

Code of Practice for Commercial Leases in England and Wales

Introduction

This updated Code contains recommendations for landlords and tenants when they negotiate new leases of business premises and where they deal with each other during the term of a lease. The Code consists of twenty-three recommendations which an industry-wide working party, including landlord and tenant representatives, consider reflect current 'best practice' for landlords and tenants negotiating a business tenancy.

Landlords and tenants should have regard to the recommendations of this Code when they negotiate lease renewals. Under current legislation if a court has to fix terms for a new lease it may decide not to change the terms from those in the existing lease.

- 1.1 Renting Premises:** Both landlords and tenants should negotiate the terms of a lease openly, constructively and considering each other's views.
- 1.2 Obtaining Professional Advice:** Parties intending to enter into leases should seek early advice from property professionals or lawyers.
- 1.3 Financial Matters:** Landlords should provide estimates of any service charges and other outgoings in addition to the rent. Parties should be open about their financial standing to each other, on the understanding that information provided will be kept confidential unless already publicly available or there is proper need for disclosure. The terms on which any cash deposit is to be held should be agreed and documented.
- 1.4 Duration of Lease:** Landlords should consider offering tenants a choice of length of term, including break clauses where appropriate and with or without the protection of the Landlord and Tenant Act 1954.
- 1.5 Rent and Value Added Tax:** Where alternative lease terms are offered, different rents should be appropriately priced for each set of terms. The landlord should disclose the VAT status of the property and the tenant should take professional advice as to whether any VAT charged on rent and other charges is recoverable.
- 1.6 Rent Review:** The basis of rent review should generally be to open market rent. Wherever possible, landlords should offer alternatives which are priced on a risk-adjusted basis, including alternatives to upwards only rent reviews; these might include up/down reviews to open market rent with a minimum of the initial rent, or another basis such as annual indexation.
- 1.7 Repairs and Services:** The tenant's repairing obligations, and any repair costs included in service charges, should be appropriate to the length of the term and the condition and age of the property at the start of the lease. Where appropriate the landlord should consider appropriately priced alternatives to full repairing terms.

- 1.8 Insurance:** Where the landlord is responsible for insuring the property, the policy terms should be competitive. The tenant of an entire building should, in appropriate cases, be given the opportunity to influence the choice of insurer.

If the premises are so damaged by an uninsured risk as to prevent occupation, the tenant should be allowed to terminate the lease unless the landlord agrees to rebuild at his own cost.

- 1.9 Assigning and Subletting:** Unless the particular circumstances of the letting justify greater control, the only restriction on assignment of the whole premises should be obtaining the landlord's consent which is not to be unreasonably withheld. Landlords are urged to consider requiring Authorised Guarantee Agreements only where the assignee is of lower financial standing than the assignor at the date of the assignment.

- 1.10 Alterations and changes of use:** Landlord's control over alterations and changes of use should not be more restrictive than is necessary to protect the value of the premises and any adjoining or neighbouring premises of the landlord. At the end of the lease the tenant should not be required to remove and make good permitted alterations unless this is reasonably required.

2.0 Conduct During a Lease

- 2.1 Ongoing Relationship:** Landlords and tenants should deal with each other constructively, courteously, openly and honestly throughout the term of the lease and carry out their respective obligations fully and on time. If either party faces a difficulty in carrying out any obligations under the lease, the other should be told without undue delay so that the possibility of agreement on how to deal with the problem may be explored. When either party proposes to take any action which is likely to have significant consequences for the other, the party proposing the action, when it becomes appropriate to do so, should notify the other without undue delay.

- 2.2 Request for Consents:** When seeking a consent from the landlord, the tenant should supply full information about his/her proposal. The landlord should respond without undue delay and should where practicable give the tenant an estimate of the costs that the tenant will have to pay. The landlord should ensure that the request is passed promptly to any superior landlord or mortgagee whose agreement is needed and should give details to the tenant so that any problems can be speedily resolved.

