

Part 1

Introduction

This RICS professional statement *Code for leasing business premises in England and Wales 2019*, 1st edition is the result of pan-industry discussion between representatives of landlords, tenants and other trade bodies. The government supports the principles behind the lease code.

The objective is to improve the quality and fairness of initial negotiations on lease terms and to promote the issue of comprehensive heads of terms that should make the legal drafting process more efficient.

The lease code and the accompanying template heads of terms should be used as a checklist for negotiations before the grant of a new lease and at the time of any lease renewal.

Reference to the lease code and template heads of terms should assist RICS members in ensuring that landlords, tenants and guarantors who they are advising have a clear understanding of the commitments that they are entering into.

Part 2

Mandatory requirements

The provisions of paragraphs 1.1 to 1.4 of the lease code **must** be complied with.

The landlord, or its letting agent where relevant, will be responsible for ensuring that heads of terms complying with those provisions are in place before the initial draft lease is circulated.

1 Negotiations and heads of terms

- 1.1 Negotiations over the lease must be approached in a constructive and collaborative manner.
- 1.2 A party that is not represented by an RICS member or other property professional **must** be advised about the existence of this code and its supplemental guide and **must** be recommended to obtain professional advice.
- 1.3 The agreement as to the terms of the lease on a vacant possession letting **must** be recorded in written heads of terms, stating that it is 'subject to contract' and summarising, as a minimum, the position on each of the following aspects:
 - the identity and extent of the premises (and requiring the landlord to provide a Land Registry compliant plan if the lease is registerable)
 - any special rights to be granted, such as parking or telecom/data access
 - the length of term
 - whether the *Landlord and Tenant Act 1954* will apply
 - any options for renewal
 - any break rights
 - any requirements for a guarantor or rent deposit
 - the amount of rent and frequency of payment
 - whether the landlord intends to charge VAT on the rent
 - any rent-free period or other incentive
 - rent review frequency and the basis of review
 - liability to pay service charge
 - liability to pay insurance premiums
 - liability to pay business rates
 - rights to assign, sublet, charge or share the premises
 - repairing obligations
 - the initial use to be permitted
 - rights to make alterations
 - any initial alterations or fit-out and
 - any conditionality of the letting, such as subject to surveys, board approvals or planning permission.
- 1.4 At a lease renewal or extension, the heads of terms **must** comply with the above except for any terms that are stated to follow the tenant's existing lease subject to reasonable modernisation.
- 1.5 Negotiations should aim to produce letting terms that achieve a fair balance between the parties having regard to their respective commercial interests.

2 The premises

- 2.1 The identity and extent of the premises being let should be clearly defined, including which elements of the structure or fabric are included.
- 2.2 A lease plan should be supplied by the landlord if that is necessary or desirable for identifying the premises and in all cases where the duration of the lease will exceed seven years, where it should comply with the requirements for registration of the lease at the Land Registry.
- 2.3 The tenant should be granted all rights necessary for the intended use of the premises. This includes clear arrangements for any special rights such as parking or for electronic communication connections including, where necessary, the right to require the landlord to grant wayleaves for data cabling.

3 Length of term, renewal rights and break rights

- 3.1 The length of term should be clearly specified and any date when it is intended to start.
- 3.2 Where the landlord proposes that statutory rights of renewal under the *Landlord and Tenant Act 1954* are to be excluded, the tenant should be notified at the outset in order to obtain early professional advice as to the implications.
- 3.2 Any break rights or options for renewal for either party should be clearly specified, including the dates (or range of dates) when a party can end the lease, the length of prior notice to be given and any pre-conditions for the break being effective.
- 3.3 Unless the landlord has special reasons for imposing stricter conditions, a tenant's break should be conditional only on there being no rent arrears, the tenant paying the basic rent up to the end date, giving up occupation and leaving no subtenants or other occupiers. Disputes about the state of the premises, or what has been left behind or removed, should be settled later, as at normal lease expiry.
- 3.4 Leases should require landlords to repay any rent, service charge or insurance paid by the tenant for any period after a break takes effect. Repayment of service charges may be deferred until the service charge accounts are finalised.

4 Rent deposits and guarantees

- 4.1 Details of any rent deposit should include the amount (including where required any sum to cover VAT), the time it will be held, whether it will be security for only the rent or all the tenant's obligations under the lease and the circumstances in which the deposit will be returned to the tenant with any accrued interest.
- 4.2 Rent deposit agreements should provide that landlords will hold rent deposit funds in bank accounts designated for holding only rent deposits and that any bank interest will accrue for the tenant.
- 4.3 Details of any guarantee should include whether it will cover only the rent or all the tenant's obligations under the lease and the circumstances (if any) in which the guarantee will be released.
- 4.4 Landlords and managing agents should refer to the RICS help sheet *Clients' money: General advice for firms* (www.rics.org/uk/regulation1/firm-and-individual-guidance/protecting-clients-money/) for further information on the steps that should be taken when handling deposit funds.

5 Rent and rent review

- 5.1 The initial rent, the frequency of payment and whether the landlord intends to charge VAT on the rent should all be clearly stated, together with details of any rent-free period or other incentive.
- 5.2 Where the landlord proposes that rent is to be subject to review, the tenant should be notified of the proposed frequency and the method or formula of review at the outset in order to obtain early professional advice as to the implications.
- 5.3 Rent review clauses should be clearly expressed. Definitions of market rent should not result in a rent higher than the true market rent unless that has been expressly agreed by the parties, such as where that is agreed in return for a financial inducement. Provisions for indexed increases in rent should not contain obscure formulae designed to produce a greater increase than is proportionate to the increase in the index over the appropriate period or outside any agreed caps or collars.
- 5.4 Leases should allow either party to start the rent review process and should not impose time limits intended to prevent a review or set a new rent through inaction by either party.

6 Service charges, insurance costs and other outgoings

- 6.1 The landlord should indicate the range of main services, if any, that the landlord will provide and supply proper estimates of service charges, insurance payments and any other ascertainable outgoings (such as business rates) that the tenant will incur under the lease. Landlords should disclose known irregular events that would have a significant impact on the amount of future service charges.
- 6.2 Landlords should be aware of the RICS professional statement *Service charges in commercial property*, (1st edition) and, so far as practicable in the circumstances, service charge provisions in leases should be drafted in conformity with the mandatory provisions of that professional statement.

7 Assigning, subletting, charging and sharing

- 7.1 Leases should allow tenants to assign the whole of the premises with the landlord's consent, which is not to be unreasonably withheld or delayed. However, landlords may set out reasonable circumstances in which consent can be refused, such as where there are arrears of rents, service charges or insurance premiums that are not the subject of a legitimate dispute.
- 7.2 Leases should also provide that, if in each case the landlord reasonably requires, the assigning tenant is to provide an authorised guarantee agreement (AGA), any existing guarantor is to guarantee that the assigning tenant complies with the AGA, and/or the assignee is to procure a new guarantor or rent deposit.
- 7.3 Except where the particular circumstances justify (such as where the landlord wishes to control tenant mix in shopping centres or parades or protect turnover rents), leases should allow corporate tenants to share the premises with other companies while they are in the same corporate group and do not create a subletting.
- 7.4 Leases should allow tenants to sublet the whole of the premises and should allow subleases of parts, if appropriate without security of tenure, and in each case with the landlord's consent, which is not to be unreasonably withheld or delayed and at rents not less than market rent. Subleases should be required to be on terms consistent with the tenant's own lease, except subleases that are to be excluded from statutory renewal rights and subleases of only part of the premises may be granted on different terms where appropriate.

