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**COMMERCIAL PROPERTY**  
ADVISORY SERVICE







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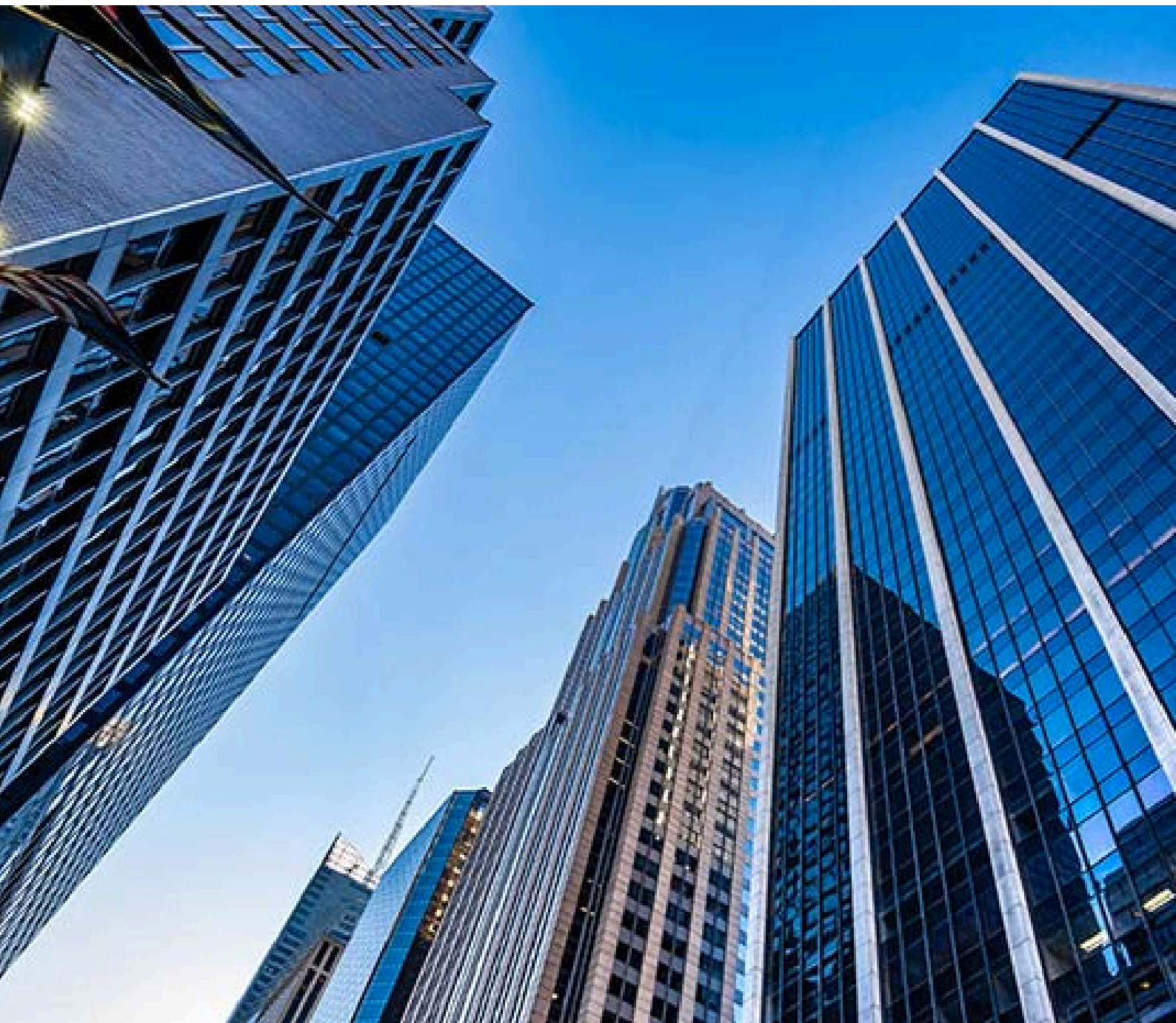
## Executive summary

The aftermath of the coronavirus pandemic has been a difficult time for commercial landlords; some lost tenants during and shortly after, whilst those that reached agreement over arrears in an effort to support tenants reeling from lockdown are now finding new pressures are jeopardising those same business tenants in different ways. The introduction of the new court sanctioned restructuring plans and their 'cram down' process have presented even more challenges when things go bad. Landlords are understandably looking back to traditional enforcement procedures and taking action sooner in the aim of avoiding further losses.

But is that the right approach?

A struggling business is unlikely to be in a position to immediately meet demands and formal proceedings may be the last straw. This could lead to hitherto good tenants vacating and/or being forced into liquidation, leaving landlords with an empty unit and liable for rates, insurance, service costs and agency fees until it is re-let. The resulting oversupply of empty premises will create a "buyer's market" and drive down market rents.