- 2.3 Rent Review Negotiation:** Landlords and tenants should ensure that they understand the basis upon which rent may be reviewed and the procedure to be followed, including the existence of any strict time limits which could create pitfalls. They should obtain professional advice on these matters well before the review date and also immediately upon receiving (and before responding to) any notice or correspondence on the matter from the other party or his/her agent.

- 2.4 Insurance:** Where the landlord has arranged insurance, the terms should be made known to the tenant and any interest of the tenant covered by the policy. Any material change in the insurance should be notified to the tenant. Tenants should consider taking out their own insurance against loss or damage to contents and their business (loss of profits etc.) and any other risks not covered by the landlord's policy.

- 2.5 Varying the Lease – Effect on Guarantors:** Landlords and tenants should seek the agreement of any guarantors to proposed material changes to the terms of the lease, or even minor changes which could increase the guarantor's liability.
- 2.6 Holding Former Tenants and Their Guarantors Liable:** When previous tenants or their guarantors are liable to a landlord for defaults by the current tenant, landlords should notify them before the current tenant accumulates excessive liabilities. All defaults should be handled with speed and landlords should seek to assist the tenant and guarantor in minimising losses. An assignor who wishes to remain informed of the outcome of rent reviews should keep in touch with the landlord and the landlord should provide the information. Assignors should take professional advice on what methods are open to them to minimise their losses caused by defaults by the current occupier.
- 2.7 Release of Landlord on Sale of Property:** Landlords who sell their interest in premises should take legal advice about ending their ongoing liability under the relevant leases.
- 2.8 Repairs:** Tenants should take the advice of a property professional about their repairing obligations near the end of the term of the lease and also immediately upon receiving a notice to repair or a schedule of dilapidations.
- 2.9 Business Rates:** Tenants or other ratepayers should consider if their business rates assessment is correct or whether they need to make an appeal. They should refer to the DTLR Business Rates – a Guide or obtain advice from a rating specialist. The RICS provides a free rating help line service and advice is available also from the Institute of Revenues Rating and Valuation (IRRV).
- 2.10 Service Charges:** Landlords should observe the Guide to Good Practice on Service Charges in Commercial Properties. Tenants should familiarize themselves with that Guide and should take professional advice if they think they are being asked to pay excessive service charges.
- 2.11 Dispute Resolution:** When disputes arise, the parties should make prompt and reasonable efforts to settle them by agreement. Where disputes cannot be settled by agreement, both sides should always consider speed and economy when selecting a method of dispute resolution. Mediation may be appropriate before embarking on more formal procedures.
- 2.12 Repossession by the Landlord:** Tenants threatened with repossession or whose property has been repossessed will need professional advice if they wish to try to keep or regain possession. Similarly, landlords should be clear about their rights before attempting to operate a forfeiture clause and may need professional advice.
- 2.13 Renewals Under the Landlord and Tenant Act 1954:** The parties should take professional advice on the Landlord and Tenant Act 1954 and the PACT (Professional Arbitration on Court Terms) scheme at least six months before the end of the term of the lease and also immediately upon receiving any notice under the Act from the other party or their agent. Guidance on the Act can be found in the Department for Transport, Local Government and the Region's "Guide to the Landlord and Tenant Act 1954".



By following the recommendations outlined above, it will not restrict the negotiating skills of a tenant to obtain the best deal on the headline rent, but should ensure fairness and transparency on the remaining terms of a lease will be achieved.

These items are an extract from a document "A Code of Practice for Commercial Leases in England and Wales", which is prepared by the Commercial Leases Working Group 2002.

The full document and explanatory notes can be obtained in pdf format.

<http://www.commercialleasecodeew.co.uk/RICS%20Code%20of%20practice.pdf>

About odbgroup

odbgroup provide a range of services and resources for the refurbishment and fitting out of commercial property primarily on behalf of occupiers.

During the preliminary stages of finding new premises we have a variety of help files on our web site which include an on-line space and budget calculator tool

<http://www.officedesign.co.uk/odbworkspace/calc/space.php>

Help files relating to the requirements of the disability discrimination act (dda), fire prevention guide, office relocation and other useful guides, please link to

<http://www.officedesign.co.uk/odbworkspace/download.php>