

Phones 4u went into administration on 15 September 2014 following a decision by EE not to renew its contract. At the time of writing, all 560 stores and 160 concessions have been closed, pending a decision by the firm's administrator whether to continue trading or break the company up in deals with, amongst others, EE and Vodafone.

As well as customers, employees and creditors, the administration of Phones 4u will have a significant effect on its landlords. This article aims to answer some of the questions faced by landlords of corporate tenants who have entered into administration.

Will the administrator pay the rent?

Recent case law has confirmed that rent accruing during administration must be paid by the administrator as an expense of the administration for the period during which the administrator "retains the property for the benefit of the administration". This may, however, leave a gap between the company going into administration and the administrator choosing to retain the property for the benefit of the administration.

If the shop re-opens for trade, then you may be able to argue that the rent is payable as an expense of the administration. Expenses of the administration are paid out in preference to all other claims except the claims of secured creditors, so rent is paid before the administrator's own fees.

Can I use the rent deposit to pay the rent?

The answer to this depends on a number of variables:

- Have the conditions for using the deposit been met?
- Who holds the deposit?
- Does the deposit fall outside the ambit of the administration?

There are a number of ways of holding a rent deposit, some of which are more landlord-friendly than others.

Rent deposits are a complicated area of law and you should seek advice before using the deposit to off-set outstanding rent.

Can I forfeit the lease and re-let the premises?

It is very difficult to remove a tenant once it has entered into administration. As soon as a company files for administration, it benefits from a moratorium, which prevents certain legal steps being taken against the company without the permission of the Court, or (once appointed) the consent of the company's administrator. These steps include starting or continuing forfeiture proceedings, forfeiting the lease by peaceable re-entry or using CRAR.

It may be possible to agree a surrender of the lease; this will depend upon the administrator's intentions and the viability of the tenant's business at the property.

I have an agreement for lease – what happens now?

The administrator does not have a general power to disclaim leases or renege on contracts so it may choose to continue and take the lease. That said, if the administrator does not agree to complete the lease, you will need the Court's permission in order to bring a claim against the company. It would be very difficult to persuade a Court to force an insolvent company to enter into the lease; the most likely result is that you would be granted leave to make a claim for damages only, which you would recover as an unsecured creditor in the tenant's insolvency.

If the administrator does want to complete notwithstanding the administration, then unless the terms of the agreement provide that it will become void in the event of the tenant's insolvency, the administrator will be able to enforce it.

If it is in your interests to bring the agreement to an end, it may be that you can come to a commercial agreement with the administrator; alternatively, you may prefer to "sit tight" and wait for the outcome of the administration.

The administrator wants to assign the lease – what should I do?

If the administrator finds a buyer for the whole or a part of the Phones 4u business, it is likely that they will make an application for assignment of the lease.

If the terms of the lease require the tenant to obtain your consent to assignment, then you must grant that consent unless it would be reasonable to refuse. There is a wealth of case-law surrounding what is considered reasonable for the purpose of refusing an assignment and advice should be sought before you make a decision to refuse consent.

Your decision must be given within a "reasonable time" – what is reasonable will depend on the facts of each case, but you should expect to need to give a decision within a period of days or weeks, rather than months. The administrator may allow the assignee into the premises as a licensee, pending your decision. Whether that is lawful will depend on the terms of your lease.

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