



UK BAILIFFS

COMMERCIAL PROPERTY · ENGLAND AND WALES



PRACTICAL GUIDE · 2026 EXPANDED EDITION

Section 146 Notice Guide

Commercial lease breaches: the notice, the legal checkpoints, the opportunity to remedy, and the decision that follows.

For commercial landlords, managing agents, asset managers and their solicitors. Reviewed against current legislation and HM Land Registry Practice Guide 26 as at 28 September 2026. General information, not legal advice.

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HOW TO USE THIS GUIDE

Each section ends in a practical checkpoint. Numbers in gold, such as [\[1\]](#), refer to the primary law, official guidance and case law listed at the back. Where the right to forfeit, waiver, notice validity, residential occupation or insolvency is uncertain, the client's solicitor should confirm the route before any action is taken.

01 EXECUTIVE OVERVIEW

Section 146 in one page

Section 146 of the Law of Property Act 1925 restricts enforcement of a contractual right of re-entry or forfeiture for breach of lease covenant. For most non-rent breaches, the landlord cannot enforce that right until a compliant notice has been served and the statutory conditions have been met.^[1]

THE ESSENTIAL POINT

A Section 146 notice does not terminate the lease. It is a statutory gateway. The landlord must still have a live contractual right to forfeit, must avoid waiver, must allow the required opportunity for compliance, and must check whether residential occupation, insolvency or another statutory protection changes the route.

Core questions before service

- 01 Does the lease contain a forfeiture or re-entry clause that applies to this breach?
- 02 Has the contractual trigger already arisen, including any prior notice or cure period required by the lease?
- 03 What exactly is the breach: assignment, underletting, sharing occupation, disrepair, prohibited use, alterations or something else?
- 04 Is the breach capable of remedy, and what would remedy realistically require?
- 05 Has the landlord done anything after knowledge of the breach which could waive the right to forfeit?
- 06 Is anyone lawfully residing in premises let wholly or partly as a dwelling?
- 07 Is the tenant in administration, a moratorium or another insolvency process?
- 08 What service method and evidence will be needed?

02 STARTING POINT

When is a Section 146 notice needed?

Section 146 generally applies where a landlord intends to enforce a right of re-entry or forfeiture for breach of a lease covenant or condition other than non-payment of rent. The lease must itself confer the relevant right, and the right must have arisen before the statutory notice process can assist.^[1]

Usually within the Section 146 route

Unauthorised alterations, prohibited use, repairing breaches, unauthorised assignment or underletting, nuisance, insurance-related breaches and other covenant breaches.

Non-payment of rent

Section 146 does not generally apply to forfeiture for non-payment of rent. The lease, any formal demand requirement and the arrears trigger still need to be checked.^{[1][8]}

Contractual conditions first

If the lease requires a default notice, cure period, consent step or another precondition before the right of re-entry arises, that step must be completed first.

Residential complications

Long residential leases and mixed-use premises can trigger additional statutory restrictions. A lease being called “commercial” is not enough on its own.

THE CONTRACTUAL TRIGGER

A Section 146 notice cannot manufacture a right to forfeit. Start with the lease. Identify the covenant, the proviso for re-entry and any wording which delays or conditions the landlord's right. HM Land Registry's current guidance also expects contractual conditions affecting determination to have been satisfied where relevant.^[8]

03 THE STATUTORY NOTICE

What must the notice say?

Section 146(1) requires the notice to specify the particular breach, require remedy if the breach is capable of remedy, and require compensation in money. The right only becomes enforceable if the tenant then fails, within a reasonable time, to remedy a remediable breach and make reasonable compensation.^[1]

- 01 **Specify the particular breach complained of.** The notice should identify the actual covenant and factual complaint with enough clarity for the tenant to understand the case it must answer.
- 02 **Require remedy if the breach is capable of remedy.** The practical question is what can realistically be done to put the landlord back into the position it would have been in had the breach not occurred.^[11]
- 03 **Address monetary compensation.** The statute says “in any case”, but the courts have held that a notice need not demand compensation where the landlord does not want it. Drafting should reflect the landlord’s actual case and be solicitor-approved where there is doubt.^[14]
- 04 **Do not treat the notice as an instant possession notice.** The statutory reasonable-time requirement remains relevant after service.

