

Insights

BCLP RETAIL INSIGHT: THE WEEK THAT WAS

Jun 19, 2020

SUMMARY

The return of customers to non-essential shops on Monday 15 June dominated mainstream news headlines this week but there were plenty of other developments that will be of interest to the retail sector. In this bulletin we consider the new COVID-19 Code of Practice for Commercial Property, the Supreme Court ATM rates ruling, whether the market is ready for a full Sunday trading and a permanent move to monthly rents. Plus a handy guide to how the flexible furlough scheme and Coronavirus Job Retention Scheme might work for retail.

The Return of Retail

The return of customers to non-essential shops on Monday 15 June dominated headlines this week. Footfall was down compared to this time last year - to what degree is up for debate and of course very location specific. Certainly, the novelty of being able to shop again coupled with the lure of sale bargains and the good weather will have impacted these figures: the true picture will take time to form. As shopping centres re-open, service costs will rise again, including the costs of covering COVID prevention measures such as additional cleaning, security and sanitising stations. It is interesting to see that the new commercial code (more below) explicitly states that service charge and insurance rent should continue to be paid as originally provided for in leases, even where rent concessions are agreed.

Code of Practice Makes Perfect?

The Government's new COVID-19 Code of Practice for Commercial Property was published today, Friday 19 June, following a consultation period which concluded last Friday. A link to the new Code is [here](#). The Code sets out principles for how businesses can share the property-related costs and business risks of the COVID-19 crisis. The Code encourages discussions between landlords and tenants over rental payments and provides guidance on rent arrears payments. However, whilst the Code promotes best practice, compliance is not mandatory and will not alter the legal relationship between landlord and tenants. Importantly, the Code states that landlords seeking to refuse

concessions must 'be clear with their tenants about why they are doing so', but stops short of requiring landlords to provide transparent financial reasoning as contemplated by the Code. Instead, landlords are urged to provide 'a reasonable explanation of their decision which clearly takes into account the information provided by the tenant'.

Business Rates Win for BCLP and Retailers at the Supreme Court

Good news for retailers as the UK Supreme Court ruled in our client's favour that ATMs operated by a company other than the store operator should be assessed as part of the host store. Separate assessments of ATM sites, which resulted in significantly increased rates, were incorrectly made. Whilst the appeal of ATMs may be dwindling in our increasingly cashless retail world, this judgment will have wider implications on a host of smaller sites and concessions that the Valuation Office Agency has sought to separately assess that will now need to be removed from the rating list. Further commentary on the impacts of this decision can be found in our blog [here](#).

Move to Monthly Rents?

At the start of the pandemic a lot of landlords agreed temporary concessions with their tenants, including side letters moving from quarterly to monthly rent collection to ease cashflow concerns. It has been reported in the property press that some landlords are now moving towards monthly rent collection being the norm. Others are biding their time pending the June/September quarters and more evidence on the way in which temporary rental concessions have been working. We're also hearing lots more talk about turnover rents, in some cases without a base rent element or the higher of base rent and turnover rents. Could this point to a longer term change in the risk allocation between landlords and tenants?

Sunday Trading Laws to be Relaxed?

Will the Government move to temporarily suspend restrictions on Sunday trading? Some retailers have queried whether opening for longer on Sundays will simply spread footfall out over a longer period rather than increase it and that consequential increased staffing and operating costs may dilute profits.

Furlough Resources

With the Coronavirus Job Retention Scheme expected to end on 31 October 2020, click [here](#) for BCLP's useful summary of the key dates and costs for UK retailers. The new flexible furlough regime will be in place until October – read about the key highlights of the new regime and the implications for employers [here](#).

Please do not hesitate to get in touch with the BCLP Retail Team if you have any queries regarding the issues raised in this bulletin.

RELATED PRACTICE AREAS

- Real Estate
- Real Estate Retail
- Real Estate Sector

MEET THE TEAM



Justine Oldale

Co-Author, London

justine.oldale@bcplaw.com

[+44 \(0\) 20 3400 4187](tel:+442034004187)



Sunita Chawla

Co-Author, London

sunita.chawla@bcplaw.com

[+44 \(0\) 20 3400 4511](tel:+442034004511)



Jeremy Bark

Co-Author, London

jeremy.bark@bcplaw.com

[+44 \(0\) 20 3400 2122](tel:+442034002122)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.