



Ministry of Housing,
Communities &
Local Government

Code of Practice for commercial property relationships during the COVID-19 pandemic



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Contents

Ministerial Foreword	4
Introduction	5
Principles	8
New arrangements	8
Service and insurance charges	10

Ministerial Foreword

Our commercial property sector is respected across the world and has attracted record international investment in recent years. It acts as a foundation for our economy, providing our businesses with space to operate even as their needs change. Likewise, commercial landlords rely on a vibrant and growing business community to occupy their properties.

The current pandemic, and the necessary restrictions government has introduced to constrain it, represent an unprecedented challenge for both tenants and landlords. While some of these restrictions are now being lifted, we know that the economic disruption of coronavirus will continue to be felt for some time.

Our objective for the commercial property sector during this period is simple: to provide the right support to those in the chain of commercial property payments, from customers, to tenant businesses, to commercial landlords and lenders, so that our economy can recover swiftly. To date, this has meant enacting a moratorium on forfeitures and associated measures for tenant businesses and making available over £330bn of guaranteed loans. This in addition to a significant package of interventions including business rate relief and the world-leading Coronavirus Job Retention Scheme.

Now, this code will support businesses to come together to negotiate affordable rental agreements. It builds upon the discussions already taking place by giving those tenants and landlords affected by the crisis the tools to come to a mutually beneficial agreement; ensuring that best practice becomes common practice.

Government has always been clear that tenants who are able to pay their rent in full should continue to do so, whilst those businesses that cannot pay in full should communicate with their landlord and pay what they can. Landlords should also provide support to businesses if they too are able to do so.

This Code of Practice sits alongside other measures, such as the moratorium on forfeiture of commercial leases and changes to Commercial Rent Arrears Recovery, statutory demands and winding up petitions, which provide tenant businesses the breathing space to work with landlords and other partners on a plan for a sustainable future. But these measures cannot last forever, which is why we have worked closely with leading business groups to publish this Code of Practice.

Our transition back to normality will take time and government will continue to monitor the economy to determine whether further intervention is necessary. This Code of Practice represents a good starting point on our road to economic recovery.

Minister for Regional Growth and Local Government

A handwritten signature in black ink, reading "Simon Clarke". The signature is written in a cursive style and is positioned above a horizontal line that extends to the right.

Introduction

1. This Code of Practice is published in response to the impacts of COVID-19 on landlords and tenants in the commercial property sector and covers the whole of the United Kingdom. It is intended to reinforce and promote good practice amongst landlord and tenant relationships as they deal with income shocks caused by the pandemic. This is a voluntary code and does not change the underlying legal relationship or lease contracts between landlord and tenant and any guarantor.
2. COVID-19 and the associated closure measures have had a significant impact on the economy, and on the income of the hospitality, leisure and retail industries in particular. Businesses will continue to feel the effects of this as the economy recovers from the shock of this pandemic. In this situation, it is in the interests of both landlords and tenants to do everything reasonable to enable otherwise viable businesses to continue operating through the period of recovery. This means that landlords and tenants must work together collaboratively and many will want to find temporary, and where possible sustainable, arrangements outside of the existing letter of their leases in order to create a shared recovery plan. The aim of this code is to facilitate those discussions by communicating best practice and presenting a unified approach.
3. The legal position is that tenants are liable for covenants and payment obligations under the lease, unless this is renegotiated by agreement with landlords. Tenants who are in a position to pay in full should do so. Tenants who are unable to pay in full should seek agreement with their landlord to pay what they can, taking into account the principles of this code. This will allow landlords to support those tenants who are in greatest need and to maintain development activity which will contribute to economic recovery. It also means landlords should provide support to a tenant where reasonably possible, whilst having regard to their own financial commitments and fiduciary duties.
4. We all recognise the difficulties that many tenants are facing, particularly those affected by the closures during lockdown. Not all will be in the same position as they previously were in terms of ability to pay rent and it may be in the interest of both parties to reach a new temporary agreement. We hope this code will help provide options for tenants and landlords to discuss, and that this will in particular help smaller businesses without access to significant legal or other resources. Tenants experiencing temporary severe hardship as a result of the impact of coronavirus should feel able to approach their landlords to discuss a request for support. Landlords should be willing to consider a reasonable case put forward by a tenant in such distress and whether some temporary arrangement the landlord can reasonably offer might enable the tenant to survive.
5. Where government support (for example the Coronavirus Job Retention Scheme, loans, grants, Business Rates Relief or VAT deferral) has been provided to businesses, whether landlord or tenant, this support is intended to help them meet the costs of maintaining their businesses and saving jobs. We recognise rent is one of these costs.
6. This code applies to all commercial leases held by businesses which have been seriously negatively impacted by the COVID-19 crisis, whether, for example, in the hospitality, retail, leisure, office, industrial and logistics, ports, or rural sectors – but it is

expected that the hospitality, leisure and parts of the retail sectors will have most need of it. Businesses within the agricultural sector may also want to consider the principles included, whilst acknowledging the differing legal framework for agricultural tenancies.

