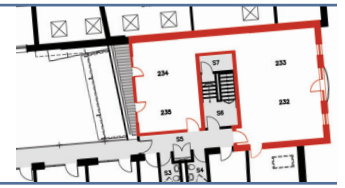


Leasing Business Premises: Occupier Guide



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

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Introduction

A business lease is a legally binding contract between the legal owner (Landlord) and the occupier (Tenant). Failure by either party to comply with the terms of the agreement could result in court action.

The 2007 Code for Leasing Business Premises ('the Lease Code') provides a framework within which a prospective tenant can reasonably expect a landlord to operate. As a prospective tenant, you should not assume that a landlord complies with the Lease Code. The Lease Code does not provide all of the protection you need for your business in leasing premises.

Sometimes the Landlord is also the tenant of another owner. This may restrict the flexibility of terms the Landlord can offer. The Landlord should always state in advance if this is so and provide a copy of the current lease.

If it is proposed to buy an existing lease (assignment) from someone else, be aware that, though parts of this Occupier Guide may help in interpreting some of the terms of the lease, there may be many additional liabilities. Professional advice from a qualified surveyor and a lawyer should be sought.

In this document the following terms have been used:

Landlord	This is the owner of the property or the person owning an existing lease of the property
Tenant	This is the occupier of the property or the person paying rent to a landlord (this Occupier Guide assumes the tenant will be you)
Heads of Terms	This is a summary of the agreement between the parties and is used to instruct lawyers to produce the formal lease. Both the lease and the Heads of Terms should comply with the recommendations of the Lease Code but the Heads of Terms will be superseded once the lease has been granted.

For more information on the Lease Code see [Useful Links](#).

1 Lease negotiations

You should expect the Landlord to make very clear exactly what you are being asked to agree.

You should be able to understand the total extent and duration of the cost and liability you will be taking on if you sign a lease based on the terms being offered by the Landlord.

Tip 1

Make sure you understand every term and condition in the offer including the total cost until the lease ends and ask the Landlord or the Landlord's representative to confirm in writing that the offer meets the Lease Code.

You should know from the offer exactly what the property is.

Tip 2

Make sure the offer clearly shows the extent of the property, with the boundaries clearly marked on plan and the floor area noted, together with all means of access, any access or areas you must share with other occupiers, any limitation of hours of use, any restrictions in the type of use, any legal or planning limitations or obligations that come with the property.

You should also remember that, however good your relationship is or seems to be with the Landlord, the Landlord may sell to another party; the terms you agree and the lease you take on must reflect everything you rely on to conduct and safeguard your business.

Tip 3

Make sure the offer sets out clearly who the Landlord is, together with any superior landlords, and assume that any Landlord will sell his interest to someone else and that you will have to deal with the new owner.

You should request alternative terms if you are not happy with the initial terms of the Landlord's offer, always bearing in mind that any variation (such as lease length, rent review terms – including frequency and basis – break options, etc) may change the level of rent or other terms.

Tip 4

Request written responses from the Landlord, where you expect to need to rely on them. Check that all the things which are important to you and your business have been accurately written down in the Heads of Terms and documented in the lease.

2 Financial matters, rent deposits and guarantees

The Landlord should provide full details of your expected costs involved in leasing the property. This should include all personal or company guarantees, security deposits or other bank guarantees.

Not all costs will be fixed at the time of agreeing the lease. You should expect the Landlord to explain how any costs are calculated so that you can understand the risks and make sure you can afford all of the costs of leasing the property.

Tip 5

It may be helpful to use a checklist (such as that set out below) so that you can ask the Landlord to be explicit about costs and obligations in the lease.

If the Landlord demands a deposit, you should make sure you understand the conditions under which it is held and the basis on which it will be returned to you. You should remember that this is YOUR money that the Landlord is holding as a protection against any failure on your part.