- 7.5 Leases should allow tenants to grant a bank or other reputable lending institution a charge over the lease, without the landlord's consent needing to be obtained unless the lease is to contain step-in rights for chargees.
- 7.6 Paragraphs 7.1 to 7.5 do not prevent landlords from imposing stricter provisions where justified by the particular circumstances, such as lettings of short duration or on concessionary terms, or leases of retail units where the tenant's business or brand may affect the character or value of the centre or parade or the amount of any turnover rent. Any such provisions should be on reasonable terms, for example a provision for surrender of the lease instead of assigning should apply only if the landlord is willing to pay its market value.

8 Repairs

- 8.1 Leases should impose tenant's repairing obligations appropriate to the length of the term, the condition of the premises and the financial terms.
- 8.3 If the tenant's repairing obligations are to be limited to the initial condition of the premises, a schedule of condition will normally be required and the parties should agree which party is responsible for the cost of obtaining it.
- 8.4 Where the premises are or will be newly built, a tenant taking on direct or indirect responsibility for repairs should be given rights for the enforcement of the defect liabilities of the main building contractor (and, so far as that contractor does not have design liability, those responsible for design), either directly through warranty deeds or statutory third party rights or by the developer being obliged to enforce its remedies.

9 Change of use, alterations and fit-out

- 9.1 Leases should give landlords control over alterations and changes of use that are no more restrictive than are necessary to protect the value of the premises and any adjoining or neighbouring premises of the landlord, and this may differ between different types of property.
- 9.2 Where the landlord intends to prohibit certain changes of use or the making of certain alterations, or to require a licence from the landlord before they can take place, the tenant should be notified at the outset in order to obtain early professional advice as to the implications. This does not apply to normal provisions against changing the use outside the existing use class under planning law.
- 9.3 Landlords should not normally prohibit, or require their consent to be obtained for, internal non-structural alterations that do not affect the character, value, stability, building services or energy efficiency performance of the building, but may require the tenant to carry out such works properly and without causing damage or nuisance and to give written details to the landlord.
- 9.4 Except where, as a term of a consent for alterations, the parties have agreed that certain alterations are to be removed at the end of the lease, leases should allow the landlord, where it is reasonable to do so, to require the tenant to remove alterations at the end of the lease and make good. Leases should require the parties to identify the required works in sufficient time before the end date to enable the tenant to comply with any such obligation.
- 9.5 The tenant should be notified at the outset if the landlord intends to impose any obligations for an initial fit-out that might involve material cost or might restrict how the tenant can fit-out or use the premises. The heads of terms and the lease should set out any agreed minimum requirements, including materials, system specifications and any capital contributions.

10 Insurance and damage

- 10.1 Where the landlord will insure the property, leases should provide that the policy will be on normal market terms, that full terrorism cover will be provided if it is available at reasonable rates of premium and that the landlord will insure with reputable insurers and provide details of the insurance to the tenant on reasonable request.
- 10.2 Leases should state that rent suspension will apply if the premises or any landlord's areas or services serving them are damaged by an insured risk or, other than where due to an act or default of the tenant, an uninsured risk. If the lease limits the period in which rent is to be suspended, either party should be allowed to terminate the lease if reinstatement of significant damage is not completed within that period.
- 10.3 Leases should state that if the whole or a substantial part of the premises or any landlord's areas or services serving them are so damaged by an uninsured risk as not to be capable of normal use by the tenant, either party should be allowed to terminate the lease unless the landlord agrees to rebuild at its own cost.
- 10.4 Landlords should pass on to tenants the benefit of discounted premiums and should disclose to tenants whether the landlord benefits from insurance commissions.

11 Management and operational performance

- 11.1 Leases of parts of multi-let buildings should contain provisions, appropriate to the characteristics of the building, that encourage cooperation between the parties to improve operational efficiencies in the building and to share available data.
- 11.2 Consideration should be given to including in the lease other 'green' provisions, see examples in the Better Building Partnership's *Green Lease Toolkit* (www.betterbuildingspartnership.co.uk/green-lease-toolkit).

12 Energy Performance Certificates (EPCs)

- 12.1 Leases should state which party is responsible for obtaining any EPC that may be needed during the lease term.
- 12.2 Landlords should be required to act reasonably if they reserve the right to choose which EPC assessor the tenant may use.

13 Landlord's title

- 13.1 Where the landlord's title (freehold or leasehold) is subject to enforceable covenants that prevent the landlord from complying with any provision of this Code, the landlord should act in conformity with those covenants but if challenged should explain the position to the tenant.
- 13.2 The landlord should be responsible for obtaining any consent for the grant of the lease required from a superior landlord, mortgagee or other third party.

Part 4 Appendices

Appendix A Template heads of terms and checklist

This template should be read in conjunction with Part 1 of this document.

This template heads of terms mirrors the sections of the lease code. These items are also listed in the checklist that follows the template heads of terms, which can be used as an alternative. The checklist is likely to be a useful tool when a landlord or their agent wishes to use their own form of heads of terms document, and the checklist should then be used to ensure that at the very least the minimum information required by the lease code is being captured.

The items marked with an asterisk (*) must be included within the heads of terms in order to comply with paragraph 1.3 of the lease code.

1.0 Initial information

1.1 Type of lease

Head lease sublease

1.2 Landlord

[.....] (Registered no. [.....])

Registered office:

Correspondence address:

Contact name:

Email:

Telephone:

Mobile:

1.3 Tenant

[.....] (Registered no. [.....])

Registered office:

Correspondence address:

Contact name:

Email:

Telephone:

Mobile:

2.0 Premises and rights

2.1 Description of the premises *

Detailed description, measured area and Land Registry compliant plan attached if available:

.....

2.2 Rights *

Detailed description of any special rights being granted:

.....

3.0 Length of term, renewal rights and break rights

3.1 Lease length and start date *

..... years and months commencing on

3.2 Landlord and Tenant 1954 Act protection *

Lease to benefit from the protection of the 1954 Act: Yes No

3.3 Options to renew

(a) Any option to renew: Yes No

(b) Notice period for exercising months

(c) New term to be years

(d) New rent to be

(e) Details of any other terms

3.4 Break rights *

(a) Any break rights: Yes No

(b) Notice period for exercising months

(c) Single break date on or at any time after

(d) Break operable by: landlord tenant both

(e) Details of any break clause payments or pre-conditions

4.0 Rent deposits and guarantees

4.1 Rent deposits *

- (a) Rent deposit required: Yes No
- (b) If yes, amount of rent deposit: £
- (c) Period of time the deposit will be held
- (d) Deposit held as security for: rent all obligations
- (e) Details of circumstances in which the deposit will be returned

4.2 Guarantors *

- (a) Guarantor required: Yes No
- (b) If yes, identity of guarantor
- (c) Guarantor providing security for: rent or all obligations
- (d) Details of circumstances in which the guarantor will be released