**The 360 view turns this into a unique opportunity for landlords to strengthen their portfolios and position themselves positively with their tenants.**





## The 360 view

### A DIFFERENT APPROACH

Rather than falling back on traditional remedies, our approach is based on retaining tenants. We do this by turning the position to the landlord's advantage, requiring the tenant to undergo an independent review to gain a rounded understanding of their business so that a structured and achievable plan can be put in place to stabilise the landlord-tenant relationship.

Ideally, this means that the tenant is able to survive and hopefully thrive, remaining in occupation and ensuring a reliable income stream for the long term.

The review will reveal whether a tenant is viable. If they are not, the review will give the required guidance to set an exit strategy and a managed outcome.

The 360 view is not just a namesake. It signifies the approach that we take in order to understand and communicate the detail behind each scenario. We can then advise on all the options and outcomes, driving an informed decision-making process.







## Commercial rent recovery

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CRAR is an option, but can only be used if circumstances meet certain criteria and cannot be easily deployed after the event.

To compound the woes of commercial landlords, we have seen a steady flow of CVA and restructuring plan proposals from High Street names containing provisions to slash future rents or gear them to turnover. We are seeing a growing swell of dissatisfaction from landlords and representative bodies are speaking out on their behalf, but landlords usually find they have to fall in line because the alternative of taking back an empty unit is even less palatable, or they simply have no choice if they are crammed down as a class of creditor in a restructuring plan.

Options are limited and it is therefore reasonable to expect landlords to be keen to act to protect their position using the recovery tools available to them.

# A review of the options

PROCESS	ADVANTAGES	DISADVANTAGES	THE 360 VIEW...
<b>Forfeiture</b>	<p>Recover property</p> <p>Crystallise debt</p>	<p>Liable for empty premises rate, insurance and marketing costs</p> <p>Reletting subject to market forces</p>	<p>... considers forfeiture to be a last resort, exercised only where absolutely necessary.</p>
<b>Commercial Rent Arrears Recovery (CRAR)</b>	<p>Recover some or all of the debt</p>	<p>Might act as waiver of right to forfeit – seek advice.</p> <p>Might not even cover costs if assets few/poor</p>	<p>... looks to avoid reliance on CRAR whilst options are considered and the inherent viability of a business is assessed. Removal of key assets could destroy a tenant and chances of further recovery.</p>
<b>Winding up petition</b>	<p>Often encourages payment</p> <p>Official Receiver and/or liquidator appointed</p>	<p>Recovery is uncertain</p> <p>Lease may be disclaimed</p> <p>CRAR cannot be exercised by the petitioner</p> <p>Terminal to tenant – leaves landlord with empty premises and costs.</p>	<p>... puts a winding up petition firmly in the “last resort” category. That said, a petition may be appropriate in some extreme cases, for example, where wrongdoing or disposal of assets is suspected.</p>

PROCESS	ADVANTAGES	DISADVANTAGES	THE 360 VIEW...
Statutory demand	Often encourages payment  Demonstrates seriousness to defaulter	Usually used as pre-cursor to a winding up petition – see above.  Landlord claims may not require statutory demand – wasted costs.	... believes that in conjunction with some of the measures mentioned above, this can be a useful tool, but time it right – this could lead the tenant to take protective action.
Court proceedings for judgment	Can be used as the basis of a charging order	Enforcement is no better than CRAR  Additional cost to landlord	... treats this as a waste of costs. Unless there is some dispute, obtaining judgment has limited benefits and you have no visibility on the tenant's affairs whilst the claim makes its way through the Court system.
Rent deposit	Immediate recovery  No covid restrictions	Continued exposure as it does not address the overall issue.  Beware – if tenant in administration, utilising a rent deposit for rent arrears might not be advisable – take advice before drawing against rent deposit.	... says “that’s what it’s there for”, but we also want to understand the whole position so that the deposit is utilised and applied properly to maximise the benefit to the landlord.
Call on guarantors	Another route of recovery  Available now	Additional costs	... considers a guarantee to be useful in negotiations, but we caution against applying a “let’s just forfeit and make the guarantor pay” approach. And if that is the route, let’s at least first get an idea of whether the guarantor can pay.





## Case study

DIVOC 91 LIMITED

Divoc 91 Limited supplies and maintains commercial gym equipment, which it supplies to order. It does not hold much stock. Divoc was 3 years into a 10 year lease when the pandemic hit. Until March 2020, Divoc had paid its rent and service charges on time and was a compliant tenant. The pandemic saw a significant decline in Divoc's revenues as its customers were forced to close. Divoc borrowed under the CBIL scheme ('CBILS') and took other unsecured finance from accessible lenders at higher than usual rates. Divoc accrued rent arrears and came to an informal agreement to defer arrears whilst trying to keep current rent up to date. Since the pandemic, the Company's trade picked up as gyms reopened, but over the last 24 months has seen declining fortunes as the consumer cost of living crisis bites. Divoc is struggling to stay on top and has again fallen into arrears.