Tip 6

Keep thinking of the deposit as your money and demand that interest on it is accrued at a fair rate. Ask the Landlord to make sure it is held in an account that belongs to you (escrow or stakeholder account) in case the Landlord becomes insolvent. Throughout the term of the lease, make sure you obtain statements from the Landlord to confirm that the money is still in the account and that all interest earned has been paid to you or, if required by the lease, has been held on your behalf within the account. Check that your deposit will be transferred to the new Landlord if the Landlord sells the property to another owner.

Tip 7

Make sure you know when and how you can get your deposit back, such as when you no longer have an interest or have satisfied agreed conditions.

If you are asked to give a personal guarantee, you should avoid using your home as security. You should be able to understand both when and how the Landlord may call on your guarantee, and also what the guarantee would actually cover.

Tip 8

Think of any guarantee as if it WILL be called on the first day of the lease; what would be the personal consequences for you? Can you afford it?

Cost Item	Who pays?	How much? How often?	What is the occupier's cost each year?	If this cost is not fixed, what does it depend on?
Rent	e.g. Tenant			
VAT				
Rates				
Service charges				
Insurance				
Utilities				
Repairs/Dilapidations				
Fitting out/Alterations				
Total each year				
Total lease cost				

3 Rent review

Your lease may contain provisions allowing the Landlord to change the rent. The rules by which the rent can be changed should be clear and understandable. It should be arranged that the Landlord cannot simply impose a rental increase. The basis of rent review should be to the market rent unless clearly stated otherwise. If you agreed increases fixed to an index, the basis should be a published, independent, authoritative source.

If there is an open market rental value provision, it should specifically exclude (or disregard) any improvements you make, other than as part of an explicit obligation, or any value arising from your business. You should also make sure there are controls in the event of disagreement that will be referred to an independent expert or arbitrator to settle.

Tip 9

Check that you understand the basis on which the rent can be changed. Can the rent go down as well as up? You should see if the Landlord is prepared to allow upward or downward rent reviews and if not, you should consider asking for a break option exercisable only by the tenant.

Your lease should include a provision allowing you to serve a rent review notice on the Landlord. If the Landlord does not initiate the rent review, think very carefully before deciding not to serve notice on the Landlord as you may be responsible for paying interest on any increase in rent above the original rent from the appropriate rent review date until the review has been agreed.

Tip 10

Make sure that the interest rate on the difference is no higher than bank base rate. Try to introduce a provision whereby the Landlord forfeits interest on the difference if he/she does not initiate the rent review process prior to the review date.

Tip 11

Avoid strict time limits in the rent review clause (other than referred to in Tip 10) – these could result in you losing the ability to negotiate.

4 Subletting and assignment

Subletting (creating a new lease of all or part of the property)

If your lease allows subletting, you should understand any limitations (in terms of the amount of space, the use and the rent you can charge and the nature of the subtenant you can sublet to).

It is usual for Landlords to insist that subleases are granted outside the protection of the Landlord and Tenant Act 1954 and on similar terms to your lease.

Tip 12

Try to make sure you are NOT required to sublet at the same or higher rent than you pay. You should not be limited other than by reference to the market rent at the time of the subletting.

from, say, sharing your space with a supplier or service provider (for example, an outside cleaning company which you provide with its own cleaner's cupboard)

Tip 13

Ask your Landlord to reflect the flexibility you require in the sharing provisions of the lease. This probably means you must not create a tenancy for your supplier.

Landlord's written consent is likely to be required for subleases.

Tip 14

Make sure your Landlord, including any superior landlords, is required to give consent within a defined (and short) period of time and that he is not allowed to refuse without good reason.

Assignment (disposing of your existing legal interest in the whole premises)

It is common for Landlords to require you to guarantee the lease once you have assigned it to a third party. The form of guarantee (an Authorised Guarantee Agreement or AGA) usually makes you responsible, as a guarantor, for the lease obligations until your assignee (the person to whom you sold your lease) assigns the lease to another party.