5.0 RENT AND RENT REVIEW

5.1 Rent *

- (a) £ per annum exclusive of VAT
- (b) Payment dates: monthly quarterly

5.2 VAT *

Will VAT be charged on the rent and other lease payments: Yes No

5.3 Rent free period (and other incentives) *

- (a) Rent free period: Yes No
- (b) If yes, length of rent-free period months
- (c) Details of any other incentives

5.4 Rent reviews *

- (a) The lease includes rent review provisions: Yes No
- (b) Basis of review
- (c) Reviews every years

6.0 Assigning, subletting, charging and sharing

6.1 Requirements before alienation can take place *

	Prohibited	Consent not to be unreasonably withheld	Permitted without consent
Assignment of whole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sublease whole	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sublease part	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sub-sublease	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Concession	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Group sharing	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Charging	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

7.0 Services and service charge

7.1 Is a service charge payable? *

(a) Service charge payable: Yes No

(b) Proportion % and estimate or actual annual charge £

(c) Any special or unusual provisions

8.0 Repairs

8.1 Repairing responsibilities *

(a) Tenant repairs: whole building interior only or interior, windows and doors

(b) Landlord repairs structure and common parts

8.2 Schedule of condition

(a) Schedule of condition to be completed: Yes No

(b) Responsibility for cost of preparing this: landlord tenant

9.0 Use and alterations

9.1 Permitted use *

(a) Permitted use:

(b) Limitations on changing use:

9.2 Landlord's initial works *

(a) Landlord to undertake works: Yes No

(b) If yes, brief description of works

(c) Long stop date by which works must be done

(d) Specification agreed: Yes No

(e) If no, to be provided by: landlord tenant

9.3 Tenant's initial works *

(a) Tenant to undertake works: Yes No

(b) If yes, brief description of works

(c) Long stop date by which works must be done

(d) Specification agreed: Yes No

(e) If no, to be provided by: landlord tenant

9.4 Alterations *

	Prohibited	Consent not to be unreasonably withheld	Permitted without consent
External structural	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
External non-structural	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internal structural	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Internal non-structural	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

10.0 Insurance

10.1 Liability for insurance costs

(a) Landlord to insure the property: Yes No

(b) Premium to be recovered from tenant: Yes No

(b) Terrorism to be an insured risk: Yes No

(c) Mutual break clause for insured damage: Yes No

(d) Mutual break clause for uninsured damage: Yes No

11.0 Other issues

11.1 Rates and utilities

(a) Responsibility for paying business rates: landlord tenant

11.2 Legal costs

Each party to pay own including costs of approval for tenant's fit-out

11.3 Conditions

Completion of the lease conditional on:

(a) Board approvals

(b) Planning or other local authority consents

(c) References

(d) Superior landlord's consent

(e) Survey/schedule of condition

(f) Other please specify:

12.0 Contact details

12.1 Landlord's solicitor

[.....]

Address:

Contact name:

email:

Telephone:

Mobile:

12.2 Tenant's solicitor

[.....]

Address:

Contact name:

email:

Telephone:

Mobile:

12.3 Landlord's agent

[.....

Address:

Contact name:

email:

Telephone:

Mobile:

12.4 Tenant's agent

[.....

Address:

Contact name:

email:

Telephone:

Mobile:

No contract

These heads of terms are subject to contract.

Minimum heads of terms checklist

As a minimum, written heads of terms must be produced that answer the following questions:

- What is the extent of the premises?
- Are any special rights being granted under the lease?
- What is the duration of the lease?
- When does the lease start?
- Will the lease be protected by the 1954 Act?
- Are there any break rights?
- Will a rent deposit be required?
- Will a guarantor be required?
- How much is the annual rent?
- On which dates will the rent be payable?
- Will VAT be charged on the rent and other lease payments?
- Is there a rent-free period or any other incentives?
- What are the rent review dates and the basis for the reviews?
- Can the tenant assign, sublet, charge or share occupation?
- Will a service charge be payable?
- Who has responsibility for repairing the premises?
- What is the permitted use of the premises?
- What rights does the tenant have to make alterations to the premises?
- What initial works will the landlord be completing and when?
- What initial works will the tenant be completing and when?
- Who will be responsible for the cost of insuring the premises?

Appendix B Code for leasing business premises – supplemental guide

1 Introduction

Before signing a lease, all parties (landlords, tenants and any guarantors) should work with professional advisors to ensure the lease matches their requirements and that they understand all the terms and conditions. Parties should consult property professionals even before agreeing heads of terms, since the early stage of negotiations is often the best time to resolve important issues.

A lease is a **binding contract** in law that sets out the terms and conditions of the tenancy between the parties and it defines their rights and obligations.

This guide, which is supplemental to the *Code for leasing business premises in England and Wales 2019* (the **lease code**), describes some of the main factors that the parties will need to consider when agreeing a lease. Many of the topics included can be highly complex, and this guide will provide an outline of the key points. It is not a substitute for the depth of knowledge and experience that property professionals – surveyors and property lawyers, working in some instances with an accountant – can provide.

RICS members are required to comply with paragraphs 1.1 to 1.4 of the lease code, including preparing heads of terms that comply with those paragraphs.

The lease code provides a framework within which prospective tenants can reasonably expect landlords to operate, but not all landlords comply with the lease code. A prospective tenant should not assume that a landlord complies with the lease code unless the landlord confirms that it is doing so, and in any event the lease code does not provide all the protection needed when leasing premises, so obtaining professional advice is essential.

Sometimes the landlord will itself be a tenant of the property and this may restrict the flexibility of terms the landlord can offer. Landlords should always state in advance if this is so and the tenant's property lawyer should check the terms of the landlord's lease.

If the tenant intends to buy an existing lease (take an assignment) from the current tenant, parts of this guide may help the tenant to interpret some of the terms of the existing lease but there may be many other issues covered in the lease that the tenant and its advisors should consider.

In this guide, the following terms have been used:

Landlord: The person or company who will grant the lease and who may be a freeholder or leaseholder.

Tenant: The person or company who will rent the property from the landlord.

Guarantor: A person or company who will guarantee to the landlord the obligations of the tenant.

Heads of terms: A summary of the agreement between the parties, used to instruct lawyers to produce the actual lease. Both the heads of terms and the lease should comply with the recommendations of the Lease Code but once the lease has been signed the heads of terms will fall away.

The structure of this guide is intended largely to mirror that of the lease code. It is organised into similar sections and within each section there are key issues that the parties should consider.

2 Lease negotiations

Parties should not assume that the initial or asking terms put forward by the other party are non-negotiable. In most cases parties are willing to discuss alternative terms. Bear in mind that a variation of one term may justify changing another. For example, a change in the duration of the term or the balance of the parties' repairing obligations may change the level of the market rent.

The lease code provides a checklist showing the most important pieces of information that should, as a minimum, be included in the heads of terms (paragraph 1.3), along with a template that should ideally be used to make the work of the solicitors more straightforward when drafting the actual lease (appendix A).

Each party needs certainty as to the identity of the other party or parties, especially where a party is a member of a group of companies that will nominate a particular group company to enter into the transaction.