## Scenario 1 - enforcement

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The landlord makes demand, which Divoc cannot meet. Divoc makes a last ditch proposal to spread arrears over 24 months which the landlord does not accept and a petition is presented. Divoc's bankers freeze its accounts and Divoc is forced to appoint a liquidator. Divoc's directors acquire the business and relocate to premises on the other side of town. There is no return to unsecured creditors in the liquidation and the premises are empty for 8 months and relet with a 30% reduction on market rents.

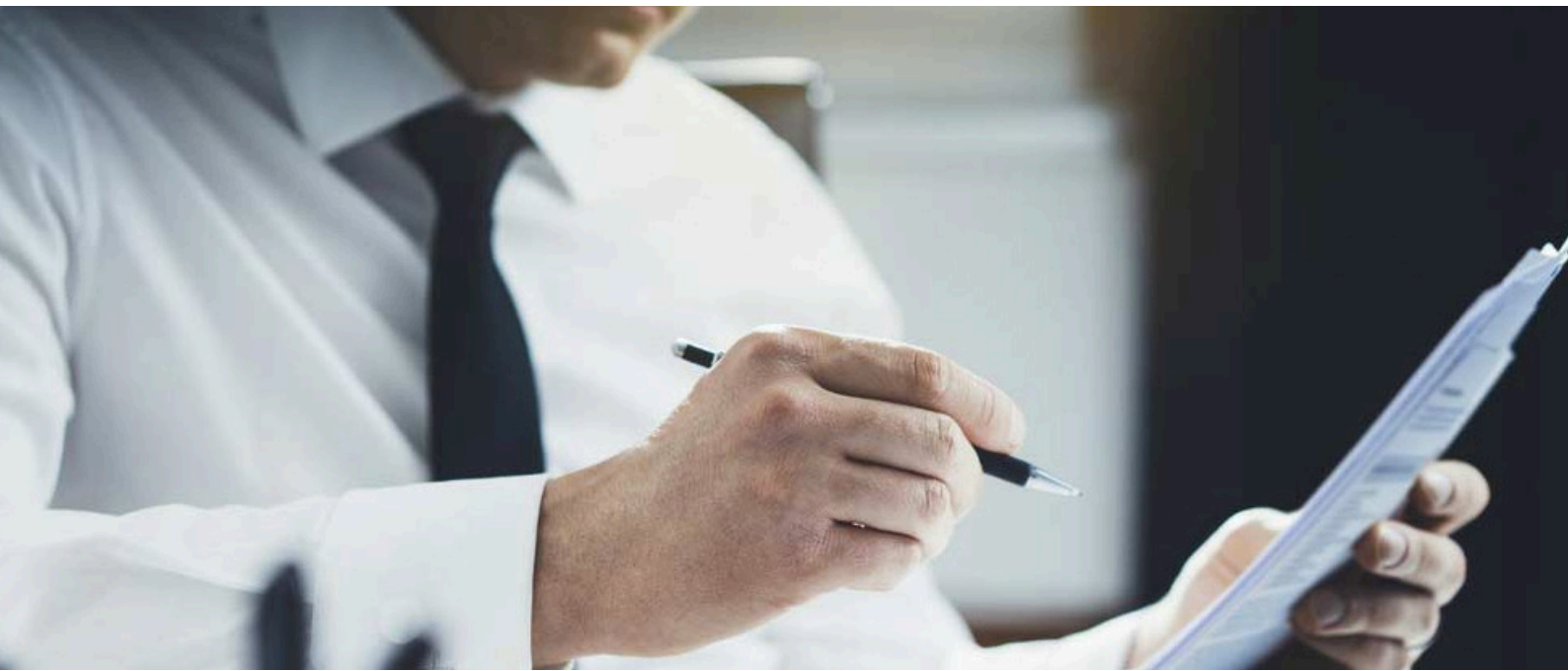


## Scenario 2 - the 360 way

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At the landlord's request, Divoc agrees to cooperate with an independent business review. 360's review reveals that the business has started diversifying into the domestic gym equipment market, which is embryonic but gaining traction. The review also identifies investment opportunities and the extra capital raised pushes the business forward. Forecasts are prepared that facilitate the implementation of an agreeable repayment plan being put in place. The landlord retains a more viable tenant and has a structured payment plan for recovery of the arrears.









## Early intervention

### A TEAM APPROACH

360 will work with you and your team to identify those tenants needing support as early as possible.

360 works alongside a team of solicitors, financiers and professional advisers, matching the team to the assignment to ensure efficiencies of cost and time.

Costs are usually recoverable from the tenant under lease terms and this will be assessed on a case-by-case basis. We will provide a written cost quotation and discuss costs with you at the offset and throughout the assignment.



## Contact us

For a confidential initial discussion, please contact us at:



01634 475546 or 01522 255426



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