Co [1983] HC*** and ***Wallis v General Accident [2000] EGCS45****:* a change in the law does not mean that the landlord can insist on an authorised guarantee agreement in the new lease – the landlord cannot upgrade the new lease to modern standards by including full repairing and insurance provisions - see also ***Cairnplace v CBL Ltd [1982] 2 WLR***.

In ***Samuel Smiths v Howard de Walden [2007]*** a judge accepted the tenant's argument that user covenants in relation to a public house could not be changed on a renewal without the consent of the tenants. The landlords wished to allow the sale of food arguing that this was the industry norm. The tenants objected to this as he felt it would have the effect of increasing future rent on review.

Edwards and Walkden v Mayor of London [2012] EWHC 2527

In spite of O'May, the judge held that a relevant circumstance on a lease renewal where different tenants have different service charge liability, the court allowed these to be standardised.

A major talking point of the moment is whether the new lease may include a rent suspension provision in the event of lockdown due to pandemic. The burden would be upon the tenant that this was fair and reasonable and reflected in a change of rent. ***WH Smith v Commerz Real Investmentgesellschaft (2021) April 19, county court***. The tenants had a lease of premises in a large shopping centre. They were able to remain open during the various lockdowns as the premises included a post office. On a lease renewal the landlord accepted that the new lease would include a rent suspension provision in the event of pandemic but only if the tenant's premises had to close. The tenant argued that their profits were much reduced due to lack of footfall in the shopping centre and therefore they wanted a rent suspension provision if any of the premises had to close due to pandemic. The county court judge decided for the tenant. This case may be instructive although a county court decision does not set a precedent.

In terms of setting the market rent, the passing rent was £953,000 based on a rent review in 2013. Because of market forces in the retail sector the landlord was arguing for a new rent of £751,995 and the tenant for a rent of £146,300. The court settled on a new market rent of £404,666. The rent was not increased because of the rent suspension provision.

In spite of this, in ***Poundland v Toplain (2021) July 2***, County Court, the court refused to change a rent suspension provision to include a pandemic clause. It also refused to include a provision whereby the right to forfeit for any breach would be suspended for the duration of any future lockdown. Following on from the House of Lords decision in ***O'May v City of London Real Property Company (1983)****,* the starting point is that the new lease should be on the same terms as the current lease and the landlord would be unfairly prejudiced by any change. The distinguished WH Smith on the basis that in that case the landlord was prepared to accept a pandemic clause but was disputing its extent.

S Franses Ltd v Cavendish Hotel (London) Ltd [2017] EWHC 1670 (QB) [2017] WLR (D) 503 [2018] UKSC 62 Here the court accepted that ground (f) could be used even though the work of reconstruction was specifically planned in order to terminate the lease. However, as the work would not commence for 12 months then the intention was not sufficiently immediate.

The Supreme Court decided the case in December 2018 and reversed the first instance decision. In deciding whether ground (f) may be used the question is whether the landlord would have done the work regardless of any intention to repossess.

The Supreme Court decision is obviously welcome to tenants. However, landlords will have to ensure that they can prove that they would still do the proposed works if the property was vacant. The issue of whether the works need to be done soon after possession is obtained was not addressed by the Supreme Court.

In June 2021 a new case settled the market rent for the premises, St James' Gallery in Jermyn Street. Due to the pandemic, the new rent was set at £102,000 pa whereas the original rent was £220,000 pa. It was noted that several properties nearby were now empty.

KEEP OPEN CLAUSES

With user covenants the Courts are willing to award damages for breach against a tenant who ceases to carry on his trade (see, for example, ***Transworld Land Co Ltd v J Sainsbury plc [1990] 2 EGLR 255***). However, the Courts are not prepared to grant mandatory injunctions forcing the tenant to stay open for business (***see Co-operative Insurance Society Ltd v Argyll Stores (Holdings) Ltd [1997] 23 EG 141***). Consider the use of the **Contracts (Rights of Third Parties) Act 1999** to increase a tenant's exposure to damages (e.g. by requiring the tenant to covenant not just with his landlord but also with the other tenants in the centre).

If the covenant is positive:

- The tenant should try to qualify the obligation to allow closure for normal business reasons, for example, for repair or refurbishment and perhaps an assignment.
- Consideration needs to be given to what amounts to the normal business hours of the shopping parade

SHB v Cribbs Mall April 17th 2019

SHB are in liquidation and are successors to BHS. They occupied a prime site at Cribbs Causeway in Bristol and held a 125-year lease. The landlord wanted to effect forfeiture for breach of a keep open clause. The tenant argued that they should be entitled to release as the loss involved would be so great and they should be given a substantial time in which to be given the opportunity to assign the lease. The Court decided that three months delay in order to attempt an assignment should be sufficient.

