

## **A fair deal for business tenants?**

### **At last a plain English, user-friendly leasing code**

The Code for Leasing Business Premises recommends taking appropriate professional advice. Tim Kind explains.

As the first port of call for business advice for many small businesses, you may have significant influence over clients' awareness of the liabilities taken on when entering a lease. A bad lease 'can seriously damage your health' – and the balance sheet.

Previous attempts to establish a code of practice had only limited success. The Reading University report 'Monitoring the 2002 Code of Practice for Commercial Leases' found that only 22% of tenants were aware of the existence of the old code. The report's author, Neil Crosby, found that 26% of solicitors were unaware of the code. The report did not comment on awareness amongst accountants!

The new code, established by the Commercial Leases Working Group and representing occupiers, landlords and professionals, is in three parts: a Landlord Code, an Occupier Guide and a Model Heads of Terms matrix.

### **Landlord Code**

A concise and manageable Landlord Code, on which the Government will judge the property industry. Some of the key points include:

- Authorised Guarantee Agreements (AGAs) should only be used where a lease is being disposed to a business of lesser financial standing.
- Alternatives to upward-only rent reviews are to be offered.
- Insurance premiums must be competitively priced
- Repairing liabilities are to be proportionate to the term of the lease, and the condition of the property
- Operation of break clauses will be dependent only on the rent being up to date
- Sub-lettings at market rent are to be allowed even if this is less than the rent paid, reflecting the British Property Federation's declaration.

### **Occupiers Guide**

This mirrors the Landlord Code and offers helpful tips about what can be negotiated on each aspect of the lease. It enables a business to fully assess all the implications of agreeing each point. A table for assessing costs is also included. By completing the table a firm can assess the true cost of leasing premises, both on an annual and total cost basis.

The guide is applicable to all sizes of business, but specifically directed at small businesses. It is written in plain English.

### **Model Heads of Terms**

This is a detailed list of the main points that should be included in a commercial lease. By filling in the matrix all significant issues will be established. The completed form can be presented to the legal representatives of both parties to the letting, reducing the (expensive) time lawyers take just to establish the facts.

## **Conclusion**

These are testing standards but the government is weary of receiving complaints and is ready to legislate. The code is voluntary, but the property industry is in the last chance saloon!

The code allows businesses to reinvent the wheel for each letting and stand a chance of securing an arrangement that works. If the small print could be incorporated into a standard lease, an off-the-peg solution that works every time could be secured, only needing to be tailored to the specific requirements for each letting: But that's another story!

Tim Kind sat on the Commercial Leases Working Group representing small business and is a Chartered Surveyor running the Property Occupiers Network - Informing Business about Property Occupation. [timkind@PropertyOccupiers.Net](mailto:timkind@PropertyOccupiers.Net)