3 Occupancy costs

The tenant should find out details of all the costs that will be incurred in occupying the property and how long the tenant will be liable for these. Landlords should provide as much information as possible about these outgoings including how shared costs are apportioned between tenants. Where costs will fluctuate, such as service charges (see 8 below) and insurance costs that will vary over the lifetime of the lease, the landlord should make this clear. If significant increases in any costs are expected, this should be disclosed to the tenant so that the tenant can understand the risks and can assess whether it can afford all the costs of leasing the property.

Tenants can be liable to the landlord throughout the length of the lease for rent for paying other outgoings and for repair costs. This liability will only end if the tenant passes (assigns) the lease on to someone else with the landlord's consent and even then the tenant may have to act as a guarantor to the landlord and meet those liabilities if the person to whom the lease is assigned defaults.

Table 1 is a checklist of the most likely occupancy costs.

Cost item	Who pays?	What is the occupier's cost each year?	If this cost is not fixed, what does it depend on?	How much?	How often?
Rent					
VAT					
Rates					
Service charges					
Insurance					
Utilities					
Repairs/dilapidations					
Fitting out/alterations					
Any additional costs					
Total each year					

Total lease cost					
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Table 1: Checklist of most likely occupancy costs.

The tenant may have to pay stamp duty land tax on the lease, depending on the amount of rent and the duration of the lease term. Any such payment will be due within 14 days of completing the lease or, if earlier, the tenant going into occupation, whether to start fit-out works or for trading. An online calculator is available at www.gov.uk/stamp-duty-land-tax but the tax calculation can be complicated and ideally advice from a solicitor should be sought. Different considerations apply if and when the lease is renewed.

4 The premises

The parties should agree exactly what the property is that is being let and for which the tenant will take responsibility. The offer or heads of terms should clearly describe the extent of the property, preferably with the boundaries clearly marked on a plan and the floor area noted. For a term of over seven years a scale plan meeting the Land Registry's requirements will be needed, as such leases must be registered at the Land Registry.

Landlords should be responsible for supplying the required plans and if the building is complicated it may be advisable for a solicitor to ask the Land Registry to approve the plans before they are used on a letting.

Tenants should ideally commission a surveyor to check the accuracy of lease plans on site and verify any floor area measurements. Where the landlord commissions an independent surveyor or reputable measurement specialist to measure the property, that person may be willing to give the tenant a 'duty of care' letter so that the tenant can rely on that person's measurements.

Leases should also contain detailed provisions for the following where they apply, and tenants should be made aware of them at an early stage:

- a. all means of access and escape
- b. any access or areas the tenant must share with other occupiers
- c. limitation of hours of use and
- d. restrictions in the type of use.

Landlords should also disclose to tenants:

- e. legal or planning limitations or
- f. obligations that come with the property.

Lettings of entire buildings usually make the tenant responsible for the whole of the property but where only part of a building is being let (such as a shop unit or an office suite) the lease should make it clear which elements of the structure and fabric of the building are being included in the lease and which are being retained by the landlord. Usually the tenant will have direct responsibility for repairing the parts included in the lease and usually the landlord will agree to repair the parts retained by the landlord. The allocation of repairing responsibilities will vary between different lettings. Items that particularly need clarity in their allocation between the landlord and the tenant on a letting of part of a building include

- roofs and other structural parts
- lifts
- dividing walls
- windows and
- shopfronts.

The landlord may want the costs of repairing and maintaining its retained parts of a building to be borne between the tenants in the building through cost contributions, usually called 'service charges' or 'maintenance charges'. Further advice can be found in section 8.

5 Length of term, break clauses and renewal rights

The parties must agree how long the duration (term) of the lease will be, whether any break options will exist for either party and what right to continue to occupy the property the tenant will have at the end of the lease.

Landlords traditionally preferred to grant leases of fairly long terms, often from 15 to 25 years. While such leases are still being granted in appropriate situations (especially in the case of modern large or high value premises, those with high fit-out costs and those specially designed for the particular tenants), in recent years there has been a trend towards increased mobility of tenants, with many leases being granted for shorter terms.

A landlord owning a modern high value building will often want to grant leases in the building for quite long terms in order to secure a flow of rental income, except where the landlord's business model is to offer mobility to tenants as in the case of serviced offices or start-up accommodation. Where a building is of lower grade or is being let pending redevelopment, the landlord may actually want to grant, or may be content to accept, shorter term lettings.

The tenant's requirements for the length of term will depend on the tenant's business plans. A new start-up venture may not be certain of its future and may not want to commit to the liabilities of renting premises for more than a limited time, with the ability to walk away at a future date if the business fails to thrive or to relocate if it outgrows the premises. Tenants running established businesses may be willing to commit for longer periods and may need a longer term in order to justify the cost of fitting out or improving the premises.

Where either or both parties want the ability to end the lease earlier than the maximum term that they have in mind, an alternative to the grant of a short term might be the grant of a longer term lease with a provision (commonly called a break clause) giving the right for one party, or either party, to end the lease sooner by giving a notice either at any time or on or between specified dates. An advantage of this approach over a short term lease is that it avoids having to negotiate the renewal that would be needed if the tenant wanted to stay on after the short term expires, but a disadvantage for the tenant could be that the longer term attracts a larger amount of stamp duty land tax, which is not refundable if the lease is ended early under the break clause. Legal advice should be obtained in order to weigh up the advantages and disadvantages.

A tenant's right to break should allow the tenant to walk away from the lease at a given time after informing the landlord in writing. This should be conditional only on the tenant having paid the main rent due under the lease and giving up occupation of the property, leaving behind no continuing subleases or occupation by others. The tenant may have other liabilities under the lease to fulfil, such as paying service charges or handing the property back in good condition, but failure to comply with these should not be used by landlords to invalidate the right to break.

The tenant should ensure that the lease requires the landlord to repay any rent or other payments the tenant may have paid covering a period beyond the date at which the break takes effect. Such service charge refunds may be deferred until the end of the accounting period in which the break occurs. Many leases do not include the requirement for a refund.

Where a lease is being granted by a landlord who is himself a leaseholder, both parties need to check whether the landlord's lease contains any break clauses and to take legal advice on the implications for each party. The law on these issues is complex.

In many cases the parties' desires for the length of term may coincide, but where they do not, each needs to consider its requirements carefully and may wish to take advice from property professionals as to what they can reasonably expect to be able to negotiate in the then current market conditions.

The parties should discuss whether the tenant is to be given security of tenure under the *Landlord and Tenant Act 1954*, so that at the end of the lease term the tenant, if still using the property to carry on business, will be entitled to claim a new lease, on terms that the parties agree or that a court will decide if they cannot. There are only limited grounds on which landlords can oppose a tenant's claim for renewal, such as where the landlord intends to redevelop the property or offers the tenant suitable alternative accommodation or where the tenant has been persistently late in paying rent. If the landlord opposes a renewal, the tenant can ask the court

to rule on the validity of the landlord's ground or grounds of opposition. A landlord who succeeds in opposing a renewal may in some cases have to pay the tenant an amount of compensation calculated in accordance with the 1954 Act.

