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Our Ref: Sanctuary Student Rent Strike

19 August 2020

By email only

Dear Client

Client Care Letter

Thank you for instructing PGMBM to represent you in your action against Sanctuary Student Homes Limited.

The purpose of the remainder of this letter is to set out the basis on which we act for you and to provide you with some information about our terms of business. This letter should be read in addition to the enclosed terms & conditions. Even though this representation will be on a pro bono basis, these elements are important to you and us, and we ask that you read this letter carefully.

The person with overall responsibility for the Sanctuary Student Rent Strike litigation is Christopher Neill, Senior Associate.

Scope of Your Representation

PGMBM agree to provide full legal representation to you throughout your legal proceedings with Sanctuary Student Homes Limited, on a pro bono basis, up to the point that a claim is issued against you in relation to your outstanding rent payments. This will include, but will not be limited to, provision of legal advice and corresponding with Sanctuary Student Homes Limited's legal representatives, with the intention of avoiding legal action. The scope of PGMBM's representation is subject to the conditions outlined below, under the heading 'Ending Your Representation'.

We will discuss with you the full scope of the work and a timetable for its completion. If those timelines need to change, this will be communicated with you as early as practicable. We are unable to provide you with an estimation at present, as we have not engaged with the claimants and are unable to ascertain what position they will adopt.

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Assessment of Risk

PGMBM has conducted a risk assessment in relation to the prospects of successfully defending claims which might be brought against you by Sanctuary Student Homes Limited. This has included determination of whether you will be able to successfully argue that your contract was frustrated due to the COVID-19 pandemic.

A frustrated contract is a contract that, subsequent to its formation, and without fault of either party, is incapable of being performed due to an unforeseen event (or events), resulting in the obligations under the contract being radically different from those contemplated by the parties to the contract.

Covid-19 and Frustrated Contracts

Whether or not your contract has been frustrated by the COVID-19 pandemic depends, *inter alia*, on:

- the nature of your contract and the type of services which were supplied;
- the frustrating event occurred after the contract was formed;
- the precise contractual performance requirements of the parties under the contract and the applicable, if present, Force Majeure clause;
- how the COVID-19 pandemic interfered with the parties' obligations to perform their respective commitments;
- the frustrating event was beyond the contemplation of the parties at the time the contract was entered into; and
- the frustrating event made the performance of future obligations under the contract impossible, illegal or radically different.

Frustration brings a contract to an end immediately and automatically. This means that the parties to the contract do not need to perform any future contractual obligations. Importantly, parties to the contract cannot claim damages for non-performance of these future obligations.

Under the Law Reform (Frustrated Contracts) Act 1943, any money paid pursuant to the contract before the frustrating event occurred is repayable. However, as you occupied the accommodation for the majority of the term and received a valuable non-monetary benefit, it is likely that you would not be able to recover all sums, if any, paid to Sanctuary Student Homes Limited under the contract prior to the point of frustration.

Our Preliminary Advice

Whilst it might appear on face value that you have arguable grounds to establish that your contract was frustrated, the general test for frustration sets a high bar that will be difficult to satisfy in a lease context.

We have reviewed your short-term tenancy agreement and note that it does not contain a Force Majeure provision. This adds strength to the argument that the COVID-19 pandemic, or similar incident, was not contemplated directly or indirectly at the time you entered into your short-term tenancy agreement.

Your short-term tenancy agreement contains no provisions for you to withhold payment of rent for COVID-19 related reasons and we understand that no agreement to withhold payment of rent was reached with Sanctuary Student Homes Limited prior to your refusal to pay.

We have not been able to identify applicable case law where frustration of a lease, in the same or similar circumstances, has been successfully established. There is case law, which is capable of being distinguished, but the available case law demonstrates that the courts will not apply the doctrine of frustration readily. As such, we are unable to predict the approach which the courts might take when specifically determining the events giving rise to your dispute.

What is clear is that cases will turn on their own particular facts. The unprecedented COVID-19 pandemic has given rise to general uncertainty and it is a real concern that judicial decisions will be influenced by public policy considerations. This could lead to meritorious claims being unsuccessful in favour of economic certainty.

Your studies were suspended as a result of the COVID-19 pandemic and the resulting uncertainty. We understand your argument to be that due to the suspension of your studies the purpose of your tenancy was rendered obsolete. Furthermore, in accordance with UK government guidelines, you believed that continued exposure to your accommodation put you at risk of harm (i.e. contracting COVID-19). This was because Sanctuary Student Homes Limited did not take sufficient steps to reduce the risk of exposure to COVID-19 in communal spaces in accordance with their contractual obligations.

You argue that the obligations to perform your commitments under your short-term tenancy were rendered radically different by the outbreak of COVID-19. For example, upon the formation of your contract you did not expect to have to occupy the shared accommodation during a global pandemic, as the continued occupancy of the accommodation, could have led to potential harm to yourself and/or other occupants.

Whilst we consider, morally, you have a strong claim our advice to you must be based in law. **However, given the lack of supportive case law and the general uncertainty specified above, it is our view and advice that you would struggle to establish a successful defence if your case proceeded to trial and was determined by a judge.** Litigation always carries risk and no guarantee can be provided as to the outcome of your dispute.

Legal Representation

We understand that it is your primary objective is to be released from your contractual obligations under the short-term tenancy agreement. You would like to resolve the dispute prior to court proceedings being issued against you and without the dispute being determined at trial.

It is unclear whether you intend to recover sums paid pursuant to the contract before the frustrating event occurred, as detailed above. Such a counterclaim could prolong the resolution of the dispute and might result in the need for the dispute to be determined at trial. Conversely, the counterclaim could be an effective negotiating tactic to resolve the dispute. However, early resolution of the dispute would likely require you to abandon any counterclaim being pursued.