Tip 15

Ask the Landlord to limit his requirement for an Authorised Guarantee Agreement to those cases where your proposed buyer (assignee) is financially weaker than you are at the date of assignment. Ask the Landlord to include provisions that will allow you to cancel the Guarantee if defined conditions are met and/or after an agreed period.

Tip 16

Try to agree alternative conditions to avoid you having to enter into an Authorised Guarantee Agreement (for example, by having the new tenant pay a rent deposit).

The Landlord should not impose any condition which requires you to be in compliance with the lease at the time of assignment.

Tip 17

Try to make sure the only precondition for assignment is obtaining the Landlord's consent in writing and that the Landlord may not unreasonably withhold or delay giving his consent.

5 Lease length, break clauses and renewals

The Landlord should make clear the length of the lease, whether there are any rights to break the lease and whether you will be entitled to an extension of the lease on expiry (see section 11 below).

Make sure that the length of the lease is appropriate for your business needs; ask the Landlord to offer you a break option exercisable only by the tenant (this will be you unless you have assigned your lease) to give you the opportunity to cancel the lease at a time that suits your business.

A right to break should allow you to walk away from the lease at a given time after informing the Landlord in writing. This should be conditional only upon having paid the rent due under the lease and giving up occupation of the property, leaving behind no continuing subleases. You may have other liabilities to fulfil, but these should not be used to invalidate the right to break.

Tip 18

Be careful that it is only the principal rent and not any other sums (such as service charges) that must be paid in cleared funds before the break date.

When your lease ends, whether by expiry or by exercise of a break option, you will be liable to the Landlord for any sums due and for any repairs you should have carried out during the lease (dilapidations).

Tip 19

When granting any subleases or in sharing possession with any suppliers or business partners, always make sure your agreement with them expires on a date before your right to break, AND that you have not given them any rights to stay in the property beyond the term of your agreement with them.

Be sure that you understand what notices you would be required to serve on the Landlord to end the lease, and how and when these should be served.

The Landlord and Tenant Act 1954 gives you the right to extend your tenancy when your lease runs out.

Unless both you and the Landlord have agreed (in the correct procedure) that the lease is to be excluded from the relevant sections of the Landlord and Tenant Act 1954, you will be entitled to renew your lease unless your Landlord can prove certain specific circumstances, which include redeveloping the property or occupying the space himself.

You should make sure you understand the options available to you when your lease expires. Take professional advice to make sure all notices are properly served and that your interests are protected.

Tip 20

Take professional advice at least six months before the end of the lease and on receipt of any notice from the Landlord under the Act.

6 Service charges

You should expect the Landlord to be explicit in his offer about any service charges, including how these costs are calculated, what they cover (and don't include) and the extent to which you will be obliged to pay towards any capital improvements and long-term repairs or replacements of structure, fabric or machinery and equipment.

Tip 21

Ask the Landlord whether he complies with the Service Charge Code 2006, and ask for a clear estimate in writing of the likely service charge costs for each year of the lease term (to include any known or planned capital costs).

Tip 22

As you are likely to be responsible for the repairs to a proportionate part or the whole of the building you should satisfy yourself that there are no major repairs required at the beginning of your lease or that are likely shortly afterwards.

Tip 23

Make sure the Landlord cannot charge you a greater proportion of cost when he has other space vacant in the estate or building.

7 Repairs

UNLESS you specifically agree at the time of taking the lease to carry out works or to reinstate the property to its original state, check that the lease does not require you to put the property into a better condition than when you take the lease.

Tip 24

It is worthwhile either getting a formal photographic schedule of condition carried out by a firm of surveyors or taking plenty of photographs on or before taking the lease to record the condition at the beginning of the lease.

Tip 25

If you take the photographs yourself, make sure you get the photographs dated and witnessed and keep a set with your lease documents. If you produce your own video schedule of condition, send the Landlord a copy by Recorded Delivery Post.