Landlords sometimes insist that the lease excludes security of tenure under the 1954 Act. This may be particularly justified where the lease is to be for a short term, such as in the case of serviced offices or start-up accommodations or where short leases are being granted on concessionary terms imposing weaker obligations on the tenant than would be expected if the tenant would remain in the property longer and the tenant ought not to have the right to renew and continue those concessionary terms. Short leases are also frequently granted for the temporary occupation of premises pending redevelopment or improvement where the landlord, having made its intentions clear to the tenant, does not want to give the tenant the right under the 1954 Act to challenge the landlord's opposition to renewal and delay the landlord obtaining possession while waiting for a court hearing. Whatever the landlord's explanation, the tenant should take professional advice before agreeing to give up the security of tenure that the 1954 Act normally provides.

6 Tenant's identity, rent deposits and guarantees

Individuals considering taking a lease should take care in deciding whether to take the lease in their personal names or alternatively in the name of a limited company or other legal entity such as a limited liability partnership (LLP) and should obtain advice from an accountant as well as legal advice.

Landlords should check the financial ability of the proposed tenant to pay the rent and meet the other obligations under the lease. The landlord should specify any requirements for personal or company guarantees, rent deposits or other forms of security for the tenant's obligations. These arrangements should specify how much is to be deposited or whether any guarantee is unlimited or capped in amount, and when the deposit or other security will be returned or the guarantor released.

If the landlord demands a deposit, the tenant should take professional advice to understand the conditions under which it is held and the basis on which it will be returned. The tenant should remember that it is the tenant's money that the landlord will be holding as a protection against any failure by the tenant to comply with its obligations under the lease.

Interest on the deposit should normally accrue to the tenant and be at a normal rate for money on deposit. Deposits should be held in separate bank accounts not used for the landlord's own monies and the bank accounts should be designated as tenants' deposits to protect the funds in case the landlord becomes insolvent.

The tenant should normally be refunded any deposit when the tenant no longer has an interest in the property (such as when the lease ends or when the tenant assigns the lease with the landlord's consent) and sometimes landlord will agree to refund a deposit earlier if the tenant satisfies agreed conditions. The conditions will normally relate to financial parameters such as the tenant achieving a specified level of profitability over an agreed period.

All these agreed arrangements should be recorded in a detailed rent deposit deed.

Where an individual or company is required to give the landlord a guarantee for the rent and other obligations under the lease, the parties need to agree whether the guarantee will be on an unlimited amount or capped at a specified sum. Guarantees usually make the guarantor liable not only for rent but also for the tenant's other obligations, including service charge repayments and repairs. The deed of guarantee may contain provisions making the guarantor responsible even after the tenant has assigned the lease. This may be commercially justified in the circumstances but guarantors should obtain legal advice on the provisions of the guarantee. Guarantors should understand when and how the landlord may call on the guarantee and what the guarantee would cover. In some cases, landlords may be willing to agree that the guarantor will be released from these obligations either at a pre-agreed point in time, or when a certain condition has been met. The parties should be clear on what is agreed in this respect.

7 Rent and rent review

The parties must agree what the rent for the property will be, and when and how the rent can change. However, the rent cannot be viewed in isolation without considering the other terms of lease. The tenant should, for example, expect to pay more if the landlord takes responsibility for repairs than the tenant would do if the tenant were responsible for them. The lease will state the payment terms for the rent. This is often

quarterly in advance although other alternatives such as monthly payments could be considered. Leases normally impose a charge of interest on late payment of rent.

The amount of the starting rent must be agreed before the lease is signed and can be a sum fixed in the negotiations or be calculable by reference to an agreed formula, such as a set amount of rent per square foot that will be multiplied by the floor area of the property once it has been measured. In the latter cases it may be appropriate to engage an independent specialist to carry out the measurement. The method of floor measurement must be agreed in advance, in accordance with the RICS professional statement *RICS property measurement* (2nd edition). Different measurement processes suit different types of property and the parties should obtain professional advice on this.

The landlord may require the rent to be reviewed at set intervals. The rules by which the rent can be changed should be clear and understandable. The lease should not be written in such a way that the landlord can simply impose a rental increase and a formula or method to be used as the basis of the rent review must be agreed. Traditionally the most usual method has been to the open market rental value that the property has at the review date. That is still a common method, particularly under leases for terms over seven years. One alternative is indexation, where the rent increases in line with increases in a published index such as the Retail Prices Index (RPI) or Consumer Prices Index (CPI).

Reviews under leases with terms of ten years or more are usually at intervals of five years. Reviews under shorter term leases may be more frequent, such as every three years or even annually. Open market rent reviews can be costly to operate since the parties will normally need to engage surveyors to advise on and negotiate the amount of new rent, so that particular type of review should not apply at frequent intervals. Indexed rents, or even fixed increases agreed before the lease is signed, are more appropriate for short term leases and do not normally involve incurring significant costs at each review.

Traditionally, commercial leases have imposed rent review provisions that are 'upwards only', which allow the rent to be increased but never decreased. If this applies the rent will not reduce even if there is a fall in the market rent or inflation index by the review date, and it is important for tenants to be aware that this can result in the rent continuing at a higher level than a new letting would achieve.

If there is an open market rent review provision, the formula for assessing the rent should require the disregarding of any added value from improvements the tenant makes (other than under an explicit obligation) or any value arising from the tenant's business. The tenant should also make sure that, if the parties cannot agree on what the open market rent is, either party refer this to an independent expert or arbitrator to settle.

The way in which a rent review clause operates can be complicated and may have the potential to both create disputes and significantly increase the amount that the tenant must pay. For these reasons, it is important that the tenant understands what is being proposed, and it is recommended that the tenant seeks professional advice on the likely implications of this.

Sometimes retail or leisure premises are let on rents that are linked to the tenant's turnover at the property. This has been most prevalent in shopping centres, but is becoming less common in view of the surge in online retail purchasing. Where a turnover rent is being considered, the detailed formula for calculating the turnover and the rent needs careful consideration.

Sometimes a tenant can negotiate a rent-free period at the beginning of the lease. This is often intended to cover the period during which the tenant is fitting-out the property, so the tenant is not paying rent before it is able to trade. A surveyor advising the tenant on the lease negotiations should be able to advise about obtaining a rent-free period.

The tenant needs to understand whether VAT will be charged on the rent and other lease payments. Many commercial properties are 'opted for VAT' by the landlord, with the result that the tenant must pay VAT in addition to the rents. A change of landlord during the term of the lease may result in a change in the VAT position. The tenant may need to take professional advice, perhaps from the tenant's accountant, on minimising the financial impact of this VAT.

8 Assignment, subletting, charging and sharing

The parties must agree what rights the tenant will have to assign the lease, to sublet or to share the property with another party.

There are two main possibilities if the tenant wants to vacate the premises before the lease expires:

- a. 'assign' (transfer) the lease to another party who will take over occupation of the property and responsibility for the lease obligations including paying the rent to the landlord; or
- b. continue to hold the lease and pay the rent to the landlord but sublet the space to another party (a subtenant) from whom the tenant will in turn collect rent.

Leases may limit or impose conditions on the tenant's ability to follow either course and the tenant need to understand these limitations fully before signing the lease. The clauses in the lease relating to assignment and subletting can have an important effect on the flexibility that the tenant may have in responding to changes in its business. The tenant should instruct a surveyor or solicitor to advise on what they are being asked to agree and its possible implications.