7. Each relationship will need to respond to these circumstances differently. Therefore, this code is voluntary and presents options for how to agree new payment arrangements. The relationship between landlord and tenant is defined by law (and by contract in Scotland), and parties may wish to seek legal advice when agreeing payment arrangements.
8. Both parties should take into account the impact of any changes to the long-term viability of their businesses. They should also consider any resources that may be available to them and, having regard to their duties and other stakeholders, be willing to consider renegotiating rent where possible to ensure the continuation of viable businesses.
9. Some landlords and tenants will have already come to new arrangements in response to COVID-19 shocks and have followed best practice in doing so. We expect these arrangements will be honoured and the publication of this code does not change that. Similarly, government recognises that there will be circumstances where parties are unable to reach agreement and that other measures may be necessary.
10. Landlords and tenants are encouraged to engage with their lenders and finance providers to seek flexible support in relation to their existing financial arrangements where this is needed. UK Finance has issued the following guidance in advance of this code: <https://www.ukfinance.org.uk/covid-19/business-support/support-for-commercial-landlords>
11. Current government interventions, including the moratoriums on forfeiture and anti-irritancy measures in England/Wales/Northern Ireland and Scotland respectively, do not undermine or permanently alter the existing legislative framework governing the relationship between tenant and landlord. These interventions are intended to be exceptional, time-limited measures to deal with unprecedented times of acute market shock. Government is also currently legislating to limit use of statutory demands and winding up petitions until 30 September through the Corporate Governance and Insolvency Bill.
12. The following organisations have endorsed this code and will encourage their members to adhere to the principles and approach. The code, and the signatories' support of it, will apply until 24 June 2021. To date, signatories include the following leading representative bodies who formed the code's steering group:
 - a. British Chambers of Commerce
 - b. British Property Federation
 - c. British Retail Consortium
 - d. Commercial Real Estate Finance Council Europe
 - e. Revo
 - f. Royal Institution for Chartered Surveyors
 - g. UKHospitality

13. Signatories also include the following organisations who support the code's principles:

- a. Agricultural Law Association
- b. Association of Convenience Stores
- c. British Beer and Pubs Association
- d. British Independent Retailers Association
- e. Central Association of Agricultural Valuers
- f. Country Land Association
- g. Federation of Small Businesses
- h. Property Owners Forum
- i. Scottish Property Federation
- j. Tenant Farmers Association and Tenant Farmers Association Cymru
- k. UKActive
- l. UK Major Ports Group

Principles

14. **Transparency and Collaboration:** We have a mutual interest in business continuity that reaches far beyond the extent of this pandemic. We are economic partners, not opponents. Therefore, in all dealings with each other, in relation to this code and the COVID-19 crisis, we will act reasonably, swiftly, transparently and in good faith. This is without prejudice to requirements of reasonableness as exist in any regulatory regime or in relation to legislation.
15. **A Unified Approach:** We will endeavour to help and support each other in all of our dealings with other stakeholders, including governments, utility companies, banks, financial institutions and others, to achieve outcomes reflecting this code's objectives and to help manage the economic and social consequences of COVID-19.
16. **Government Support:** Where businesses (whether landlord or tenant) have received government COVID-19 related subsidies or reliefs (for example the Job Retention Scheme, loans, grants, business rates relief or VAT deferral), we recognise that this support has been provided to help businesses meet their commitments. This will include a spectrum of costs from supplies of goods and services as well as rent and other property costs such as insurance, utilities and service charges.
17. **Acting Reasonably and Responsibly:** We will operate reasonably and responsibly, recognising the impact of COVID-19, in order to identify mutual solutions where they are most needed.
18. We recognise there will be cases where landlords and tenants have followed these principles but have been unable to reach a specific agreement. They might both feel that a negotiated outcome could still be achieved and therefore a third party mediator could be employed by mutual agreement of tenants and landlords to help facilitate negotiations (if the cost of this is proportionate and with the understanding both sides would bear their own costs).

