

Leasing Business Premises: Landlord Code

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. It outlines 10 main points in which landlords have to abide by to be code-compliant.

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.

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.

3. Length of term, break clauses and renewal rights

The length of term must be stated clearly.

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.

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.

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.

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 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.

6. 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

Landlords must provide best estimates of service charges during negotiations.

7. Repairs

Tenants repairing obligations should be appropriate to the length of time in the property. Unless stated in the heads of terms, tenants should be obliged to return the property in the same condition they received it.

8. Alterations and Change 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 additions should be notified to the landlord but does not require consent unless it could affect services or systems to the building.

9. Insurance

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

Rent Suspension should apply to the property if it is 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.

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.