

# A code of practice for commercial leases in England and Wales

Second edition

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# A 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.

Explanatory guidance notes, set out on pages 4 to 11, provide the background to each of the recommendations.

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.

## Negotiating a business tenancy (lease)

- **Recommendation 1: Renting premises:** Both landlords and tenants should negotiate the terms of a lease openly, constructively and considering each other's views.
- **Recommendation 2: Obtaining professional advice:** Parties intending to enter into leases should seek early advice from property professionals or lawyers.
- **Recommendation 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.
- **Recommendation 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. Those funding property should make every effort to avoid imposing restrictions on the length of lease that landlords, developers and/or investors may offer.
- **Recommendation 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.
- **Recommendation 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. Those funding property should make every effort to avoid imposing restrictions on the type of rent review that landlords, developers and/or investors may offer.

- **Recommendation 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.
- **Recommendation 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.
- **Recommendation 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.
- **Recommendation 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.

### Conduct during a lease

- **Recommendation 11; 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.
- **Recommendation 12; 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.
- **Recommendation 13; Rent review negotiations:** 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.

- **Recommendation 14; 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.
- **Recommendation 15; 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.
- **Recommendation 16; 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.
- **Recommendation 17; 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.
- **Recommendation 18; 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.
- **Recommendation 19; 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 (see below) and advice is available also from the Institute of Revenue Rating and Valuation (IRRV).
- **Recommendation 20; Service charges:** Landlords should observe the Guide to Good Practice on Service Charges in Commercial Properties. Tenants should familiarise themselves with that Guide and should take professional advice if they think they are being asked to pay excessive service charges.
- **Recommendation 21; 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.
- **Recommendation 22; 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.

- **Recommendation 23: 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 Regions' "Guide to the Landlord and Tenant Act 1954".

## A code of practice for commercial leases in England and Wales - explanatory guide

The Code of Practice for Commercial Leases consists of the Recommendations set out in this Guide. This Guide gives a brief explanation of the background to the recommendations. Further sources of advice and explanation are listed at the end.

### Negotiating a business tenancy (lease)

#### • Renting premises

Roughly a third of business premises in the UK are occupied by rent-paying tenants holding a lease (also called a "tenancy") of the premises. Tenants should choose premises suitable for their short to medium term business plans, in respect of size, location, property and the terms of the lease. Premises might be rented, depending on the individual circumstances, either by the owner granting a new lease, by an existing tenant assigning the lease or by an existing tenant granting a sublease. The terms of a lease should reflect the type, location and condition of the property, the needs and status of the parties, and the state of the property market. All the terms in a commercial lease are normally negotiable.

For business reasons, the landlord or the tenant may wish to keep the details of their transaction confidential, but parties should avoid unnecessary secrecy. This will help the availability of market data.

**Recommendation 1:** Both landlords and tenants should negotiate the terms of a lease openly, constructively and considering each other's views.

#### • Obtaining professional advice

Unless landlords and tenants are fully experienced in these matters they will benefit from the advice of professional property advisers. Each party should be separately advised by independent advisers as the same person should not advise both parties. Tenants should not place reliance on advice offered by a letting agent acting for the landlord.

The main recognised property professionals are chartered surveyors regulated by the Royal Institution of Chartered Surveyors (RICS) and solicitors regulated by the Law Society and Licensed Conveyancers regulated by the Council for Licensed Conveyancers.

A surveyor can conduct or assist in the negotiations and can advise on the terms, including the appropriate level of rent taking into account the other terms of the letting, the location, size and quality of the property, the state of the property market, the level of business rates and other outgoings, and other relevant matters. A building surveyor can advise about the present condition of the property and about any necessary repairs. For lettings of part of a building, this can include advice about the need for major repairs and renewals of the structure or common parts which might increase service charges. A solicitor can negotiate the detailed text of the lease once the main terms have been agreed. Lease documents often run to many pages and there are no standard forms of lease. A solicitor can also check important matters such as town planning and the landlord's ownership of the property.

**Recommendation 2:** Parties intending to enter into leases should seek early advice from property professionals or lawyers.

#### • Financial matters

The tenant should find out about the total cost of occupying the premises – rent, service charges, insurance, business rates, utility costs etc. – and ensure that they can be afforded within the budget of the business.