DRAFTING DISCIPLINE

Do not rely on a generic template where the lease, breach or remedy is unusual. A notice that identifies the wrong breach, or assumes a breach is irremediable when it is not, can be fatal to the forfeiture route.

04 CLASSIFY BEFORE DRAFTING

Remediable, irremediable and misdescribed breaches

Whether a breach is remediable is not decided merely by whether the covenant is positive or negative, or by how serious the breach sounds. The question is whether the harm caused by the breach can be put right within a reasonable time.^[11]

Assignment or formal underlease

A breach that creates a new legal interest, such as an unauthorised assignment or underlease, is generally treated as incapable of remedy.^[12] The precise transaction must be identified before the notice is drafted.

Sharing or parting with possession

Informal sharing, occupation by another business or parting with possession without granting a legal interest is different, and is often capable of remedy.^[13] What appears to be “subletting” may not be an underlease.

Unauthorised alterations

Reinstatement may be possible, but the scope, consents, contractors and time required can make the reasonable-time analysis substantial.

Disrepair

Repairing breaches are commonly remediable, but they attract additional statutory protections and evidential requirements (see section 08).

PRACTICAL LESSON

Do not draft the Section 146 notice from the managing agent’s shorthand description alone. “Sublet”, “alterations”, “nuisance” and “disrepair” need to be matched to the actual lease wording and evidence. The notice must specify the breach that has actually occurred.

05 PRESERVE THE RIGHT

Waiver: the right can disappear before service

A landlord with knowledge of a breach can waive the right to forfeit for that breach by unequivocally recognising the lease as continuing. Demanding or accepting rent which falls due after the breach, once the landlord knows about it, is the classic risk.

Marking a demand “without prejudice” does not necessarily prevent it operating as a waiver, and knowledge held by the landlord’s managing agent may be treated as the landlord’s knowledge. The position depends on the nature of the breach and the landlord’s conduct, and should be legally reviewed where material.

THE FRIDAY-AFTERNOON QUESTION

Before anyone issues another rent demand, accepts payment, agrees a variation or sends correspondence treating the lease as continuing, ask whether the landlord already knows of a forfeiture breach and whether the proposed act could amount to waiver.

Once-and-for-all vs continuing breach

Waiver can have different consequences depending on the type of breach. A continuing breach, such as disrepair or prohibited use, may generate a fresh right to forfeit as it continues. A once-and-for-all breach, such as an unlawful assignment or underletting, may not: once waived, the right may be gone. The classification is fact-sensitive.

Operational rule

- ◇ Record when the landlord first learned of the breach.
- ◇ Record what the managing agent knew and when.
- ◇ Check rent demands, rent receipts, correspondence and negotiations after knowledge.
- ◇ Where waiver is in issue, obtain solicitor confirmation before Section 146 service or re-entry.

06 PREPARATION AND SERVICE

Build a defensible service file

The notice is only as useful as the evidence supporting the breach and the evidence proving valid service. The lease service clause and section 196 of the Law of Property Act 1925 should be checked together where relevant.^[2]

Information to assemble

Lease and title

Signed lease, variations, title information, landlord identity, forfeiture clause, service clause and superior interests.

Evidence of breach

Dated photographs, inspection reports, correspondence, witness material, contractor evidence and a chronology.

Tenant and occupation

Correct legal entity, registered office or service address, actual occupiers, subtenants, residential elements and insolvency information.

Remedy and compensation

What the landlord says must be done, how compliance will be evidenced and whether compensation is actually sought.

Service evidence

Section 196 provides statutory service routes unless a contrary intention appears in the lease, which may also specify its own service machinery. A solicitor should confirm the correct route where service is material.^[2]

- ◇ Keep the final signed notice.
- ◇ Record the exact date, time and place of service.
- ◇ Identify the recipient or method of delivery.
- ◇ Retain photographs, attendance notes, witness details and postal evidence where used.
- ◇ Do not assume an email or a photograph of a posted notice proves valid service.

