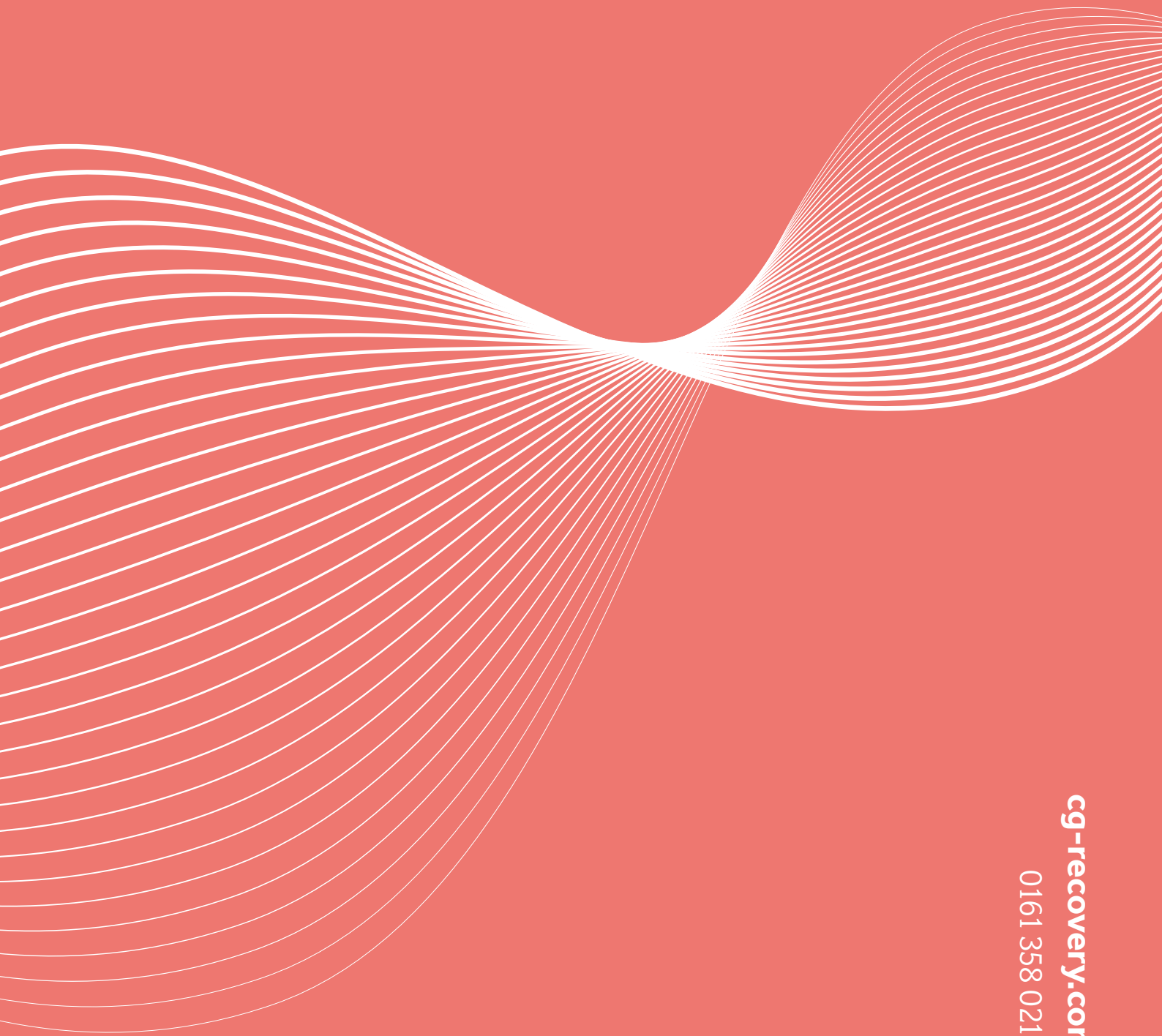


**COVID-19 Guide
for Lenders**



Enforcement in uncertain times

We're living through the most difficult times...

The global coronavirus (COVID-19) pandemic has resulted in many unprecedented changes to the way both the United Kingdom and its businesses operate.

In order to safeguard the health of the public - as well as the economy - the Government introduced new guidance, regulations and legislation, primarily through the Coronavirus Act 2020 (CA 2020), to help steer us through this immensely challenging and uncertain chapter.

Lenders will undoubtedly be wondering what options they have for enforcement during this new COVID-19 era.

There are undoubtedly steps that certain lenders can take when it comes to enforcement and we've highlighted these in the following pages.

That said, every lender should adopt a proportionate and carefully considered approach – based on the real risk borrowers are facing - when deciding what action to take at this point in time.

It's important to stress that the situation surrounding COVID-19 is still evolving daily.

Accordingly, the information detailed here is correct at the time of publication but, as circumstances change, please don't hesitate to contact CG&Co to discuss the latest position and how we can work with you to secure the best possible outcome for your individual needs.

Edward Gee & Daniel Richardson

Revised December 2020



Why choose CG&Co?

Founded in 2012, CG&Co is a specialist Property Receivership and Insolvency Practitioner which has a track record of excellence when it comes to dealing with default customers and returning funds to lenders as swiftly as possible.

The key points to CG&Co's service include:

- Partners take a lead role in all cases
- The fastest and most proactive service possible
- Free pre-appointment review of circumstances
- All costs and fees rolled up to conclusion of appointment (no monthly bills or request to ongoing expenses)
- Reporting requirements fully agreed with lenders

Who this brochure is for...

This brochure is aimed at those unregulated lenders who lend against residential and commercial property under short term unregulated facility agreements.

They are **not** regulated by the Financial Services and Markets Act 2000, the Mortgage Credit Directive Order 2015 or the Consumer Credit Act 1974.

The analysis contained below is therefore not relevant for any lender who is regulated by the Financial Conduct Authority (FCA), which has published separate guidance in response to the exceptional circumstances arising out of COVID-19.

The FCA's guidance also applies to an authorised person who carries on activity in relation to an unregulated agreement to provide credit which is secured on land.

Such arrangements are not covered in this brochure. Any authorised person should therefore refer to the FCA guidance even in respect of unregulated agreements.

CG&Co's highly experienced Property Receivership team is happy to discuss enforcement plans with regulated lenders whenever the need arises.

When a borrower is in default...

Lenders can still issue a demand letter in accordance with the terms of their facility and security documentation. Indeed, UK Finance explicitly stated at the start of the pandemic that these demand letters can still be issued.

Similarly, if the reasons for non-payment are not linked to financial difficulty caused by coronavirus then lenders are clearly entitled to issue a demand letter as usual and subsequently begin enforcement proceedings.

But when facilities attract default interest, lenders should now consider whether it's appropriate to defer decisions around enforcement to a time when "normality" has resumed.

Separately, there could feasibly be some disruption to Royal Mail's service – and whilst the onus may not be on lenders to ensure that all essential documentation reaches the borrower, it is prudent to take steps to bring demands to the attention of borrowers, to reduce opportunities for challenge down the line.

In other words, it's essential that lenders don't inadvertently affect their demand's validity of service by failing to get the right documents to the right people on time.

Consequently, if an alternative additional means of issuing that demand – possibly by using email – is an option, it's worth doing this in addition to posting it.

In any correspondence, lenders are also advised to clarify precisely what steps they intend to take on the expiry of the demand letter during the COVID-19 era if payment is not made in full.

This will ensure that borrowers do not ignore the demand after incorrectly assuming that no subsequent enforcement can be taken at the present time.

For those borrowers currently experiencing short term financial difficulty as a result of COVID-19, the receipt of this demand letter might prompt them to contact their lender to discuss their options.

As ever, lenders should be considerate of any real issues that a borrower is encountering.

But this approach will also leave any borrowers using COVID-19 as an excuse not to pay in no doubt regarding their position.



Expiry of Demand...

At the expiry of demand, lenders are fully entitled throughout this COVID-19 era to appoint a Receiver over the secured property.

The Receivers' appointment...

Despite the fact that we're living through unprecedented times, the Receivers – upon appointment – assume the management of the secured property, as agent of the borrower, in exactly the same way as has always been the case. The Receivers will then take steps to ensure there is minimal disruption to their appointments.

Steps currently being taken by the Receivers include: alternative arrangements made with insurers regarding empty properties; and engaging process servers to assist with the personal delivery of letters. The Receivers can still assist lenders in discussing strategy and take the necessary steps towards securing possession.

Where a property is tenanted, the Receiver will still be entitled to collect any rent due on the appropriate date.

Possession

The ability for a possession order to be obtained – and enforced – was restricted for most of 2020.

A compulsory stay on the progression of all Possession Proceedings and the enforcement of Possession Orders was initially introduced by the Courts on 27 March, 2020.

This stay was subsequently extended on two separate occasions until September 20, when it was lifted.

At this point, it became possible to resume stayed possession proceedings via a "reactivation notice".

Significantly, Property Receivers were required to demonstrate as part of this notice that they're in possession of any relevant information about a borrower's circumstances.

This includes information about the effect of the pandemic on the borrower, which enables the court to be fully informed when reaching a decision.

