



A Landlord's Guide to complying with The Code for Leasing Business Premises

The Code for Leasing Business Premises In England and Wales 2007 is the result of a government-endorsed collaboration between a number of groups representing both landlords and tenants.

The Code aims to promote fairness in commercial leases, by creating a document which is clear, concise and authoritative.

The Code is made up of three core documents, the Landlord Code, the Occupiers Guide and the Model Heads of Terms.

Full copies can be obtained from www.leasingbusinesspremises.co.uk

Although you do not need to follow the recommendations of the Code strictly to be code compliant, you must be transparent and open about any departures from it.

We have prepared an easy guide to help you comply with the Code and see where the responsibilities for compliance lie. Note that many of the recommendations apply even if the lease pre-dates the Code. If in doubt, please refer to the Code or speak to your advisors.

1. Pre-Lease Negotiations

- Make offers in writing which clearly state the terms on which the lease is being entered into
- Be flexible if requested by prospective tenants

- **Letting Agent** should offer different rents and lease terms if requested by the tenant
- **Letting Agent** should negotiate openly and fairly and make sure that the tenant understands the offer
- **Letting Agent** should encourage tenants to seek professional advice
- **Letting Agent** should use the **Model Heads of Terms** and add to it if necessary

2. Rent Deposits and Guarantees

- Clearly state any rent deposit proposals, such as:
 - for how long
 - the arrangements for paying/accruing interest at a proper rate
 - the conditions for release

- **Letting Agent** should incorporate this into the **Model Heads of Terms**
- **Managing Agent/Landlord** should hold deposit in a joint account and provide the tenant with regular statements showing any interest which may have accrued
- **Solicitor** should draft rent deposit deed accordingly

3. Length of Term, Break Clause and Renewal Rights

- The length of term and 1954 Act status should be made clear at outset
- The only pre-condition to a tenant exercising a break clause should be that they are up to date with their rent, give vacant possession and leave behind no subleases

- **Letting Agent** should incorporate this into the **Model Heads of Terms**
- **Solicitor** should draft break clause accordingly
- **Managing Agent** should settle disputes as to the state of the premises with the tenant after lease expiry

4. Rent Review

- The rent review should be clear and headline rent review clauses should not be used unless openly agreed
- If requested, offer alternative options for rent review, e.g. Index linked increase, upwards or downwards review or stepped increases
- Either party should be able to start the rent review process

- **Letting Agent** should offer different rents and rent review options if requested by the tenant, or should explain why other options cannot be offered
- **Solicitor** should draft rent review clause accordingly

5. Assignment...

- Lease should allow tenants to assign the whole of the premises with the Landlord's consent, not to be unreasonably withheld or delayed
- Lease should not refer to any specific circumstances for refusal to an assignment, but assignment to group company may be prohibited on grounds of financial standing, taking into account any guarantor
- AGA should only be required if the proposed assignee is of lower financial standing or is resident or registered overseas

- **Letting Agent** should summarise alienation provisions using the **Model Heads of Terms**
- **Solicitor** should draft assignment clause accordingly
- **Managing Agent** should allow assignments in accordance with the Code, even if the lease pre-dates the Code

...and Subletting

- Sublease rent should be the market rent at the time of subletting, rather than the passing rent
- Sublease to be excluded from the 1954 Act should not have to be on the same terms as the tenant's lease

- **Managing Agent** should allow sublettings in accordance with the Code (i.e. at the market rent), even if the lease pre-dates the Code
- **Solicitor** should draft subletting clause accordingly
- **Solicitor** should approve proposed sublease accordingly even if the lease pre-dates the Code. (N.B. subject to landlord's rights of entry and landlord's right to enforce covenants against the sub-tenant, where appropriate)

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6. Service Charges

- During negotiations, provide best estimates as to services charges, insurance payments and other outgoings that tenants will incur under their leases
- Try to follow the 2006 RICS Service Charge Code during negotiations for new leases and renewals and also during the term of any existing lease
- During negotiations disclose anything that would significantly increase the service charge in the future