You should bear in mind if you buy an existing lease (take an assignment of someone else's lease), that the condition of the property when you take it may be poorer than it was at the beginning of the lease. You may be required to put the property back into its original condition so it is worth taking professional advice.

8 Alterations and changes of use

Your lease will limit the use of the property to a specified purpose (for example, B1 (Offices)). The lease will usually put the responsibility on you to check that your proposed use complies with any planning consent.

Tip 26

Make sure the Landlord provides you with all relevant information and, if possible, confirms to you that your use complies with his planning consent.

The lease may be quite restrictive in terms of any signage and any alterations you are permitted to make. Before you enter into the lease, you should make sure you are permitted to carry out any works your business needs.

Tip 27

Check what you need to do to the property in order to trade. Make sure the Landlord agrees in writing any changes you intend to make at the beginning of the lease period. Check whether you will be required to remove your alterations at the end of the lease.

The Landlord should be required to give his consent within a reasonable time period (say 21 days) and should not be able to refuse your proposed alterations without good reason.

Tip 28

Make sure your lease allows you to make non-structural alterations except where the Landlord can demonstrate it would affect the operation of the building. You should remember that you should notify the Landlord of any non-structural alterations you do make.

You should be aware of statutory requirements (such as Construction (Design and Management) Regulations 2007 (CDM)) that you must comply with when carrying out any works or alterations to the Property. The CDM regulations require you to keep full and detailed formal records and your Landlord will require you to maintain these records throughout the lease.

9 Insurance

You may be required to reimburse the Landlord for his insurance premiums, and the Landlord should tell you what commission payments (if any) he receives.

Tip 29

Ask for a copy of the Landlord's insurance policy and before signing the lease, check with alternative insurers that you are getting value for money for the given level of premium and that the insurance company is reputable. Ask him to confirm to you that he has no intention of changing the scope (and, therefore, the cost and nature) of the insurance cover.

The lease should provide for the Landlord's policy to be used to repair or rebuild the property unless the insurance is invalidated by anything you do, in which case you may be liable for the reinstatement.

Tip 30

Remember to inform the Landlord and his insurer if you intend to change the way you use the property; let them know if you are storing any hazardous chemicals in the context of your business or if you propose to leave the property vacant and unattended at any time. Ask the Landlord to ensure inclusion of such activities in the insurance policy and to consult you over any changes in the insurance policy terms.

Tip 31

Check whether your alterations or improvements would be covered under the Landlord's policy.

10 Tenant's defaults and applications for consent

Tenant default

The lease forms a legal contract between you and your Landlord. Any breach of contract may have serious consequences and you should take care to understand your obligations and steps the Landlord may take against you and, if applicable, your guarantors, including Court action.

The laws relating to Landlord and Tenant relationships are complex and you should seek professional advice so you are clear on your obligations and rights.

A fair lease is one which allows you enough opportunity to fix any problems (without loss to the Landlord) before any legal action is taken.

Tip 32

Check that the Landlord must let you know you are in breach and give you a reasonable opportunity to remedy the breach before taking legal action against you.

You may find that you have failed or forgotten to carry out some obligations under your lease. It is usually best if you are able to carry out these obligations yourself. It may be better sometimes to approach the Landlord and negotiate a reasonable payment to have the Landlord carry out the obligations after your lease has expired.

Tip 33

Try to stay on good terms with the Landlord. This should help make any situation easier to handle and should allow you to run your business without unnecessary outside interruptions.

The remedy for a breach of your agreement may range from the Landlord sending in bailiffs, who may seize goods to the value of the breach, to the Landlord taking back the property from you ('Forfeiture'). You should note that this would not take away your liability to pay arrears of rent.

Tip 34

Make sure the 'Forfeiture' provisions in the lease are clear; they should allow you enough time to pay, and should allow you to restructure your business without necessarily making your lease vulnerable to forfeiture.