As the landlord will wish to assess the tenant's ability to pay those costs, particularly the rent and any service charge, the tenant should provide written references from accountants, trade suppliers and any previous landlord. If the tenant is a limited company, the landlord may also wish to see audited accounts for the last few years' trading. If this information does not exist or fails to show that the tenant has an adequate financial standing, the landlord may refuse to accept that tenant or may require guarantees from financially viable guarantors, covering not only the rent but also all other liabilities under the lease.

The landlord may also require a cash deposit, frequently of three or six months' rent. This "rent deposit" will generally be required as security for service charges and the cost of remedying disrepair or other defaults as well as rent. There should be a proper written agreement covering the amount deposited, whether it can vary, who can hold it, how and when it can be paid over to the landlord or returned to the tenant and which party will receive any interest accruing.

The drawing up of commercial leases involves legal costs. The question of payment is a matter for negotiation between the parties. The Costs of Leases Act 1958 provides that, in the absence of agreement, each side pays its own costs.

**Recommendation 3:** 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.

#### • Duration of lease

The length of the letting is called the "term". Leases are commonly granted for three, five, ten or fifteen year terms, but can be for terms of twenty or twenty-five years or more. A lease carries the protection of the Landlord and Tenant Act 1954, unless the parties agree to its exclusion. If the tenant occupies all or part of the premises when the lease ends, the Act enables a tenant to ask the county court to order the landlord to grant a new lease at a market rent. The landlord can refuse to grant a new lease in

certain circumstances set out in the Act, for example if the tenant has seriously defaulted under the lease, or if the property is to be redeveloped or used for the landlord's own business. The tenant can ask the county court to examine the landlord's refusal to grant a new lease. In some cases, the tenant may be entitled to be paid compensation if a new lease is refused. If the lease excludes the Act, the tenant will not have the right to seek a new lease through the courts when the term expires.

Leases can contain a provision (break clause) allowing either the landlord or the tenant (or both) to terminate the lease at a specified date without waiting for the term to expire. This may be advantageous to the party who wishes to end the lease early – such as a tenant who wants to vacate without finding an assignee or subtenant, or a landlord who wants to redevelop – but early termination may cause problems and/or loss to the other party.

**Recommendation 4:** 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. Those funding property should make every effort to avoid imposing restrictions on the length of lease that landlords, developers and/or investors may offer.

#### • Rent and value added tax

The appropriate level of rent will depend upon the state of the property market, the location, type, age, size, character and condition of the premises and the terms on which the lease is to be granted, especially the duration of the lease and the burden of repairing obligations. Rent is usually payable by quarterly instalments in advance; the usual quarter days being 25 March, 24 June, 29 September and 25 December. One quarter of the yearly rent will usually be payable on those dates. This is not invariable. In some cases, particularly for short term lettings, monthly payments might be appropriate.

Value Added Tax (VAT) will be payable on the rent (and on service charges) if the landlord has elected to waive the building's exemption from VAT. If the landlord has not already done this, it could be done at any time during the lease unless the lease forbids it. If this waiver is made, VAT will be payable by the tenant in addition to the rent and service charge. Many tenants will be entitled to recover the VAT through their business VAT returns.

**Recommendation 5:** 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.

#### • Rent Review

For leases over five years, it is usual for the rent to be reviewed at stated intervals. Usually rent is reviewed to open market rent level – the rent that a new tenant would pay if the property was being let in the open market at the time of the review (the most appropriate basis for review). Alternatives include fixed increases or linking the rent to a published index (such as the Index of Retail Prices) or to the annual turnover of the tenant's business at the premises. Reviews to open market rent normally occur every five years whilst rents linked to indices or turnover are commonly recalculated annually. Not all these methods of review are suitable for every tenant or appropriate to every type of property or business.

If the review is on "upwards only" terms, the rent will not reduce at review but will remain at its existing level even if the market rent or index has fallen. Tenants may find that they would have to pay a higher initial rent where the rent review is to be up or down compared with upwards only, as this transfers the risk of downward movements to the landlord. Financiers of property require landlords to ensure that rental income will not fall below a particular level and this may restrict a landlord's ability to agree an upwards/downwards basis.