Note: **S.82 of the Coronavirus Act 2020** - There is a moratorium on forfeiture for non-payment of rent until 25 March 2022. This may be extended further but it does not apply to breaches other than non-payment of rent. Forfeiture will still be available after the moratorium period is over and rent will still be owed. Landlords wishing to go down this route must be careful not to waive any breach and must be careful of business rates liability on empty properties.

Note: If the premises have to close under the Health Protection Regulations 2020, there would be a defence to breach of a keep open clause as the tenant has to be comply with statute. Planning law has been relaxed temporarily whereby pubs, restaurants and cafes can now operate as takeaways. Check the user covenants as there can still be a breach.

Note: Post lockdown many tenants are requesting that keep open clauses will not apply during any future pandemics. They are also requesting this on lease renewals.

INTERIM RENT: S.24A

Prior to 2005, only a landlord could apply for an interim rent to protect against significant delay in settling the terms of the new tenancy. The landlord only application does not fit easily with possible downward rents.

Previously, interim rent was payable for the period between:

- the termination date set out in the landlord's S.25 notice or the date requested for a new tenancy in the tenant's S.26 notice or (if later) the date for an application for interim rent; and
- the commencement of the new lease following the court's judgment.

This allowed manipulation of service of notices to ensure continuation of rent at old levels. The post 2005 law is thus:

- tenants as well as landlords are able to apply for interim rent. However, parties should not be able to apply if the other party has already made an application and has not withdrawn it
- the interim rent will be calculated at the end of proceedings and then back-dated to the earliest time at which an application could have been made i.e. the end of the contracting fixed term
- changing the method for calculating interim rent, to apply in most circumstances where the court orders the grant of a new tenancy

Previously, the interim rent was 'cushioned' so as to prevent a sudden major increase in rent, in that it is based on a hypothetical letting of a notional yearly tenancy, and regard is had to the existing rent.

This can result in a downward effect on the rent (usually 10 to 20%). See ***Regis Property Co. Ltd v Lewis and Peat [1970] CH 965***.

In a rising market, there was a one-third reduction.

Ratners Ltd v Lemnoll [1980] 255 EG 987 – a 15% reduction.

French v Commercial Union [1993] 24 EG115. The existing rent is a major factor as well as market forces, in reducing interim rent. Moreover, the fact that turnover had reduced when another anchor tenant moved out of the area was a major factor in reducing rent.

Previously, a rent review clause should have been included at the end of the contractual term to enable a market rent to be changed. See ***Willison v Cheverell Estates Ltd [1996] 1 EGLR 116, [1996] 26 EG 133***. The rent review clause cannot be exercised during the continuation tenancy unless this is made clear in the lease.

Since 2005 this cushioning effect will disappear where:

- the landlord's notice or the tenant's request related to the whole of the property let under the current lease: otherwise, it will be difficult to calculate market rent
- the tenant was in occupation of all the property

- the landlord stated in his/her notice, or his/her counter-notice to the tenant's request, that he/she would not oppose the grant of a new tenancy
- Moreover, interim rent, which is probably amongst the last of matters to be decided, will be back-dated to the date from which it became payable, to prevent usually the landlord, or, in a downward market, the tenant from suffering

This method of calculation would require a separate valuation to determine the interim rent on the date it becomes payable (usually the contractual termination date).

The presumption in these circumstances is that the interim rent will be the new rent unless it can be shown that there has been a substantial change in rent during the period or a substantial change in the terms of the lease. In ***Charles Brooker v Unique Pub Properties [2009] EWHC 2599*** a 10% difference was not substantial. In ***MacWilliam v Clough [2014] PLSCS 58***, a 40% fall in rents was substantial.

In ***WH Smith v Commerz Real Investmentgesellschaft April 19, county court*** (above) the lease renewal was not opposed. The new rent was set at £404,666 pa. The interim rent was backdated to October 2018 but because of the substantial change in market rents the interim rent was set at £758,789 pa.

In ***S Franses Ltd v Cavendish Hotel (London) Ltd*** (above) the lease renewal was opposed and so the new rent was based on a yearly tenancy and could take into account a cushioning effect. There was also a substantial gap between the end of the old lease and the new lease being determined. The court accepted the tenant's valuation of £140,000 pa was correct but because of the adverse effect on the landlord the interim rent was set at £164,300 pa.