The Landlord may try to forfeit your lease by locking you out of the Property or by obtaining a court order. In either case you can apply to the Court to give you time to put matters right or to pay what you owe. Seek urgent professional advice in that situation.

New legislation often brings new obligations for owners and occupiers of property. Leases often require tenants to comply with statute at their own cost. You should ensure your obligations under the lease are proportionate to the length and terms of your lease and you should take professional advice and make your own estimate of any expected costs. You should research possible new Regulations that could affect your occupation and your business.

This provision should not be taken lightly and you should ensure that the Property is in compliance with existing regulations (for example, with Disability Discrimination Acts, Town and Country Planning Acts, Health & Safety Acts or Environmental Protection Acts) when you take the lease.

Tip 35

Ask the Landlord to confirm to you in writing that the Property complies with all regulations (some of which are "Statutory Instruments") before entering into the lease.

Tip 36

Stay aware of potential new legislation and Regulations that will affect occupiers of business premises (many trade bodies and professional firms send out newsletters which can help to identify significant changes). Identify the costs and take professional advice to ensure you comply where you are obliged to by your lease.

Applications for consent

You will need to make applications to the Landlord during the lease, for example, if you intend to carry out alterations (see Section 8) or if you propose to sublease or assign your lease (see Section 4). The lease should specify that the Landlord may not unreasonably withhold or delay his consent.

The Landlord's duty to respond only applies from when he has received from you adequate information about the proposed alterations or about the proposed assignee or subtenant and full details of the proposed transaction.

Tip 37

Check what information will be required before making an application and make sure you are able to give the Landlord full details. Ask the Landlord in advance what other consents he may have to get and ask for assurances that this will not add any further delay to the approval process.

Useful Links

The Code for Leasing Business Premises in England and Wales 2007

www.leasingbusinesspremises.co.uk

Bills before Parliament

www.publications.parliament.uk/pa/pabills.htm

Building Regulations

www.communities.gov.uk/index.asp?id=1130474

Health and Safety Executive

www.hse.gov.uk

Service Charge Code

www.servicechargecode.co.uk

Town Planning (Link Site)

www.ukplanning.com/ukp/index.htm

Uniform Business Rates

www.voa.gov.uk

Organisations Endorsing the Code

Association of British Insurers

www.abi.org.uk/

British Council for Offices

www.bco.org.uk

British Property Federation

www.bpf.org.uk

British Retail Consortium

www.brc.org.uk

Communities and Local Government

www.communities.gov.uk

Confederation of British Industry

www.cbi.org.uk

CoreNet Global

www.corenetglobal.org.uk

The Forum of Private Business

www.fpb.org.uk

Federation of Small Businesses

www.fsb.org.uk

Investment Property Forum

www.ipf.org.uk/

The Law Society of England and Wales

www.lawsociety.org.uk

The Royal Institution of Chartered Surveyors

www.rics.org

Welsh Assembly Government

www.wales.gov.uk/index.htm

The Code for Leasing Business Premises is endorsed by the following organisations:



Association of British Insurers

Association of British Insurers www.abi.org.uk



British Council for Offices www.bco.org.uk



British Property Federation www.bpf.org.uk

BRITISH RETAIL CONSORTIUM
for successful and responsible retailing



British Retail Consortium www.brc.org.uk



Confederation of British Industry www.cbi.org.uk



Communities and Local Government www.communities.gov.uk



CoreNet Global www.corenetglobal.org.uk



The Forum of Private Business www.fpb.org.uk



Federation of Small Businesses www.fsb.org.uk



Investment Property Forum www.ipf.org.uk



The Law Society

The Law Society of England and Wales www.lawsociety.org.uk



The Royal Institution of Chartered Surveyors www.rics.org



Llywodraeth Cynulliad Cymru
Welsh Assembly Government

Welsh Assembly Government www.wales.gov.uk/index.htm