**Recommendation 6:** 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. Those funding property should make every effort to avoid imposing restrictions on the type of rent review that landlords, developers and/or investors may offer.

#### • Repairs and services

Leases generally state which party will be responsible for carrying out, or for meeting the cost of, repairing and maintaining the fabric and services of the property. The degree to which these burdens are placed on the tenant should take into account the initial condition of the premises and the duration of the lease.

A "full repairing" lease makes the tenant of an entire building responsible for all internal and external repairs and redecoration that become necessary during the term. This includes the roof, foundations, main walls and other structural parts, irrespective of whether or not they are in good condition at the start of the lease. A "full repairing" lease for part of a building requires the tenant to maintain and decorate the inside of the premises and to pay, through a service charge, towards the landlord's costs of maintaining and repairing the common parts and structure and providing services such as portage, lifts, central heating, etc. Such obligations might require the tenant to carry out, or pay towards the cost of, work to remedy an inherent construction defect which becomes apparent during the term.

Alternatives to "full repairing" terms might include limiting the tenant's repairs to the maintenance of the property in its existing condition, excluding certain categories of repair, and the remediation of inherent defects. The scope or amount of any service charge can be limited or there can be a fixed rent which is inclusive of service costs, if the lease refers to the existing condition of the property, it will be in both parties' interests for a schedule of condition (which can be photographic) to be professionally prepared and kept with the lease documents.

Professional advice should be sought when the tenant is required to carry out initial improvements and repairs, as there may be implications for tax and rent review.

**Recommendation 7:** The tenant's repairing obligations, and any repairs 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.

#### • Insurance

It is usual for the landlord to insure the building and require the tenants to pay the premiums. In the case of multi-occupied buildings, each tenant would be expected to contribute towards the total insurance premium; this may be included in the service

charge or may be charged separately. Leases may give the landlord discretion to choose the insurer. Alternatives include allowing the tenant to influence the selection of the insurer (if their lease covers the entire building), or providing that the landlord must arrange the insurance on competitive rates.

The lease should contain provisions covering the situation where there is damage by an uninsured risk or where there is a large excess. These risks vary from time to time and might include terrorist damage. If suitable provisions are not included in the lease the tenant might have to meet the cost of rebuilding in that situation. Alternatives include allowing the tenant to terminate the lease following uninsured damage, although it may be appropriate to allow the landlord to choose to rebuild at his own cost in order to keep the lease in force.

**Recommendation 8:** 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.

#### • Assigning and subletting

There are two ways in which the tenant may pass on the lease obligations to a third party; one is by assignment (selling, giving away or paying someone to take over, the lease) and the other is by subletting (remaining as tenant of the lease with the lease obligations but granting a sublease to another tenant who undertakes the same or similar obligations). Leases generally control assignment and subletting. Most require the tenant to obtain the landlord's consent (which cannot be unreasonably withheld) but some leases completely prohibit certain acts such as subletting part of the premises. A new lease, and an existing lease granted since 1995, may expand the landlord's right to control assignments by imposing credit ratings or other financial criteria for assignees. It may also require the assigning tenant to stand as guarantor for any assignee by giving the landlord an "Authorised Guarantee Agreement"; alternatives include giving this guarantee only if it is reasonably required by the landlord, such as where the assignee is of lower financial standing than the assigning tenant.

**Recommendation 9:** 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.

#### • Alterations and changes of use

Leases generally restrict the tenant's freedom to make alterations and often impose tighter control over external and structural alterations than over internal non-structural alterations or painting. The lease may absolutely prohibit the work. Alternatives may require the landlord's consent which must not be unreasonably withheld, or may permit the particular type of alteration without consent. The lease may endow the landlord to require the tenant to reinstate the premises (reverse alterations) at the end of the lease, or alternatively reinstatement need only take place if it is reasonable for the landlord to require it.

The permitted use of the premises may be very narrowly defined or there may be a wide class of use. Consent for changes of use can be at the landlord's discretion or,

alternatively, the lease may provide that consent is not to be unreasonably withheld. If the provisions of the lease are very restrictive this can hinder the assignment of the lease or the subletting of the property to a different business.

