**Rent Arrears & Covid Support Guidance**

**In relation to The Arch Company Properties\***

**COVID SUPPORT RESPONSE**

**The Arch Co has to date provided:**

1. Substantial rent credits (c£11m)
2. Lease & rent remodelling via side letter arrangements
3. Payment plans
4. Allowing you more time to pay down pre-existing arrears.
5. Move to monthly rents
6. Assistance with access to storage or additional space for social distancing

**Outstanding Legal Action/breach of lease**

If you have any outstanding legal action with The Arch Co due to any matter unrelated to covid rent arrears the following support might not apply. If you are in doubt please contact archcotenant@guardiansofthearches.org.uk

**The main principles behind Arch Co customer recovery are:**

1. One size DOES NOT fit all! Support available is specific to each tenant.
2. Retain as many viable business tenants as possible.
3. If you can afford to pay your rent, pay your rent.
4. If you can’t afford to pay your rent, pay what you can afford.
5. Speak to your Asset Manager & credit control and stay in dialog.
6. Keep full written records of all communication.

**ARREARS RESPONSE & MORATORIUM**

The Arch Co has committed to not “ring fencing” any arrears by dates of mandated closure, they have promised to support tenants in financial distress by a complete and holistic review of their business health and ALL debt they may have with the landlord.

This is a fundamentally different approach; it means that all pre-existing arrears prior to the pandemic can be included in your discussions and any forthcoming or outstanding rent revaluations too.

While GOTA would strongly advise caution in the inclusion of any rent revaluation (property revaluation) as part of this discussion, we do believe that business owners with arrears need to be taking into consideration all financial obligations they have when attempting to determine their business viability and any arrears repayment plans.

GOTA applaud the Arch Co commitment to not ring fence arrears, this sets them apart as a landlord and provides a practical and helpful path to recovery however it does require that the tenant must apply for this support and must be willing to share financial evidence of eligibility. This is a challenging prospect for many and we advise tenants to be in written communication with Arch Co as early as possible.

**What support has been promised/provided?**

Covid Rent Credits for all small independent business tenants:

* March 2020 QTR 100% rent relief
* June 2020 QTR 50% rent & 50% deposit drawdown
* Sept 2020 QTR onwards – support available upon application
* Affordability Mechanism (previously only available for SMEs) is available for application to all tenants for covid specific support.

**Rent deposit**

If you used part or all your deposit to supplement your rent during the pandemic, you will be required to repay this deposit to The Arch Co. If you have applied for additional support or an affordability review, the repayment of your deposit may be included as part of your repayment plan.

**Rent reviews**

Arch Co permitted all SMEs with outstanding rent reviews to defer these negotiations until end March 2021. This does not alter the valuation date, the majority of these rent review proceedings have since commenced.

There have been instances of rent reviews being settled at nil uplift however this is not a blanket commitment and these instances have been achieved in individual or community group negotiations.

**BE AWARE –** please ensure that correct property valuation process is being followed at rent review and the landlord or their agents are adhering to RICS regulations and the 2020 Leasing Code. To increase rent, the landlord must first **PROVE** using correctly applied comparable evidence that a rental increase is due. Please contact us for further information: [advice@guardiansofthearches.org.uk](mailto:advice@guardiansofthearches.org.uk)

**Lease surrender**

If a small and independent business tenant is in significant financial crisis and can evidence unique and challenging circumstances Arch Co will permit lease surrender mid contract. This option is available only in extraordinary circumstances and determined on case by case basis.

If a tenant is not able to evidence significant financial difficulties however has other circumstances that require lease surrender, application for this process is available on a case by case basis and may require that the tenant continues to obligate the terms of their lease until they are able to find another tenant to take on their unit. The Arch Co will support tenants to the maximum of their ability and where possible will actively market such units on the tenant’s behalf.

**Lease renewal**

**Tenancy at Will –** This is a document which gives both landlord and tenant a framework to continue a tenancy prior to finalising the lease. GOTA do not believe this document is necessary for the majority of cases and therefore we advise caution. Please check carefully before signing any documents. If you held a lease or protections under the Landlord and Tenants Act 1954 or you intend to negotiate a lower rent than what you previously were required to pay, you may be signing away potential or existing high value tenancy rights without realising. ***We advise all tenants not to sign any documents without getting expert advice.***

**Pre-existing arrears are subject to legal action.** Where there are existing (pre-covid) arrears, Arch Co will usually require that these arrears are settled in full prior to the issuing of a new lease however where a tenant can evidence, that due to the impact of covid, they require additional time to repay these arrears, The Arch Co will consider a repayment plan which extends into the period of the “new lease”.

