**Protected Rent Debt (PRD)**

Guidance Document 3

(JAN 2022)

**How will the arbitration work and what will it cost?**

The Government is minded to limiting the costs, any such limits are expected to be variable; with a sliding scale, relative to the size of the rental arrears owed, used to determine the cap and ensure it is proportionate for each case. (See further down)

**Type of Arbitration**

It is perhaps best described as a pendulum arbitration in phases or rounds (i.e., the documents are exchanged from party to party).

It is expected that the vast majority of disputes will be conducted on a document only basis i.e. via email, however hearings can be requested but will cost more.

**Arbitration process**

**Letter of notification**

The landlord/tenant sends a letter to the other party notifying them of their intention to apply for arbitration. Attached to this is expected to be a proposal or offer (in line with the principles), with supporting information, to settle the unpaid protected rent debt.

**Pre-action negotiation I**

The respondent has 14 days to respond to the letter from the other party. This response can include a counteroffer and any supporting evidence on affordability of the counteroffer that they want to include. Written statements can be provided.

**Pre-action negotiation II**

The initiator has 14 days to consider any response and reply to it. After expiry of those 14 days, or 28 days if no response is received, either party can proceed to apply for arbitration.

**Request for arbitration**

Either Party can apply for arbitration. The application must show that the pre-application notification requirements have been met (an application will not be accepted without this). An application must include a formal proposal, with supporting evidence, for resolving the unpaid protected rent debt.

**Acceptance of application**

Arbitrator will check that the case is eligible (i.e. for business within scope, debts within the ring fence) and will accept if they have the capacity to conduct the process within the times specified, otherwise waitlisted or can seek another arbitrator.

**Final offers**

The other party has 14 days from receipt of the applicant’s proposal to submit their own proposal. After that, each party has a final opportunity to submit best/final proposals after seeing initial proposals. The arbitrator will have the power to request further information from either party. Written statements can be provided.

**Method of resolution**

At this stage the parties can agree to either a public hearing (or private if chosen) or for the arbitrator to simply reach their decision based on the information provided (i.e. on the papers).

**Hearing**

A hearing is to be held no later than 14 days after a request for a hearing is made. There is expected to be no more than one session lasting no longer than six hours (excluding breaks), during which the parties can state their case. This should be inquisitorial not adversarial.

**Decision**

The arbitrator has up to 14 days from a hearing, or as soon as reasonably practicable if no hearing, to consider the evidence and come to a statutory and legally binding decision. The arbitrator’s award must be published (with any confidential information taken out).

**Types of awards you can expect**

Rent can be a 100% write off – to 0%

With or without repayment arrangement for any balance spread out over 24 months

**Arbitrators’ fees**

The party applying to make a reference to Arbitration must pay the entire fee upfront, however the act directs the Arbitrator to create an order requiring the other party to reimburse the applicant in their award.

Therefore, the fee for arbitration is fully intended to be split between the parties 50:50 the arbitrator has the power to direct a different split, or proportion of the fee to be paid if they deem it appropriate.

The cost for any hearings is shared equally between the parties upfront (i.e., when applying for one).

**Costs -Can I claim costs from the other side?**

The cost of the arbitration is not recoverable should you “win” your claim, in the same way the other side cannot claim any costs from you should they “win”. The act states that the parties must meet their own legal and other costs; this stops parties from using legal costs as a threat.

Given that there is no award on costs, if you lose you are not at risk of paying the costs for the other side as can happen in other forms of arbitration.

You can however claim all the costs from your year-end accounts in the normal way (i.e., the fee, any representation for the Arbitration).

There is an award on the fee that was paid upfront and applies to the arbitration you undertake (see above).

**What other options exist to this legislation?**

See guidance document number 4