- **Managing Agent** should provide service charge information to **Letting Agent** and **Solicitor** during pre-lease negotiations
- **Letting Agent** should pass on service charge information to tenant
- **Solicitor** should pass on service charge information to tenant, if Letting Agent has not
- **Solicitor** should draft service charge provisions in new leases and renewal leases to reflect the 2006 RICS Service Charge Code, unless there is a good reason not to
- **Managing Agent** should follow the 2006 RICS Service Charge Code even if the lease pre-dates this Code, unless there is a good reason not to

7. Repairs

- Tenant's repairing obligations should be appropriate for length of term and condition of the premises
- Unless expressly agreed, Tenant should only be obliged to give the premises back at the end of the lease in the same condition as they were when it was granted

- **Letting Agent** should discuss using a schedule of condition, particularly for shorter leases or where tenant is not given any rent free or other inducement to put the premises into repair
- **Letting Agent** should summarise the repairing obligation using the **Model Heads of Terms**
- **Solicitor** should draft the repair clause accordingly

8. Alterations and Changes of Use

during the lease...

- Control should not be overly restrictive and only necessary to protect the value of the premises, or landlord's nearby premises
- Internal non-structural alterations should be notified to the landlord but should not need landlord's consent unless they affect services or systems in the premises
- See also Ongoing Management, below

...and at the end

- Tenants should not be required to remove permitted alterations and make good at the end of the lease unless reasonable to do so
- Tenants should be notified of their reinstatement requirements at least six months before the termination date

- **Letting Agent** should summarise the Alterations and Changes of use provisions using the **Model Heads of Terms**
- **Solicitor** should draft alterations and change of use clauses accordingly
- **Managing Agent** should have a procedure for receiving and storing notification of internal non-structural alterations
- **Managing Agent** should provide a schedule of reinstatement requirements and negotiate it according to the suggested timeframe even if the lease pre-dates the Code

9. Insurance

- If landlord is insuring the policy should be with reputable insurers and the policy terms should be fair and reasonable and should represent value for money
- Disclose any commission received and provide full insurance details on request
- Rent suspension should apply to premises damaged by an insured or uninsured risk, other than when caused by a deliberate act of the tenant. Leases should allow landlords or tenants to terminate the lease if reinstatement is not completed within the period for which loss of rent is insured
- Landlords should provide terrorism cover if practicable
- If whole of the premises are damaged by an uninsured risk to prevent occupation, tenants should be allowed to terminate the lease unless landlords agree to rebuild at their own cost

- **Landlord** should review insurance arrangements regularly with broker to try to comply with the Code even if the lease pre-dates the Code
- **Managing Agent** should be in a position to deal with insurance queries from tenant
- **Solicitor** should draft the insurance and reinstatement clause accordingly
- **Landlord** should apply the Code if the premises are destroyed by an uninsured risk, even if the lease pre-dates the Code

10. Ongoing Management

- Handle all defaults promptly and deal with tenants and guarantors in an open and constructive way
- At least six months before the termination date provide a schedule of dilapidations to the tenant to enable tenants to carry out any works. Notify any dilapidations that occur after that date as soon as practicable
- When receiving any application for consent:
 - give tenant an estimate of the costs
 - request any additional information from the tenants within 5 days
 - make decisions on consent for alterations within 15 working days of receiving full information

- **Managing Agent** should act accordingly during the lease and at the end, even if the lease pre-dates the Code
- **Managing Agent** should provide a schedule of dilapidations and negotiate it according to the suggested timeframe, even if the lease pre-dates the Code
- **Managing Agent** should deal with applications for consent accordingly and try to adopt a standard procedure, even if the lease pre-dates the Code
- **Solicitor** should process consent documents promptly even if the lease pre-dates the Code