**Recommendation 10:** 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.

## Conduct during a lease

#### • Ongoing relationship

The relationship between landlord and tenant will continue after the lease has been signed; for example, there may be rent review negotiations or discussions about varying the terms. The landlord may be contemplating planning applications, redevelopment, improvements or making changes in the provision of services.

**Recommendation 11:** 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.

#### • Request for consents

There may be occasions when the tenant seeks a consent (licence) from the landlord, when for example, the tenant proposes to assign the lease, grant a sublease, change the use of the property, make alterations or display signs. The effect on the landlord will vary with the exact details. In some cases, the landlord will have to pass the request to a superior landlord or to a mortgagee. Most leases require the tenant to pay any costs incurred by the landlord in dealing with such an application.

**Recommendation 12:** 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.

#### • Rent review negotiation

Many leases contain provisions for the periodic review of rent; these may be highly technical and may lay down procedures and time limits.

**Recommendation 13:** 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.

- **Insurance**

Directly or indirectly, the tenant will usually pay the cost of insuring the premises and the lease will state whether the tenant or the landlord has to arrange this. 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.

Sometimes the lease allows the landlord or the tenant to end the lease if the premises are very badly damaged. If damage occurs but is covered by the insurance, there may be important questions about how, why and by whom the insurance money is spent and the parties should take professional advice as soon as the damage occurs.

**Recommendation 14:** 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.

- **Varying the lease – effect on guarantors**

A guarantor may not be liable if the terms of the lease are changed without the guarantor's consent. In some cases the variation may release a guarantor from all liability.

**Recommendation 15:** Landlords and tenants should seek the agreement of any guarantors to any proposed material changes to the terms of the lease, or even minor changes which could increase the guarantor's liability.

- **Holding former tenants and their guarantors liable**

A tenant who assigns a lease may remain liable for a period for any subsequent breach of the lease terms including failure to pay rent. This liability may also apply to a guarantor for the former tenant. Where payment is made to the landlord under this liability, the former tenant may be entitled to take an overriding lease of the property in order to have some control over the current tenants; legal advice can be obtained about these matters. In certain circumstances, insurance against losses following an assignment may be possible. Landlords must notify previous tenants about arrears of rent and service charges within six months of the amount becoming due, in order to make them liable.

**Recommendation 16:** 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.

- **Release of landlord on sale of property**

A landlord who sells his interest in the building may remain liable to the tenants to perform any obligations in the lease (for example, in repairing or insuring the building) in the event of failure on the part of the new landlord. It is possible, in certain circumstances, for landlords to terminate their obligations on selling the property through provisions in the lease or, in some cases, by seeking the agreement of their tenants and, in the event of objection, decision by a county court.

**Recommendation 17:** Landlords who sell their interest in premises should take legal advice about ending their ongoing liability under the lease.

- **Repairs**

The landlord may be entitled to serve a notice requiring the tenant to undertake repairing obligations which the tenant has failed to carry out. This notice may be served near or at the end of the term or earlier. The list of repairs is called a "schedule of dilapidations". Disagreements about these are not uncommon and the law on repairing obligations is complex.

**Recommendation 18:** 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).

- **Business Rates**

Uniform Business Rates (UBR) are payable to local authorities and are the responsibility of the occupier (the ratepayer) of the property. In certain circumstances the amount payable can be reduced by appealing against the business rates assessment. Ratepayers should be aware time limits apply to certain appeal procedures and advice on these may be obtained from a rating specialist, who is usually a chartered surveyor.

**Recommendation 19:** 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 DTIR Business Rates – a Guide or obtain advice from a rating specialist. RICS provides a free rating help line service (see inside back-cover) and advice is available also from the Institute of Revenue Rating and Valuation (IRRV) – (see inside back-cover).

- **Service charges**

Where the lease entitles the landlord to levy a service charge, details of the services covered are usually set out in the lease and it may contain provisions requiring the landlord to act reasonably or economically. Some leases lay down strict time limits for the tenant to query service charges. Several leading property industry and professional bodies have agreed a Guide to Good Practice in relation to service charges which is available free – (see page 12).