If the lease allows subletting, it may limit the amount of space that the tenant can sublet or sometimes will allow the tenant to sublet only the whole of the premises and not just part. Sublettings of part will normally be inappropriate if the size and configuration of the premises make them unsuited for use as two or more separate units. The lease may also lay down a minimum rent for the tenant to charge on a subletting. Tenants should avoid being prohibited from subletting at a rent below the level of rent that they are paying, in case the market rent has fallen by the time they wish to sublet.

It is usual for landlords to insist that subleases of only part of the premises, if permitted, must be granted outside the protection of the *Landlord and Tenant Act 1954* and sometimes they impose that requirement even in the case of a sublease of the whole of the premises. Leases often require subleases to be on similar terms to the lease, although the lease code acknowledges that it may be appropriate in some cases for subleases that are outside the 1954 Act's protection to be allowed to be granted on different terms.

Where the landlord's written consent is required before the tenant can sublet, the lease should provide that the consent of the landlord, and any superior landlord, is not to be unreasonably withheld so that they cannot refuse consent without good reason.

It is common for landlords to require a tenant who assigns a lease to guarantee to the landlord the performance of the lease obligations by the party to whom it is assigned. The assigning tenant's liability under this guarantee (called an authorised guarantee agreement (AGA)) will continue until the end of the lease or until that assignee assigns the lease, with any necessary consent from the landlord, to another party. Tenants should try to negotiate a provision under which they do not have to give an AGA if, for example, the new tenant is financially strong enough or pays an appropriate rent deposit or provides a suitable guarantor.

Landlords are allowed to provide in leases a list of conditions that must be satisfied before the tenant can assign the lease. Tenants should try to avoid onerous conditions, such as a requirement that the tenant must have complied with every one of its lease obligations. From the tenant's viewpoint the ideal position is that the only precondition for assignment should be obtaining the landlord's consent that the landlord may not unreasonably withhold or delay, but landlords often require further provisions. The lease code states that it may be acceptable for leases to describe certain circumstances in which the landlord can refuse to grant consent, such as if the tenant has failed to make payments that are required by the lease. Tenants should try to make sure that if these circumstances are described they are not overly onerous, as it could potentially mean that the landlord could prevent the tenant from assigning the lease or subletting.

Leases often also restrict the ability of the tenant to charge (mortgage) the lease so as to use it as security against a loan. Short and medium term leases are often not considered suitable to be the main security for a loan but some lenders to a business may require security over all the assets of the business including leases of the business's premises. Tenants should ensure that their leases allow them to charge the leases to bona fide lenders.

9 Service charges

Service charges may be payable where the property being leased is only part of the landlord's building or estate. Landlords have traditionally liked to grant such leases on terms that made their tenants liable to repair the parts let to them and also liable to contribute (through cost contributions commonly called service charges) towards all the costs incurred by the landlord of repairing and insuring the structure and common parts of the building or the communal areas of the estate. These leases are often called 'full repairing and insuring' (FRI) leases..

Such full service charges are still commonly payable, although in some cases landlords letting premises for shorter terms or in poor or outmoded condition are willing to quote rents that are inclusive of service costs or to restrict the amount or scope of the service charge.

Where the lease is to reserve a service charge, the landlord should indicate the types of services and works that it will cover, how the tenant's contribution will be calculated, and the estimated initial yearly amount expected to be charged.

Often the service charge will be a proportion of the cost of maintaining and decorating the exterior and common parts of the building, and matters such as structural repairs and the repair or renewal of communal boilers, lifts and other plant and equipment serving the building. If major items of equipment need replacement, the tenant's contribution could be a large sum and tenants should get a chartered surveyor to look into the implications of the proposed service charge liability and the likelihood of high service charges becoming payable.

Sometimes (especially, but not limited to, cases of short term lettings) the tenant can negotiate a maximum (cap) on the amount chargeable for all or some of the service costs. Some landlords are willing to cap just those service costs that are largely within their control but may refuse to cap items such as utility charges payable to energy suppliers. Where a cap is agreed, the landlord may fix it for the first year and require it to be linked after that to an annual inflation index such as the RPI or CPI (mentioned in section 6 above).

Tenants should ask landlords whether they comply with the RICS professional statement *Service charges in commercial property* (1st edition). That professional statement sets out best practice on a number of service charge issues such as regular transparent accounting and ensuring that the landlord has to bear a fair share of the cost attributable to any unlet space in the estate or building.

There are also other occupational costs that tenants need to consider before a lease is entered into; the most significant of these is likely to be business rates. Businesses are liable to pay the 'uniform business rate' (UBR), and it is usually the tenant who will be responsible. Occasionally, however, the landlord will pay the UBR and pass on the cost to the tenant, perhaps in the service charge. The lease should make clear where the responsibility lies and the prospective tenant should make enquiries with the local authority responsible for administering the UBR as to the likely charge for the property.

10 Repairs

Leases of whole buildings have traditionally made the tenant responsible for repairing and maintaining the entire building, while leases of just part of a building have usually made the tenant directly responsible for repairing the internal non-structural parts of the area let to the tenant (and sometimes windows and shopfronts) with the tenant contributing to communal repairs through a service charge (see section 8 above).

In addition to repairs, tenants will usually be made responsible for the regular redecoration of the premises let by the lease. Where the lease comprises part of a building, such as an office suite or shop unit within a building, the tenant will normally be responsible for redecorating the interior of the premises and in appropriate cases also certain external parts such as windows and shop fronts.

Unless the tenant and the landlord specifically agree otherwise, the fact that the premises were in a poor condition when the tenant took them on is largely irrelevant – the tenant may still have to put them into good condition. Under common law, a requirement in a lease to 'repair' a property may by legal implication include an obligation to undertake any repairs necessary at the time the tenant signs the lease (sometimes called a 'put and keep' obligation), so tenants should obtain professional advice from surveyors and solicitors on the proposed repairing obligations under the lease, and surveyors should be commissioned to check the condition of the property.

When leases are being granted for short terms, tenants may be able to negotiate limits to their repairing obligations, especially where the premises are not in the best of repair and condition. A common limitation is that the tenant need not repair existing disrepair, sometimes expressed as not having to improve the condition of the property or hand it back in any better condition than that in which it was let. In this case, after the tenant has had the premises surveyed, the parties should record the condition of the property in a 'schedule of condition' to be referred to in the lease and attached to it or kept with it. This schedule may consist of a verbal description of the state of the property or a set of photographs, or both. It is in the interests of both landlords and tenants to have this level of clarity as to the extent of the tenant's repairing obligations.

A formal photographic schedule of condition can be prepared by a firm of surveyors, although some tenants may choose to undertake this task themselves, in which case they should take plenty of photographs of all parts of the property on or before taking the lease, have the photographs dated and agreed by the landlord and keep a set with the lease documents.

It is recommended that any required schedule of condition should be prepared at as early a stage as possible during the lease negotiations to allow ample opportunity for the parties to agree it as being an accurate record.

Tenants taking over an existing lease (taking an assignment) should bear in mind that the condition of the property when the tenant takes it over may be poorer than it was at the beginning of the lease. The tenant may be required to put the property back into its original condition. Again, in such cases tenants should seek professional advice on the possible repairs that the tenant may have to carry out.

If the tenant is taking over premises that have been previously occupied, the tenant should also find out which fixtures and fittings will be removed by the previous occupier.