07 AFTER SERVICE

Reasonable time: no universal seven- or fourteen-day rule

Section 146 does not prescribe a fixed period that fits every breach. The statutory test is whether a reasonable time has elapsed for remedy, where the breach is capable of remedy, and for reasonable compensation.^[1]

NO FIXED NUMBER OF DAYS

The statute does not require a fixed number of days, and the notice itself does not have to state a compliance period. The question is whether a reasonable time has actually elapsed between service and enforcement.^[1]

What can affect the period?

- | | |
|---|---|
| ☐ The nature and seriousness of the breach. | ☐ Ordering materials or specialist equipment. |
| ☐ Whether remedy requires physical works or merely stopping an activity. | ☐ The tenant's actual response and progress after service. |
| ☐ Access to the property and availability of contractors. | ☐ Any dispute about what remedy is required. |
| ☐ Planning, landlord or third-party consents. | ☐ Whether the breach is capable of remedy at all. |

Where a breach is incapable of remedy, such as an unauthorised underlease, a much shorter period before enforcing may be appropriate, because the tenant is not being given time to put anything right.^[12]

AVOID TEMPLATE DEADLINES

A standard period copied into every notice can create false confidence. The safer question is: what would this particular tenant reasonably need to do to remedy this particular breach?

08 SPECIAL REGIME

Repairing covenants and the 1938 Act

Repair breaches are one of the most technical areas of Section 146 practice. The Leasehold Property (Repairs) Act 1938 gives the tenant additional protection where two conditions are both met. ^[3]

Condition 1: the original term

The lease was granted for a term of **seven years or more** (section 7(1) of the 1938 Act).

Condition 2: the unexpired term

Three years or more of the term remain unexpired on the date the Section 146 notice is served (section 1(1)).

Counter-notice rights

Where the Act applies, the Section 146 notice is not valid unless it contains a statement, in characters no less conspicuous than the rest of the notice, that the tenant may serve a counter-notice claiming the benefit of the Act, together with the time and manner for doing so and the landlord's name and address for service. The tenant has 28 days from service to serve the counter-notice. If one is served, enforcing forfeiture or claiming damages for the repairing breach requires the court's leave.

^[3]

Knowledge of service and sufficient time

For forfeiture based on a repairing breach, the landlord must be able to show that the tenant (or the specified alternative person) knew the notice had been served, and that a period reasonably sufficient to carry out the repairs has since elapsed. ^{[10][8]} Service by registered post or recorded delivery to the tenant's last known place of abode can raise a presumption of knowledge, which is a good reason to combine service methods.

CHECK BOTH CONDITIONS

A lease with more than three years left is not automatically within the Act. A five-year lease granted in 2025 has more than three years unexpired, but it falls outside the 1938 Act because its original term is under seven years.

09 MIXED-USE AND RESIDENTIAL OCCUPATION

A “commercial” unit can still require a court order

Section 2 of the Protection from Eviction Act 1977 makes it unlawful to enforce a right of re-entry otherwise than by court proceedings where premises are let as a dwelling and anyone is lawfully residing there. HM Land Registry confirms that, for this purpose, dwelling includes premises let wholly or partly as a dwelling. ^{[4][8]}

THE CLASSIC TRAP

A shop with a flat above may be documented under one commercial-looking lease, but lawful residential occupation takes peaceable re-entry off the table. Always establish actual occupation, not just the lease label.

Long residential leases

Separate restrictions can also apply to long leases of dwellings. Section 168 of the Commonhold and Leasehold Reform Act 2002 can prevent service of a Section 146 notice until the breach has been admitted or finally determined, subject to the statutory exceptions and exclusions. ^[9]

Before re-entry, ask

- ◇ Is any part of the demised premises used or let as a dwelling?
- ◇ Is anyone actually residing there, and are they lawfully residing there?
- ◇ Is the lease within a residential long-lease regime with additional restrictions?
- ◇ Has the client’s solicitor confirmed the correct possession route?

10 ENFORCEMENT

Peaceable re-entry means peaceable

A lawful right to forfeit does not create a general power to force entry against an opposing occupier. Section 6 of the Criminal Law Act 1977 makes it an offence for a person, without lawful authority, to use or threaten violence to secure entry while someone present opposes entry and the person knows that. Violence for this purpose can be directed against property as well as a person.^[5]

Before any physical attendance

- ◇ A valid and unwaived right to forfeit must still exist.
- ◇ The lease and any Section 146 requirements must have been satisfied.
- ◇ The premises must be legally suitable for peaceable re-entry, with no statutory bar arising from lawful residential occupation.
- ◇ Insolvency restrictions must have been checked.
- ◇ The operational information must support a safe and lawful attendance.

STOP IF THE FACTS CHANGE

If the position on site is materially different from the instruction, such as unexpected residential occupation, active opposition to entry or an insolvency issue, the attendance should be paused and the legal route reassessed.

11 INSOLVENCY CHECKPOINT

Insolvency can bar peaceable re-entry

Where a tenant company is in administration, paragraph 43 of Schedule B1 to the Insolvency Act 1986 prevents a landlord exercising a right of forfeiture by peaceable re-entry unless the administrator consents or the court gives permission. The same paragraph also restricts legal process against the company.^[6]

Part A1 moratorium

During a company moratorium, section A21 of the Insolvency Act 1986 prevents forfeiture by peaceable re-entry except with the court's permission.^[6]

Individual tenants

Where an interim order is in force for an individual voluntary arrangement, section 252 prevents forfeiture by peaceable re-entry without the court's leave. Bankruptcy and liquidation raise their own questions.^[6]

OPERATIONAL BOUNDARY

UK Bailiffs should not decide on the doorstep whether an insolvency moratorium permits forfeiture. Where administration or another insolvency procedure is identified, the client's solicitor should confirm the route before attendance.

Pre-attendance insolvency questions

- ◇ Is the tenant company in administration or a Part A1 moratorium?
- ◇ Has a liquidator, receiver, supervisor or other office-holder been appointed?
- ◇ Has the client supplied evidence of any required consent or court permission?
- ◇ Does the proposed route involve peaceable re-entry or court proceedings?
- ◇ Has the instruction changed since the last insolvency check?

12 MONEY OR POSSESSION?

CRAR, rent arrears and Section 146 are different tools

Where the problem is unpaid commercial rent, Section 146 is generally not the notice route. The landlord should first decide whether the objective is recovering qualifying rent while preserving the tenancy, or terminating the lease and recovering possession.

ISSUE	CRAR	FORFEITURE
Primary objective	Recover qualifying commercial rent	Recover possession by terminating the lease
Section 146	Not part of the CRAR mechanism	Usually relevant for non-rent covenant breach; generally not required solely for rent arrears
Effect on tenancy	Tenancy continues	Tenancy ends if forfeiture is validly completed
Service charge and insurance	Excluded from CRAR "rent" even if the lease calls it rent ^[7]	Lease wording may affect the forfeiture analysis
Waiver risk	Using a remedy that affirms the lease can affect the ability to forfeit for the same arrears	Waiver must be checked before action

CRAR statutory definition of rent

For CRAR, "rent" means the amount payable for possession and use of the demised premises, together with specified interest and VAT. It excludes sums for rates, services, repairs, maintenance, insurance and other ancillary matters, whether or not the lease calls them rent.^[7]

DO NOT WORK FROM THE INVOICE LABEL

An "insurance rent" or service charge may be reserved as rent for lease purposes but still fall outside the statutory definition of rent for CRAR. Identify the sum, the lease wording and the remedy separately.

13 AFTER FORFEITURE

Relief from forfeiture remains part of the risk picture

Section 146(2) gives the court power to grant or refuse relief where a landlord is proceeding to enforce a right of re-entry or forfeiture for relevant breaches. The House of Lords has confirmed that a tenant can still apply for relief after the landlord has peaceably re-entered.^{[1][15]}

Why this matters operationally

- ◇ A technically completed re-entry may still be challenged.
- ◇ The tenant's conduct, remedy, compensation and delay can affect the relief application.
- ◇ Subtenants, mortgagees or other interested parties may have rights depending on the circumstances.^[1]
- ◇ A landlord should expect its service evidence and re-entry evidence to be scrutinised later.

Delay matters

Relief is not open-ended. In a rent arrears case, the Court of Appeal refused relief where the tenant applied around 18 months after the landlord recovered possession, and six months is commonly treated as a benchmark for reasonable promptness.^[16] Landlords should keep a clear record of when possession was recovered.

AIM FOR A ROUTE THAT WILL STAND UP AFTERWARDS

The objective is not simply to obtain possession on the day. It is to use a route capable of being defended if the tenant later seeks relief or disputes the validity of forfeiture.

14 UK BAILIFFS PROCESS

From instruction to evidence

UK Bailiffs supports commercial landlords, managing agents, asset managers and their solicitors with Section 146 notice service and subsequent commercial lease forfeiture, where the legal route is confirmed and operationally suitable.

- 01 **Instruction received.** Lease, variations, title information, breach details, notices, evidence and authority to act.
- 02 **Operational completeness review.** Identify missing documents, service information, occupation details, vulnerabilities, access issues and known insolvency concerns.
- 03 **Legal approval where required.** Disputed breach, drafting, waiver, residential occupation or insolvency issues are referred back for solicitor confirmation.
- 04 **Service plan.** Confirm recipient, address, permitted service route, attendance resources and evidence requirements.
- 05 **Professional service.** Record date, time, location, method, photographs and attendance notes as appropriate.
- 06 **Post-service review.** The client or solicitor monitors remedy, response and reasonable time before any possession decision.
- 07 **Forfeiture attendance where instructed.** Only after the route is confirmed as legally available and operationally safe.
- 08 **Client report.** Documented outcome, photographs, meter and lock information where relevant, and any follow-on actions.

THE SOLICITOR

Legal entitlement, notice drafting and approval, waiver, disputed issues, insolvency advice and the decision to pursue forfeiture.

UK BAILIFFS

Practical service, evidence of service, risk planning and later commercial re-entry where accepted and legally cleared.

15 WORKED EXAMPLE

“Can you get a Section 146 out today?”

A managing agent calls on Friday afternoon. A retail tenant appears to have “sublet” part of the unit without consent. The landlord wants a Section 146 notice served immediately and the locks changed the following week.

The questions that change the route

- 01 **Has the next rent demand gone out?** A demand issued with knowledge of the breach could create a waiver problem, depending on the breach and the facts.
- 02 **What does the lease require before the forfeiture clause bites?** A prior contractual notice or cure period may need to run first.
- 03 **What is the “sublet” legally?** A formal underlease, assignment, sharing arrangement or parting with possession may require different analysis.
- 04 **Who is living upstairs?** A flat above the shop with a lawful resident makes peaceable re-entry unavailable.
- 05 **How much time is reasonable?** That depends on the actual breach and remedy, not a standard number of days.
- 06 **Is the tenant insolvent?** Administration can prevent peaceable re-entry without consent or court permission.

OUTCOME

The rent demand is stopped. The client’s solicitor confirms the legal character of the occupation arrangement, confirms that the right to forfeit remains live and approves the notice. The notice is served with full evidence. Because there is lawful residential occupation above the shop, the landlord uses the court route rather than peaceable re-entry.

The fastest-looking route is not always the fastest route in reality. A short document review can prevent months of litigation over a defective notice or unlawful re-entry.

16 INSTRUCTION CHECKLIST

What to send before a Section 146 instruction

- ☐ The complete lease and any variations or supplemental documents.
- ☐ Title information and evidence of the landlord's authority to instruct.
- ☐ The exact covenant said to be breached.
- ☐ A short chronology with dates and supporting evidence.
- ☐ Any default notice, cure notice or contractual notice already served.
- ☐ Any Section 146 notice already drafted or served, with evidence of service and the tenant's response.
- ☐ Rent demands, rent receipts and communications after knowledge of the breach.
- ☐ Details of all known occupiers, subtenants and any residential use.
- ☐ Known insolvency information.
- ☐ Repair reports, schedules or surveyor material if the breach concerns repair.
- ☐ The client's objective: compliance, rent recovery, possession, or an assessment of routes.

BEFORE INSTRUCTING ATTENDANCE

Do not ask an enforcement agent to resolve a disputed legal entitlement on site. Where the right to forfeit, waiver, notice validity, residential occupation or insolvency position is uncertain, obtain legal confirmation first.

Discuss an instruction

Section 146 service and commercial lease forfeiture across England and Wales.

0330 133 1818

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ukbailiffs.co.uk/section-146

SOURCES AND FURTHER READING

Primary law, official guidance and case law

1. **Law of Property Act 1925, s.146** — restrictions on and relief against forfeiture of leases and underleases.
legislation.gov.uk/ukpga/Geo5/15-16/20/section/146
2. **Law of Property Act 1925, s.196** — statutory provisions on service of notices.
legislation.gov.uk/ukpga/Geo5/15-16/20/section/196
3. **Leasehold Property (Repairs) Act 1938, ss.1 and 7** — counter-notice protections; application to leases of seven years or more.
s.1: legislation.gov.uk/ukpga/Geo6/1-2/34/section/1
s.7: legislation.gov.uk/ukpga/Geo6/1-2/34/section/7
4. **Protection from Eviction Act 1977, s.2** — restriction on re-entry where premises are let as a dwelling and someone is lawfully residing there.
legislation.gov.uk/ukpga/1977/43/section/2
5. **Criminal Law Act 1977, s.6** — violence for securing entry.
legislation.gov.uk/ukpga/1977/45/section/6
6. **Insolvency Act 1986, Sch. B1 para. 43, s.A21 and s.252** — administration, Part A1 moratorium and IVA interim order restrictions on peaceable re-entry.
Sch. B1 para. 43: legislation.gov.uk/ukpga/1986/45/schedule/B1/paragraph/43
s.A21: legislation.gov.uk/ukpga/1986/45/section/A21 · s.252: legislation.gov.uk/ukpga/1986/45/section/252
7. **Tribunals, Courts and Enforcement Act 2007, ss.72 and 76** — CRAR and the statutory definition of rent.
s.72: legislation.gov.uk/ukpga/2007/15/section/72 · s.76: legislation.gov.uk/ukpga/2007/15/section/76
8. **HM Land Registry Practice Guide 26: leases – determination**, section 8, updated 14 September 2026.
gov.uk/government/publications/leases-determination-pg26
9. **Commonhold and Leasehold Reform Act 2002, ss.168–169** — restrictions on forfeiture notices for long leases of dwellings.
legislation.gov.uk/ukpga/2002/15/section/168
10. **Landlord and Tenant Act 1927, s.18(2)** — knowledge of notice and reasonable time in repairing covenant forfeiture.
legislation.gov.uk/ukpga/Geo5/17-18/36/section/18
11. **Expert Clothing Service & Sales Ltd v Hillgate House Ltd [1986] Ch 340 (CA)** — whether a breach is capable of remedy; reasonable time.
12. **Scala House & District Property Co Ltd v Forbes [1974] QB 575 (CA)** — unlawful underletting as an irremediable breach.
13. **Akici v LR Butlin Ltd [2005] EWCA Civ 1296** — sharing and parting with possession without creating a legal interest held capable of remedy.
14. **Lock v Pearce [1893] 2 Ch 271 (CA)** — notice need not claim compensation the landlord does not want.
15. **Billson v Residential Apartments Ltd [1992] 1 AC 494 (HL)** — relief remains available after peaceable re-entry.
16. **Gibbs v Lakeside Developments Ltd [2018] EWCA Civ 2874** — delay and relief after re-entry.
caselaw.nationalarchives.gov.uk/ewca/civ/2018/2874

IMPORTANT

HM Land Registry Practice Guide 26 is registration guidance. It is a useful official statement of the evidence HM Land Registry expects when recording a lease determination, but it is not a complete code of the substantive law of forfeiture.

This guide is general information for commercial property instructions in England and Wales. It is not a statutory notice, legal advice or a guarantee that forfeiture is available. Every instruction should be reviewed against the lease, the breach, the landlord's conduct and the current statutory position before action is taken.

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