**Recommendation 20:** Landlords should observe the Guide to Good Practice on Service Charges in Commercial Properties. Tenants should familiarise themselves with that Guide and should take professional advice if they think they are being asked to pay excessive service charges.

- **Dispute resolution**

Disputes between landlords and tenants can be expensive, time-consuming and divisive. If the lease does not state how a particular dispute is to be settled, the parties may have to go to court. Leases often provide for certain types of dispute to be resolved by particular procedures; for example, it is common to provide that a dispute about rent review is to be referred to an independent surveyor acting either as an arbitrator or as an expert. Professional advice should be obtained about any procedures laid down in the lease.

The parties can agree to appoint a mediator to try to resolve a particular dispute even though the lease does not provide for it. The mediator will consult both parties separately and advise them on the strengths or weaknesses of their case and work towards a settlement. Mediators should be able to keep costs down and achieve an

outcome within a short timescale; but if mediation fails, delay and cost will have been incurred and the parties still have to resort to the formal procedures of arbitration, expert determination or court proceedings.

**Recommendation 21:** 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.

• **Repossession by the landlord**

The lease will contain a clause giving the landlord the right ("forfeiture" or "re-entry") to repossess the property if the tenant breaks any obligations under the lease or becomes insolvent. When a landlord seeks repossession under a forfeiture clause, the tenant (or sub-tenant) may be entitled to claim "relief from forfeiture" from a court, i.e. the right to retain the property despite the breach.

**Recommendation 22:** 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.

• **Renewals under the Landlord and Tenant Act 1954**

Unless it is excluded, this Act may give the tenant a right to renew the lease when it ends (see under Duration of lease). It contains procedures and time limits that must be strictly followed by both landlords and tenants. Disputes under the Act about whether the tenant should be granted a new lease and about its terms are adjudicated by the county court, but the parties may agree to ask the court to refer all or some aspects to be decided by an independent surveyor or solicitor under the Professional Arbitration on Court Terms scheme operated by the RICS and the Law Society.

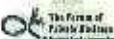
**Recommendation 23:** The parties should take professional advice on the Landlord and Tenant Act 1954 and the PACT scheme at least six months before the end of the term of the lease and also immediately upon receiving any notice under the Act from the other party or their agent. Guidance on the Act can be found in the Department for Transport, Local Government and the Regions, "Guide to the Landlord and Tenant Act 1954" (see inside back cover).



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## Property advice

For a selection of local professional property advisers who could represent you call: The Royal Institution of Chartered Surveyors (RICS) Contact Centre on 020 7222 7000.

For a free rent review and lease renewal helpline service for businesses not already professionally represented call the RICS on 020 7334 3806. For the rating helpline call 020 7222 7000. Rating advice also available from the Institute of Revenues Rating and Valuation on 020 7831 3505.

Also free from the RICS: 'Rent review – a guide for small businesses'. Send a large stamped, self addressed envelope to Corporate Communications, The Royal Institution of Chartered Surveyors, 12 Great George Street, London SW1P 3AD, or contact the RICS Rent Review and Lease Renewal helpline on 020 7334 3806.

For a "Guide to Good Practice on Service Charges in Commercial Properties", contact the RICS Commercial Property Faculty at the address above (with a large stamped SAE) or the website found at [www.servicchargeguide.co.uk](http://www.servicchargeguide.co.uk).

## Legal advice

For a free Guide to the Landlord and Tenant Act 1954 write to the Department for Transport, Local Government and the Regions at Gland House, Bressenden Place, London SW1E 5DU.

For information on local solicitors who could represent you, call The Law Society on 020 7242 1222.

For information on local licensed conveyancers who could represent you, call The Council for Licensed Conveyancers on 01245 349539.

## Property owners

The trade association which looks after the interests of property owners is: The British Property Federation, 1 Warwick Row, 7<sup>th</sup> Floor, London SW1E 5ER. Tel: 020 7828 0111 Fax: 020 7834 3442.

## Occupiers

Several trade associations look after the interests of occupiers, including the British Retail Consortium and the Property Market Reform Group. The BRC can be contacted on 020 7854 8900. Contact details for the PMRG and other organisations supporting the code may be obtained from the Commercial Leases Working Group Secretariat.