

EXPERT OPINION

Perfect Market in a Perfect World – or a Broken Market And a Very Bitter Taste?

The Elephant in the Room - Rent - Has Not Been Addressed



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As firms up and down the country are starting to count the days until they are finally able to reopen, businesses are also starting to count the true cost of the pandemic as they stare at a mountain of debt. While there is hope and elation, there is also a very bitter taste in the mouth as the unfairness of it all becomes increasingly apparent.

The Cambridge Dictionary definition of 'perfect market' describes the following scenario:

"A market where the sellers of a product or service are free to compete fairly, and sellers and buyers have complete information"

Based on this definition, I don't think I have ever seen a market as 'imperfect' as that which is currently emerging.

The actions of national and local government are to be commended, with businesses receiving grants, business rates reductions and furlough, all of which have all kept the property and hospitality industries going while also protecting jobs. At no stage, however, has the government fully addressed the very large elephant in the room – the issue of rent, and leading on from this, the commercial lease structure.

With businesses forced to close their doors and remain shut, trade has been decimated and with little or no income there has been very little in the kitty to pay the fixed cost of rent. There has also been a general apathy to pay (rent) for something that cannot actually be used. While the government, as part of the emergency Coronavirus Bill, announced commercial tenants who cannot pay their rent were protected from eviction, rent will still ultimately need to be paid at the end of it all. Sadly, this was not extended by Rishi Sunak as part of his budget, and again I believe the government has made an incorrect assumption that market forces will prevail.



This is the one area that the government should and could have made a real difference to struggling businesses. While they 'encouraged' landlords and tenants to have a conversation, this was as far as their intervention went, and I believe they hoped that market forces would prevail.

Market forces, however far from being alive and well, are held in a straitjacket when it comes to property.

On the one hand, we have debt that has accumulated over the last 12 months and counting. On the other, there is the level of rent that operators should be paying. At Shelley Sandzer, we have done our utmost to renegotiate terms for clients. Some landlords have been keen to enter into a dialogue with tenants on the premise that surely it is better to have a tenant paying 50% of rent than no tenant at all and an empty property. Not all landlords have been so helpful though, with CCJs being issued and full rent, plus interest for late payments, being sought.

Throughout the various lockdowns and even leading up to their initial onset, we have seen several casual dining chains going down the CVA route, using this as a means to dump the rental debt which had accumulated and rewrite their contracts with landlords. Such businesses are almost starting afresh with a clean slate.

By contrast, operators who kept their head above water and who have not gone down this route will be reopening with, in some instances, 12 months' worth of unpaid rent that landlords will expect to be paid off over a period of time – eating into their profitability.

We subsequently have a two-tier market: operators stuck with their longer leases paying rents set in a different time with no means of these being adjusted; and operators who took the opportunity to go down the CVA route who have either renegotiated new terms or are paying lower rents for the next two years as part of the CVA process.

At the beginning of lockdown, I was very scathing of the CVA as a tool being manipulated to dump debt, but where the system is held constrained too tightly, loopholes have to be used and have been used to very good effect.

I believe it will only be when the High Street is fully able to reopen that we will really see the high number of vacant properties. Is it not therefore time for the market to reconsider the use of upwards only rent reviews? Surely it is better to have a tenant paying some rent than an empty space and no rent at all? Might we also see the increase in shorter leases and break clauses being sought?

Whatever the case, we are all currently struggling through an imperfect world with a broken property market, one that is in dire need of further assistance from above rather than relying simply on market forces.

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