This requirement lasts until 28 March, 2021.

There remain steps that proactive Receivers can take towards obtaining possession.

This includes asking the borrower for voluntary possession, even where the possession is actually obtained at a later date.

Taking the steps outlined below can help to engage a borrower in order to achieve redemption and – where early redemption is not possible – put Receivers in the best position for when the stay is lifted.

Enforcement of possession orders is restricted in some areas where there are higher coronavirus measures, but this restriction does not apply in certain circumstances, including in connection with certain trespass proceedings.



Possession: Residential

Throughout the COVID-19 era, it has remained entirely possible for proactive Receivers to enter into discussions with borrowers in order to seek possession voluntarily and subsequently obtain that property's keys.

In some cases, these discussions may be welcomed by a borrower who may wish to bring matters to an early resolution - especially in circumstances where default interest, Receivers' costs and other fees linked to enforcement are accruing.

Furthermore, advising borrowers of their options with a view to reducing these overall costs while simultaneously preserving any equity that remains in the property at the earliest opportunity will reduce the likely success of any future challenge brought by the borrower regarding the sums claimed.

When it proves impossible to obtain possession from the borrower voluntarily, Receivers have been able to issue pre-action correspondence to the borrower and subsequently issue possession proceedings online.

In 2021, these proceedings resumed on 11 January after the conclusion of the "Christmas truce" which halted evictions over the festive period.

It remains entirely possible that possession proceedings could be stayed once again in 2021 - and Receivers are obviously keeping themselves fully apprised of developments in this area.

Nonetheless, progressing with the pre-action requirements and subsequently issuing proceedings at the earliest opportunity should consistently provide Receivers with a head start.

It might also result in meaningful dialogue with borrowers opening at an early stage while clearly demonstrating to them the lenders' intention to progress with enforcement.

Where a property was tenanted, a Receiver was able to serve notices as usual under sections 21 and 8 of the Housing Act 1988, but under the Coronavirus Act 2020 (CA 2020) - and the corresponding regulations - any notices served after 26 March, 2020, had to be for a minimum of three months.

This period was extended to six months (except for a number of limited exceptions) in August 2020 and the extended time limits are currently in place until 31 March, 2021.

Upon expiry of any notice it is possible for the Receivers to issue possession proceedings online in the usual course.

Again, the issue of proceedings will assist Receivers in obtaining possession without any further delay as soon as possession proceedings are free to be pursued.

Possession: Commercial Property

On 9 December, 2020, the Government announced that it was extending the ban on evictions of commercial property tenants until the end of March 2021.

A moratorium on business evictions had been introduced earlier in the year to help firms ride out the pandemic and had been due to end on 31 December, 2020.

The Ministry of Housing, Communities and Local Government stated: "This final extension to protections from the threat of eviction will give landlords and tenants three months to come to an agreement on unpaid rent."

While this extension clearly impacted on the enforcement options available to lenders - and landlords - until the ban is lifted, it remains essential for lenders encountering default loans linked to commercial properties to appoint a Property Receiver at the earliest possible opportunity.

While the Receiver will not be able to engage a bailiff to enforce possession, there remains an enormous amount that can be done to ensure that each appointment is as far advanced as possible for when the ban is lifted.



Realisations and market conditions

Where possession of a property has been obtained during the COVID-19 era - for example, by peaceful entry or voluntary possession - then proactive Receivers have been able to take steps to market and sell those premises.

At CG&Co, we've continued to achieve pre-COVID-19 valuations on any property we've marketed during the pandemic, safely returning funds to lenders.

This is true for both properties that we were able to obtain possession of prior to the pandemic commencing as well as for others - including investment properties - where we were appointed after the stay was implemented.

On these occasions, we were able to continue obtaining rental incomes while subsequently selling those properties as an investment.

We achieved this by working with all relevant parties and ensuring they were effectively marketed.

CG&Co will continue to consider the market conditions when looking for a sale and take appropriate professional advice before fully discussing the proposed strategy with lenders.

Contact CG&Co

For further information or guidance, please contact CG&Co's partners at the earliest opportunity.

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Nothing in this brochure is intended to constitute formal advice.

It has been written to provide unregulated short term lenders with CG&Co's analysis of the current position around enforcement.

As stated previously, circumstances, guidance and legislation are frequently being updated.

In addition each matter should be reviewed on a case by case basis to see whether there are any bespoke circumstances which may affect enforcement.

Please do not hesitate to contact CG&Co at the earliest opportunity and we'll review whether we're able to assist in enforcement and recovery.

As always, if you are concerned about the validity of any security or the ability to enforce, you should seek professional advice.