Where a property is newly or recently built or refurbished, the landlord may have warranties or third party rights allowing them to enforce remedies against building contractors or consultants if defects are found in the construction or installation works. In such cases landlords should inform tenants about any relevant warranties or rights, the tenant should make enquiries regarding their presence and should take legal advice about obtaining the benefit of them. In many cases warranties may not be available to be given directly to all tenants and in such cases tenants should explore whether the landlord will agree to enforce its own warranties or rights for the tenants' benefit.

11 Use and alterations

Leases usually restrict the type of business that can be carried on at the property. The degree of control that a landlord will want to exercise should depend upon the circumstances. For example, a landlord owning a shopping centre or parade of shops will often have a policy of achieving a certain mix of businesses and brands and will want tighter control than a landlord who owns a single retail unit. A landlord owning a property having a valuable established use under planning law may not want to allow the tenant to change the use so that the valuable planning rights are lost. In the case of a letting of an office suite in a high-class office building, the landlord may be happy to allow most types of office use but may not want to allow tenants to conduct office businesses that attract a flow of public off the street, such as an employment agency.

Tenants should ensure that the use to be permitted by the lease will cover not only the tenant's existing business but also any expected diversification and an appropriate business that a future assignee or subtenant may want to conduct in the property. That may be achieved by ensuring that the permitted use is by reference to a type of use rather than a specific trade or business.

Sometimes a lease will require the tenant's use to fall within a specified category of use under planning law. This is usually worded by reference to the *Town and Country Planning Act (Use Classes) Order 1987*, and the tenant should obtain professional advice to check that the definition of that use class matches the tenant's required range of uses.

Landlords should disclose to the tenant any particular restrictions on use imposed by covenants on the landlord's title or by specific planning permissions or planning agreements and state how the property has been used in the recent past. The lease will usually put the responsibility on the tenant to check that the proposed use complies with covenants and planning law, so tenants should take advice from their surveyors and solicitors on these matters. The use of the property will inevitably be subject to some restrictions imposed generally under planning legislation; for example, the tenant will not normally be able to use a high street shop as an office. Solicitors' local searches will usually reveal any local council directions that further restrict changes of use or development.

Tenants should also check that there are no particular planning or regulatory restrictions on the property that may affect its ability to run the business, such as a limitation on working hours or noise emissions. If the tenant needs to obtain planning permission for its proposed use, it should allow at least eight to ten weeks (sometimes longer) for the application to be processed.

Altering services such as electricity and gas can be expensive, so the tenant should always ensure that the property has adequate mains services and that they are in good order, as well as checking that the premises

comply with health and safety requirements, including fire regulations and access requirements under disability legislation.

Leases normally require tenants to comply with all legislation and at their own cost. Tenants should keep a watch for the issue of new laws and regulations that could affect their occupation and business and take professional advice on the implications. The provision to comply with all legislation should not be taken lightly and the tenant should ensure that the property complies with existing regulations (for example, with the Equality Act, Town and Country Planning Acts, Health and Safety Acts or Environmental Protection Acts) when the tenant takes the lease. A chartered surveyor and other professional advisors can assist the tenant with this.

Landlords often impose restrictions on tenant's signage and on alterations to the property. Where the landlord wants a right to approve the size and appearance of signage, tenants should ask for a provision that the landlord's approval will not be unreasonably withheld or delayed. In the case of alterations, landlords should be able to prevent the property being devalued or endangered by works carried out by the tenant but should not require such a degree of control that they can prevent the tenant making reasonable alterations that do not carry those risks. Where just part of a building is being let, it is common to prohibit the tenant from making structural and external alterations (apart from altering shop fronts, if appropriate) but to allow internal non-structural alterations with some degree of control by the landlord. Some landlords allow tenants freedom to make internal non-structural alterations and just require the tenant to notify the landlord of the details, while other landlords require the tenant to obtain the landlord's approval first, which will not be unreasonably withheld. In some cases landlords give tenants freedom to install and remove lightweight partitions. The degree of control exercised by the landlord should be appropriate to the property; the tenant of a whole industrial building may be given greater freedom to carry out alterations than the tenant of a unit in a shopping centre. The landlord may want more control over tenant's alterations if the building is of particularly high value or has a special character, such as a listed building subject to strict planning controls.

If particular alterations will be essential to enable the tenant to carry on business at the property, the tenant should make sure, before entering into the lease, that it will be permitted to carry them out.

12 Insurance and damage

The parties should agree who is to be responsible for arranging the insurance of the property and who is to be liable for the costs of the insurance.

Where the premises being let are only part of a building, the landlord will invariably accept the obligation of insuring the building (but not tenants' contents or their business equipment) and will normally require the tenants to contribute their appropriate proportions of the insurance premiums and of any insurance valuation costs.

If an entire building is being let on one lease, usually the landlord will still want to arrange the insurance and will expect the tenant to pay the whole of the insurance premiums and valuation costs. Very occasionally a landlord might agree that the tenant of an entire building can be responsible for arranging the insurance, but this usually happens only where the tenant is a very large reputable company that can be relied upon to carry appropriate insurance cover or be able to meet the rebuilding cost out of its own funds.

Responsibility for insurance should be made clear in the heads of terms. Most tenants will also want to arrange their own insurance against disruption to their business and loss of profits should the property become unusable following a fire or other peril. A buildings insurance policy taken out by the landlord will not normally cover the tenants' business losses.

Sometimes landlords receive commission payments for arranging buildings insurance. If this is the case, landlords should be willing to disclose this information.

Tenants should request details of the landlord's insurance policy before signing the lease and satisfy themselves that the sum insured is sufficient to rebuild the building, the insurance is on terms giving value for money and that the insurance company is reputable. Surveyors can advise tenants on such matters. The tenant might also ask the landlord whether there is any intention to change the insurance.

The lease should provide for proceeds from the landlord's insurance policy (other than the cover for loss of rent) to be used to repair or rebuild the property in the event of it being damaged by a risk covered by this insurance, unless the insurance is invalidated by anything the tenant does, in which case the tenant may be

liable for the reinstatement cost. Many modern insurance policies designed for let commercial buildings contain provisions stating that the insurance will not be invalidated by acts of tenants and that tenants cannot be sued (under a rule of law called 'subrogation') for causing fire or other damage, unless the tenant acted unlawfully or maliciously. Tenants should check whether the insurance policy contains those provisions.

The landlord's insurance policy should give cover for loss of rent from the building for a period sufficient to allow the building to be rebuilt if it is seriously damaged. That will usually be at least three years and may be five or six years for a large complex. The lease should then provide for the tenant's obligation to pay rent (and service charges if relevant) to be suspended or appropriately reduced where all or part of the tenant's premises cannot be used due to insured damage occurring to the premises or to some other part of the building. Most leases limit the period of rent suspension to the period for which loss of rent is insured, in which case the lease should give the tenant the right to terminate the lease if rent would resume being payable but the premises have not yet been restored. Some leases give landlords the choice to terminate the lease if the property is seriously damaged, rather than having to rebuild.

Tenants should inform the landlord and their own insurer if they intend to alter the property or change the way it is used, and about the storage of any hazardous substances or if the property is to be left vacant and unattended at any time. The landlord should be asked to ensure that such activities are covered by the buildings insurance policy and to inform the tenant of any changes in the insurance policy terms.