**FINANCIAL DISCLOSURE**

In order to ascertain eligibility for additional covid relief or an affordability review, The Arch Co will request the following information:

* Detailed Profit and Loss account and Balance Sheet for the last 3 years that supports the accounts submitted to Companies House as provided by your accountant. We would also like to see this information for other group or associated companies (including companies or businesses that operate out of the same premises and/or businesses with common shareholders)
* Last 3 months bank statements
* Management accounts since the last set of accounts filed at Companies House
* What support are you getting from any founders / parent companies / guarantors / shareholders / equity partners?
* Business plan and cash-flow projections for the next 6-12 months

The Arch Co have committed to treat all information as confidential, only using this information for the purpose of the affordability or covid relief and to permanently destroy this information following the conclusion of that negotiation. If you have any concerns relating to the use and management of your financial data please contact your asset manager.

**So what can I get following an application for Covid Support or Affordability Review?**

**Side Letters**

The Arch Co are using side letters to allow them to make individual arrangements for tenants requiring temporary or permanent adjustments to their lease or rental terms.

All side letters by The Arch Co are **not subject to any confidentiality clauses**. Where there may be some with a confidentiality clause or statement, this has been included in error, The Arch Co have committed to not enforcing any confidentiality clauses or statements as part of any side letter arrangements and will amend any letters which may have been issued using outdated templates.

A side letter is a legal arrangement as part of the terms of your lease agreement. It is being used en masse by landlords to enable them to discount rental payments - in property terms this arrangement is called “an incentive”. Your lease may say your rent due is £60,000pa but the rent you are required to pay in a side letter may say £22,000pa. Your lease is what the landlord will use to show how valuable your property is and the side letter allows flexibility on what rent is actually being paid.

The greatest risk is lack of understanding about how these legal documents work and anyone agreeing to a side letter arrangement must ensure the rent valuation on the lease is fair, correct to market and not an inflation or un-evidenced amount.

When the tenants or their neighbours rent is being reviewed or when business rates are being assessed, the valuation of the lease not the side letter is used to determine the next rent level and business rates valuation.

**Repayment plans**

Arch Co have committed to proving a 3-6 month repayment plan as standard and up to 24 month repayment plans upon financial disclosure of eligibility however should a tenants financial information indicate that a shorter or longer plan is required this can be discussed on a case by case basis.

**Rent credits**

Additional rent credits may be applied where there is evidence to support further financial investment to help a viable business tenant to fully recover. The Arch Co are not making any blanket commitments to any further rent relief.

**Lease re-gearing**

Arch Co have committed to providing flexibility on lease terms and rent models where possible. Some options may include staggered or stepped rental payments over the term of the lease, turnover linked rents, moving from quarterly to monthly payments or additional break clauses.

Tenants with significant arrears have been invited to surrender their lease rights in exchange for arrears being discounted. This is an agreement by the tenant to waive their legal right to renew their lease (**security of tenure**) under the Landlord & Tenant Act 1954. If this is something being proposed by either party, GOTA strongly recommend taking independent professional advice before agreeing to the surrender of this highly valuable and irreplaceable legal tenancy right.

**Expansion**

Some tenants have required additional space to support with social distancing. This is available upon request and within the constraints of appropriate vacant units available.

**Relocation**

Arch Co will support long standing viable tenants in relocation within their estate where appropriate. This is a special arrangement available on a case by case basis.

**Dilapidations**

The Arch Co continues to pursue any payments or works required as part of dilapidations upon vacating the unit. Failure to follow the correct process of lease surrender and vacating a unit may result in legal action by The Arch Co against the tenant and/or any named guarantors’ on the lease.

**Legal Action**

The Arch Co will engage debt collection and legal action for any rent arrears (once permitted by law) where a tenant is not in communication with the landlord.

**The future of Arch Co Customer Support**

The Arch Co property management continue to work closely with Guardians of the Arches and their other key stakeholders in developing a sustainable and mutually beneficial estate management model. This includes a full review of the Tenants Charter and Handbook along with workshops on Rent Reviews, Affordability Mechanism, Inspections and Compliance & Redevelopment.

Guardians of the Arches are currently supporting The Arch Co in the implementation of a Customer Advisory Group. It is essential to work towards building long lasting and meaningful relationships between landlord and tenant; this requires honesty and trust from both sides. GOTA leadership are very hopeful that with continued dialog and constructive meetings with Arch Co Board Directors, a positive and profitable future is possible within the Arch Co property estate.

\* This is a guidance note only, this is not officially endorsed by The Arch Company or any qualified property or legal professional. This document is subject to change and amendment as new information becomes available. This is not professionally qualified advice and should be treated as an opinion.