As we have assessed the prospects of successfully defending any claim brought against you to be low, the legal services which we are prepared to offer are limited. PGMBM is willing to offer pro-bono legal representation up to the point that court proceedings are issued against you. What this means for you is that we will engage in pre-action correspondence with Sanctuary Student Homes Limited setting out the strengths of your case, with a view to resolving the dispute before the instruction of debt recovery agents and/or legal proceedings being issued against you. **However, if Sanctuary Student Homes Limited issues court proceedings against you, this Agreement will come to an end and you will need to find alternative legal representation or self-represent as a litigant in person. PGMBM will cease to represent you in these circumstances.**

By signing this client care letter, it confirms that you understand the limited legal services being offered to you and the basis on which we agree to act.

We suspect, but cannot guarantee, that Sanctuary Student Homes Limited will agree to release you from your contractual obligations to avoid adverse publicity. However, we have not put Sanctuary Student Homes Limited on notice of our potential involvement and it remains to be seen how this will impact their position.

Potential Effect on Credit Rating

PGMBM must inform you that as a result of the non-payment of your rent, your credit rating may have already been adversely affected. However, it is your responsibility to discover whether this is the case.

In the event that the dispute is resolved outside of court, with you being released from your contractual obligations, your credit rating could still be adversely affected. This is because your credit file might still record that you were a defaulting party to an agreement which failed to satisfy the full contractual sums owed. We will attempt to seek that your arrears are shown as cleared in full, but we cannot predict the terms on which Sanctuary Student Homes Limited are prepared to resolve the dispute.

If court proceedings are issued against you and the court orders you to pay your rent arrears, it could negatively affect your ability to get credit for up to six years. If you ignore the judgment or fail to meet its terms, the court may take more serious action, such as taking your belongings to repay the debt.

However, if you pay the full amount within one calendar month of the judgment being issued, your credit rating should not be affected.

Collective Representation

It is our intention to represent each individual client separately, but to manage the cases collectively as a whole. This should provide individual clients with the freedom to determine whether their dispute is resolved under the terms which we will hopefully be able to broker with Sanctuary Student Homes Limited or continue the dispute without our involvement. As stipulated above, we are unable to predict what approach Sanctuary Student Homes Limited will adopt and it might be that they only agree to release.

Costs

Due to the pro bono nature of this arrangement, you will not be liable to pay PGMBM for legal representation. This includes all services performed by PGMBM, but will not include any disbursement payments which need to be reasonably incurred to progress your case, during the period that we represent you. Regardless of the outcome of your case, you will not be expected to pay PGMBM's legal costs for the services provided to you.

However, you must be aware that you will be liable to pay the other party's costs in the event that a successful claim is brought against you or if an adverse costs order is made against you during the course of the litigation. Similarly, if the matter settles, and a term of the settlement is that you have to pay the entirety, or part of the other side's costs, you will be liable to pay these costs.

It may be that we recommend that you take out insurance to protect against the risk of any costs orders that are made against you throughout the course of the litigation. It is likely that we will be able to facilitate insurance where the cost of the premium is deferred and contingent upon the success of your case. However, this may not be possible and in such event, you will be required to pay for cost of that insurance policy. If your claim is successful, then it is likely that we will be able to recover the costs of the insurance from the defendant or, in the event that a contingent insurance policy has been entered into, you will be responsible for the cost of the policy at successful conclusion.

We have assessed the value of this claim to be less than £10,000, the maximum value of a claim that can be brought in the Small Claims Court. The consequences of this is that even if the claimant is successful, they will not be entitled to recover their legal costs. It is on this basis that we have not recommended that insurance is obtained at this stage.

If you are eligible for, and granted, Legal Aid you will generally be protected from adverse costs orders. Should you become eligible for Legal Aid, the pro bono representation may be brought to an end in order that you may seek the protection afforded by Legal Aid representation. To see if you would be eligible for Legal Aid you can apply via the Government Legal Aid website: <https://www.gov.uk/check-legal-aid>.

Our firm does not hold a Legal Aid franchise, and as such we are unable to accept your instructions on a Legal Aid basis. Therefore, you will need to consider whether you instruct PGMBM on a pro bono basis, or seek representation from a Legal Aid accredited law firm who might be able to accept your instructions, so you are afforded the representation offered by the Legal Aid Agency.

Having read this letter, should you wish to instruct us, we will assume having not notified us otherwise, that you are either not eligible for Legal Aid or that you have considered the terms offered to you within this agreement and readily accept the risks outlined herein.

Ending Your Representation

There may come a time when consideration needs to be given to terminating our representation. PGMBM will terminate this agreement if you intentionally and knowingly mislead us, fail to provide instructions in a timely manner and/or refuse to accept the legal advice in respect of an issue which PGMBM considers essential to the conduct or satisfactory settlement of this matter. PGMBM will also terminate this agreement if you conduct yourself in a manner that is contradictory to our Terms of Business or any advice provided to you by one of our representatives.

Enclosures

We enclose the following:

- **Terms of Business**

We require written confirmation of your instructions in this matter, confirming acceptance of the terms of the letter of engagement and the terms of business. **Please provide this to us by 2 September 2020.**

Should you have any questions in relation to this letter or the enclosed documents, please do not us hesitate to contact us. Please direct initial inquiries to cwalters@pgmbm.com.

Yours sincerely

PGMBM

PGMBM
(a trading name of Excello Law Ltd)

I have read and understood the contents of this letter and the enclosed Terms of Business and instruct PGMBM to act on my behalf.

[Insert Client's full name] :

Date: