

Leasing Business Premises: Landlord Code



This document is one of three component parts of the Code for Leasing Business Premises in England and Wales 2007

Introduction

This revised lease code is the result of pan-industry discussion between representatives of landlords, tenants and government. The objective is to create a document which is clear, concise and authoritative.

However, our aims are wider. We want the lease code to be used as a checklist for negotiations before the grant of a lease and lease renewals. Landlords should be transparent about any departures from the code in a particular case and the reasons for them.

We have provided model heads of terms and whilst we recognise the code will apply to leases in England and Wales, we believe its intent should apply to the whole of the UK.

Most importantly, we are launching the code with an objective to ensure that parties to a lease have easy access to information explaining the commitments they are making in clear English. We will encourage trade and professional bodies, lenders and government (at all levels) to ensure small businesses are made aware of the code and the advisory pages which accompany it.

Although the code applies to new leases, please also see the British Property Federation declaration, which applies to existing leases, in relation to applications for consent to sublet where there is an existing lease covenant requiring subleases to be at the higher of the passing rent and the market rent.

We hope the code will help the industry in its quest to promote efficiency and fairness in landlord and tenant relationships.

1 Lease negotiations

Landlords must make offers in writing which clearly state: the rent; the length of the term and any break rights; whether or not tenants will have security of tenure; the rent review arrangements; rights to assign, sublet and share the premises; repairing obligations; and the VAT status of the premises.

Landlords must promote flexibility, stating whether alternative lease terms are available and must propose rents for different lease terms if requested by prospective tenants.

2 Rent deposits and guarantees

The lease terms should state clearly any rent deposit proposals, including the amount, for how long and the arrangements for paying or accruing interest at a proper rate. Tenants should be protected against the default or insolvency of the landlord.

State clearly the conditions for releasing rent deposits and guarantees.

3 Length of term, break clauses and renewal rights

The length of term must be clear.

The only pre-conditions to tenants exercising any break clauses should be that they are up to date with the main rent, give up

occupation and leave behind no continuing subleases. Disputes about the state of the premises, or what has been left behind or removed, should be settled later (like with normal lease expiry).

The fallback position under the Landlord and Tenant Act 1954 is that business tenants have rights to renew their lease. It is accepted that there are a number of circumstances in which that is not appropriate. In such cases landlords should state at the start of negotiations that the protection of the 1954 Act is to be excluded and encourage tenants to seek early advice as to the implications.

4 Rent review

Rent reviews should be clear and headline rent review clauses should not be used. Landlords should on request offer alternatives to their proposed option for rent review priced on a risk-adjusted basis.

For example, alternatives to upward only rent review might include up/down reviews to market rent with a minimum of the initial rent, or reference to another measure such as annual indexation.

Where landlords are unable to offer alternatives, they should give reasons.

Leases should allow both landlords and tenants to start the rent review process.

5 Assignment and subletting

Leases should:

- allow tenants to assign the whole of the premises with the landlord's consent not to be unreasonably withheld or delayed; and
- not refer to any specific circumstances for refusal, although a lease would still be Code compliant if it requires that any group company taking an assignment, when assessed together with any proposed guarantor, must be of at least equivalent financial standing to the assignor (together with any guarantor of the assignor).

Authorised Guarantee Agreements should not be required as a condition of the assignment, unless at the date of the assignment the proposed assignee, when assessed together with any proposed guarantor:

- is of lower financial standing than the assignor (and its guarantor); or
- is resident or registered overseas.

For smaller tenants a rent deposit should be acceptable as an alternative.

If subletting is allowed, the sublease rent should be the market rent at the time of subletting.

Subleases to be excluded from the 1954 Act should not have to be on the same terms as the tenant's lease.

6 Service charges

Landlords must, during negotiations, provide best estimates of service charges, insurance payments and any other outgoings that tenants will incur under their leases.

Landlords must disclose known irregular events that would have a significant impact on the amount of future service charges.

Landlords should be aware of the RICS 2006 Code of Practice on Service Charges in Commercial Property and seek to observe its guidance in drafting new leases and on renewals (even if granted before that Code is effective).

7 Repairs

Tenants' repairing obligations should be appropriate to the length of term and the condition of the premises.

Unless expressly stated in the heads of terms, tenants should only be obliged to give the premises back at the end of their lease in the same condition as they were in at its grant.

8 Alterations and changes of use

Landlords' control over alterations and changes of use should not be more restrictive than is necessary to protect the value, at the time of the application, of the premises and any adjoining or neighbouring premises of the landlord.

Internal non-structural alterations should be notified to landlords but should not need landlords' consent unless they could affect the services or systems in the building.

Landlords should not require tenants to remove permitted alterations and make good at the end of the lease, unless reasonable to do so. Landlords should notify tenants of their requirements at least six months before the termination date.

9 Insurance

Where landlords are insuring the landlord's property, the insurance policy terms should be fair and reasonable and represent value for money, and be placed with reputable insurers.

Landlords must always disclose any commission they are receiving and must provide full insurance details on request.

Rent suspension should apply if the premises are damaged by an insured risk or uninsured risk, other than where caused by a deliberate act of the tenant. If rent suspension is limited to the period for which loss of rent is insured, leases should allow landlords or tenants to terminate their leases if reinstatement is not completed within that period.

Landlords should provide appropriate terrorism cover if practicable to do so.

If the whole of the premises are damaged by an uninsured risk as to prevent occupation, tenants should be allowed to terminate their leases unless landlords agree to rebuild at their own cost.

10 Ongoing management

Landlords should handle all defaults promptly and deal with tenants and any guarantors in an open and constructive way.

At least six months before the termination date, landlords should provide a schedule of dilapidations to enable tenants to carry out any works and should notify any dilapidations that occur after that date as soon as practicable.

When receiving applications for consents, landlords should where practicable give tenants an estimate of the costs involved.

Landlords should normally request any additional information they require from tenants within five working days of receiving the application. Landlords should consider at an early stage what other consents they will require (for example, from superior landlord or mortgagees) and then seek these. Landlords should make decisions on consents for alterations within 15 working days of receiving full information.