Leases sometimes contain provisions that apply if a peril that was previously insurable becomes incapable of being insured at sensible rates of premium. In the past this happened in relation to terrorist damage (which at the moment can normally be covered due to a government re-insurance scheme) and currently there are concerns about the continuing availability of insurance against flood damage for buildings in areas of high risk of flooding. Leases that address this issue usually provide that neither party has to repair uninsured damage of that type, that rent suspension or reduction will apply if it occurs, and that if the damage is substantial the landlord has a period of time – usually between six months and a year – to tell the tenant that the landlord has chosen to remedy the damage at the landlord's own cost, with the lease ending if the landlord decides not to do so. Not all leases contain provisions about uninsurable damage but it is sensible to have these provisions in leases of properties in high flood risk areas or areas such as major city centres where there may at some time be a real risk of terrorist activity.

13 Energy efficiency

The parties should make themselves aware of any legal requirements for ensuring or improving the energy efficiency or sustainability of the premises. Any specific obligations should be mentioned in the heads of terms and, as with all the terms of the lease, the tenant should be clear about, and take professional advice on, its responsibilities and possible liabilities.

Parties are encouraged to include in leases provisions relating to sustainability and the environment that encourage co-operation throughout the lease term between the landlord and the tenant to ensure that the property is used as sustainably as possible. These are sometimes called 'green clauses' and are usually aimed at facilitating the reaching of understandings between the parties from time to time on voluntary measures but do not compel either party to spend significant sums on environmental improvements or processes.

When tenants propose making alterations to the property, there is a requirement in many modern leases that the alterations must not negatively impact the sustainability rating of the building or reduce its energy efficiency. The inclusion of such a requirement is generally to be encouraged, but tenants need to be aware that this can restrict their ability to alter the property or make that more expensive.

Energy Performance Certificates (EPCs) are used to assess the energy efficiency of a building. These are required by law in the course of a sale or letting and are developing an increased level of importance due to the introduction of Minimum Energy Efficiency Standards in April 2018. These prohibit the letting of properties with EPC ratings lower than E.

A tenant who wishes to assign a lease or sublet the premises will normally have to produce an EPC to the assignee or subtenant. If no valid EPC exists at that time, the tenant may have to commission the preparation of one. Landlords sometimes want to take control of that process and insert provisions in their leases for the landlord to obtain the EPC at the tenant's cost or to nominate the energy efficiency assessor who will prepare the EPC for the tenant.

14 Ongoing matters and lease expiry

14.1 Relationship between the parties

The lease forms a legal contract between the landlord and the tenant. Any breach of their obligations can cause loss to the other party and have serious consequences, so each party should have a clear understanding of its right and obligations under the lease. The laws relating to landlord and tenant relationships are complex and many clauses in leases are affected by statutory provisions that are not even mentioned in the clauses, so landlords and tenants should seek professional advice when needing to check their obligations and rights.

14.2 Rent reviews

Each party should obtain professional advice in respect of rent reviews that arise under the lease (see section 6 above). In the case of reviews to open market rent levels, the expertise and market knowledge of chartered surveyors is vital in agreeing a rent, because they will know the level of rents that have been achieved for similar recent lettings in the area, can advise on what figure is reasonable and can conduct the negotiations.

14.3 Rent deposits

Landlords should ensure that they comply with their obligations under rent deposit deeds, particularly regarding how funds are held and interest credited. Tenants should ask landlords for annual statements to confirm that the money is still in the account and that all interest earned has been paid to the tenant or accrued within the account. If the landlord sells the building, the rent deposit should normally be paid over to the new landlord for holding on the same basis, and the rent deposit deed may contain provisions about this with which the old and new landlord must comply.

14.4 Breaches

Landlords and tenants should try to stay on good terms. Landlords should allow tenants enough opportunity to fix any problems they cause (without loss to the landlord) before any legal action is taken. If a tenant fails to remedy a breach of the lease, the landlord may have a range of remedies such as suing for arrears or damages, sending in enforcement agents to seize goods to the value of the breach, or even taking back the property ('forfeiture'). Tenants should note that they can still be sued for arrears of rent or for damage caused (including failing to carry out repairs) even if the landlord exercises the right of forfeiture. Landlords should note that if they forfeit the lease they resume responsibility for the property and its outgoings.

14.5 Forfeiture

Even though most leases say that the landlord can forfeit the lease (called 're-entry' in many leases) for arrears of rent or breach of covenant by the landlord simply re-entering the property, legislation requires landlords to give formal notice of a breach other than for rent arrears and to allow a reasonable time for the tenant to remedy the breach before the landlord can forfeit the lease by re-entry for that breach of covenant. Legislation gives the tenant the right to apply to the court to give the tenant more time to remedy breaches or to pay arrears (called 'relief from forfeiture'). Parties should each seek professional advice if circumstances arise where forfeiture may be contemplated.

14.6 Consent for alterations

A tenant who wishes to make alterations that need the landlord's consent (see section 10 above), must expect the landlord to insist on having the right to require the tenant to remove the alterations and restore the premises at the end of the lease. Unless the landlord thinks the alterations have added value to the building, the landlord will usually exercise that right and require the premises to be reinstated by the end of the term. This obligation, if it arises, may be costly for the tenant. In some cases, when obtaining consent to make alterations, tenants may be able to persuade landlords that particular alterations do not need removing at the end of the lease and if so that arrangement should be recorded in the landlord's consent (or 'licence') for the alterations. Landlords should respond to requests for consent to alterations within a reasonable time. If the landlord receives a proposal that includes a specification and plan, and the landlord fails to object to the proposal within three months, under the *Landlord and Tenant Act 1927* the landlord may lose the right to object to the alterations. Information on the process to be followed for the approval of alterations can be found in the Alterations Protocol (www.propertyprotocols.co.uk/the-alterations-protocol).

14.7 Consent for assignment or subletting

A tenant who wishes to obtain the landlord's consent for an assignment or subletting (see section 7 above) can find information on the process to be followed in the Alienation Protocol (www.propertyprotocols.co.uk/the-alienation-protocol).

14.8 Dilapidations

The term 'dilapidations' is normally used to cover defects and disrepair that the tenant will be required to deal with or pay to have remedied when the tenant vacates the premises at the end of the lease. The landlord may give the tenant a 'schedule of dilapidations' towards the end of the term, describing the items of disrepair and often specifying the work that the tenant needs to carry out. The tenant can challenge the correctness of the schedule of dilapidations and each party should consult a chartered surveyor experienced in dealing with dilapidations since legal and technical issues can arise. Landlords cannot generally make dilapidations claims earlier than three years before the end of the lease. If the tenant has a statutory or contractual right to a new lease, the landlord will normally not make a dilapidations claim unless the tenant declines to renew the lease. For full details on the timings to expect and the process that should be followed see the Dilapidations Protocol (<http://bit.ly/2hOICgv>).

14.9 Termination and renewal

Where the tenant has the protection of the *Landlord and Tenant Act 1954*, both parties should take professional advice not later than a year before the term is due to end, so that they understand their respective rights under the Act and the choices available to them. The 1954 Act is complex and a party receiving a notice under the Act from the other party should immediately take professional advice.