New arrangements

19. Every landlord and tenant relationship is different and we respect the rights of parties to settle on an arrangement that reflect this. However, in seeking an arrangement and any changes to rental payments, both parties should act in good faith, reasonably and flexibly as set out in the principles above.
20. Tenants seeking concessions should be clear with their landlords about why this is needed. This means being prepared to be transparent and explaining their request by providing financial information about their business. This should be to an appropriate and relevant extent, which may differ from case to case. Landlords should provide concessions where they reasonably can, taking into account their own fiduciary duties and financial commitments, and landlords seeking to refuse concessions should be clear with their tenants about why they are doing so. This means providing a reasonable explanation of their decision which clearly takes into account the information provided by

the tenant. Both parties will want to consider how to protect commercially sensitive information as part of this process.

21. In considering a tenant's request to renegotiate their rent, landlords may wish to bear in mind the impact of the following issues on the entire business of both the tenant and the landlord. This is not an exhaustive list but could give an indication of the extent to which the tenant's financial position has been impacted across their entire business:

- a. Closure period impacting the tenant's business and ability to trade via other means.
- b. Duration and extent of restricted trading due to social distancing requirements.
- c. Extra costs and obligations through protecting customers to adhere to social distancing requirements.
- d. Needs of other stakeholders, such as banks, employees and suppliers, during this period.
- e. Government support received and how this has been used.
- f. The tenant's previous track record under its lease terms and any concessions to the tenant already agreed.
- g. The impact that providing support may have on the tenant's competitors and on other support already offered to tenants.
- h. Possible alternative considerations in a regulated sector. For example, pubs that are regulated under the Pubs Code.

22. Agreeing and adhering to a new arrangement agreed to by both parties should protect against forfeiture (or irritancy in Scotland) for non-payment of rent under the previous lease terms (to the extent that the rent has been amended by the rent payment plan) after the Coronavirus Act 2020 moratorium on forfeiture (and similar measures in Scotland) is lifted and for so long as the rent payment plan applies. It should also apply to leases not covered by the moratorium (e.g. agricultural).

23. The below sets out options of new arrangements that could be agreed to by both parties. While we all want to see cooperation and parties working together, these options are intended as suggestions and parties are not obliged to adopt them. This is not intended as an exhaustive list and parties may wish to suggest and come to other arrangements not set out below. Parties should also not take any inference from the order in which they are listed:

- a. A full or partial rent-free period for a set number of payment periods.
- b. A deferral of the whole or part of the rent for one or more payment periods.

- c. The payment of the rents over shorter payment periods for a set time (e.g. monthly rather than quarterly) including provision for their payment in arrears.
- d. Rental variations to reduce ongoing payments to a current market rate and/or to provide for all or part of the rent to be paid as a proportion of turnover of the site, incorporating any period during which the site was closed.
- e. Landlords drawing from rent deposits on the understanding that the landlord will not then require that the deposits be 'topped up' by the tenant before it is realistic and reasonable to do so.
- f. Reductions in rent, either in whole or part, across other units occupied by the tenant and owned by the landlord, as part of a negotiated agreement applying to a portfolio of units.
- g. Landlords waiving contractual default interest on unpaid rents or rents paid in arrears to make payment plans more affordable.
- h. Provisions for ending the solutions on a fixed date, or on reaching the trigger point of particular circumstances.
- i. Tenants and landlords agreeing to split the cost of the rent for the unoccupied period between them.
- j. Any of the above in return for other arrangements e.g. a reversionary lease on reasonable terms, the removal of a break right in favour of the tenant, or an extension of the lease.

Service and insurance charges

24. It is important that buildings continue to be insured and safely maintained so that they are ready to support the economy's recovery after the COVID-19 crisis. Any service charge and insurance charge payable under the lease is not profit-making, and, unless otherwise agreed, needs to be paid in full. Recognising the impact this may have on tenants' finances, in relation to service charges:

- a. These should be reduced accordingly where the lack of use of a property has lowered the service charge costs incurred.
- b. Conversely, it is acknowledged that in some cases there may be additional service costs required, e.g. in order to operate a building which complies with health and safety requirements in the context of COVID-19, or recommissioning where buildings are reopened.
- c. Landlords should ensure that service charge costs are reduced where practicable and consistent with providing best value for occupiers.

- d. Where possible, the frequency of tenant service charge payments should be spread over shorter periods.
- e. Where there is a known net reduction in overall service charge due to lack of use of a property (taking into account any additional COVID-19 related costs), this reduction should be passed on to tenants as soon as possible ahead of the end of year reconciliation in order to help with cash flow and business viability.
- f. Landlords should ensure that all management fees reflect the actual work carried out in managing the services and the service charge during the COVID-19 crisis.
- g. Any solution the parties reach in relation to service charge should take account of the RICS Professional Statement Service Charges in Commercial Property, 1st edition and of all RICS guidance in relation to service charges and COVID-19.