



THE COMMERCIAL LANDLORDS ACCREDITATION SCHEME (CLAS)

Scheme Manual

Version June 2007

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1. INTRODUCTION

The aims of the Scheme are to encourage, acknowledge, raise awareness and actively promote good standards and management practice by commercial landlords.

The Scheme comprises an element of self-regulation and accordingly relies on a degree of goodwill and trust on the parts of landlords, occupiers and the Scheme operator.

Signatories to the Scheme must ensure that in addition to complying with the requirements of the Scheme, they also comply with their statutory obligations.

2. HOW THE SCHEME OPERATES

The Scheme essentially has four elements to it:

- a. A Code of Standards - This sets out a minimum level of good practice expected of Scheme members. Any landlord wishing to join the Scheme must agree to follow the Leasing Business Premises: Landlord Code 2007, which is set out in annex 1.
- b. Self-certification - A landlord applying to join the Scheme must self-certify that they agree to abide with the Code and other Scheme rules. This is an important step in the application process, affirming that the applicant is agreeing to be bound by the Scheme rules. The Code allows for some departures from it, but requires landlords to make occupiers or prospective occupiers aware of this at the earliest opportunity and to state their reasons why they cannot follow that part of the Code. In agreeing to abide by the Code the Scheme expects the same standard of proactive disclosure with reasons stated for departing from the Code. Leases that substantially depart from the Code without the occupiers' or prospective occupiers' agreement will leave the landlord vulnerable to charges of not abiding by the Code.

A landlord joining the Scheme will be expected to follow the rules of the Scheme in all lease dealings which they control, including those of their subsidiaries. In joint ventures, and other vehicles where they are not in control of negotiations, this will not apply.

The Scheme only covers lettings in England and Wales, replicating the coverage of the Code.

Following successful application, landlords will be awarded the status of accredited landlord, as appropriately determined by the Scheme operator.

- c. Successful applicants for Scheme membership will be issued with the Scheme Standard Mark, which they can display at their offices and in their written material, subject to the Scheme rules. The names and details of accredited landlords, sufficient only for publicity and promotional purposes are a matter of public record, and will be readily available for public reference on the Scheme website.

Any Scheme landlord who has their membership withdrawn or suspended will be required to cease using the Scheme Standard Mark immediately.

- d. A complaints procedure (see section 5) – The credibility of the Scheme will rest on members' willingness to abide by the Scheme rules and Code and to deal with occupiers' or prospective occupiers' complaints speedily and professionally. All Scheme members will be required to have a written complaints procedure, and where occupiers feel this fails to address their complaint, they will have the right to refer it to the Scheme operator and ultimately to the Scheme Standards Board.

The Scheme operator will also be able to refer cases to the Scheme Standards Board, where it feels a members' behaviour is incompatible with membership of the Scheme.

Similarly landlords wishing to make a formal complaint about the operation of the Scheme, or its staff, can do so to the same body.

In the event of a complaint being upheld against a landlord the Scheme Standards Board will be able to take a range of disciplinary action (see section 6). Action which is to be made public will be reported in an open and transparent way to demonstrate that the Scheme is being enforced.

Landlords who lose their accredited status will no longer be participants of or eligible for any of the benefits of the Scheme.

3. HOW TO JOIN

To apply to join the Scheme the Scheme Operator must receive:

- a. A completed application form.
- b. A signed statement of compliance, which is a part of the application form.
- c. Any appropriate fee (at inception of the Scheme there will be no fee payable, but the operator reserves the right to charge in future).

Membership is at the discretion of the Scheme Operator.

Fees

At inception of the Scheme there will be no fee for membership. The Scheme Operator, however, reserves the right to charge a membership fee in future.

4. THE CODE OF STANDARDS

General comments

The Code of Standards for the Scheme is the Leasing Business Premises: Landlord Code 2007, which is attached as an annex. It sets minimum standards of good leasing practice. The Code is not meant to replace landlords' existing statutory obligations,

which they should discharge. The Code is designed to allow competition and market forces to work to encourage higher standards for the benefit of customers.

Introduction

The over arching principle of this Scheme is to promote transparency on the part of landlords in their dealings with occupiers or prospective occupiers and a constructive and fair approach towards both lease negotiation and conduct during the lease.

The Scheme is primarily focused at new leases but landlords must also follow the requirements of the Scheme for lease renewals, in so far as they are covered by the Leasing Business Premises: Landlord Code 2007.

To be compliant with the Scheme landlords must:

1. At the earliest possible stages of negotiations make all prospective occupiers aware that they are a member of the Scheme, providing them with the Scheme postcard, or making suitable alternative arrangements, for example, where they have access, referring them to the Scheme website.
2. Provide any prospective small business occupier with the Leasing Business Premises 'Landlord Code', 'Occupier Guide' and 'Model Heads of Terms'. 'Small business occupier' for such purposes is defined as those eligible for small business rate relief, that is those properties with a rateable value which is not more than £21,499 for those situated in Greater London and £14,999 for those outside Greater London, or as time-to-time amended.
3. Abide by the Leasing Business Premises: Landlord Code 2007.
4. Communicate to the occupier if there are any Code requirements that the landlord is unable to fulfil and explain to the occupier why this is the case.
5. Have a written procedure for dealing with complaints, which is given to each occupier at the start of negotiations. It must explain how the complaint should be made, how and by whom it will be considered and how long it will take, which should be a period of not more than 7 days to acknowledge and a further 21 days to consider, making 28 days in total. In exceptional circumstances, where for example technical input is required, a member may send a holding response within the first 28 days, but must provide a final response with a further 28 days. The point of contact for making complaints must be with the landlord and not their agents.

5. COMPLAINTS

(Note in this section the word occupier encompasses prospective occupiers who are in negotiations, or were in negotiations that did not reach completion with a Scheme landlord).

The complaints procedure

The complaints procedure for the Scheme has three stages. The intention is to resolve complaints as early as possible, ideally at stage 1. The later stages will be available if this not possible.

Stage 1 - Complaints should be directed in the first instance to the landlord, who is required as part of being a Scheme member to have a written procedure for dealing with complaints.

Stage 2 - If the complaint is not resolved at Stage 1, it can be referred by the occupier in writing (letter or email) to the Scheme operator, who will assign a case worker. The case worker will investigate the complaint and seek to mediate between the two parties. Where they believe there has been a breach of the Scheme they can follow one of two courses of action:

1. For minor or straightforward cases to adjudicate on whether there has been a breach of the Scheme rules, letting both parties know of their decision in writing.
2. For more complex or serious cases, these will be referred to the Scheme Standards Board.

Stage 3 - The Scheme Standards Board consists of an independent chairman and equal numbers of landlord and occupier representatives, plus three independent Board members. It will adjudicate in more complex or serious cases and also take appeals to decisions made by case workers at stage 2. The Board will normally adjudicate on the basis of the case worker's report and any written submissions either landlord or occupier wish to make. Where the Board feels it would be helpful it can also request both parties to attend a hearing.

Where no breach of the Scheme has occurred both parties will be informed of this in writing.

Where a breach has occurred, again both parties will be informed in writing, by first class post to the address provided. The Scheme Standards Board will have to decide what disciplinary sanction will apply (see section 6).

Confidentiality

The Scheme operator will generally presume that the identity of complainants is not confidential. If complainants want their identity not to be disclosed the onus is on them to make this clear when a complaint is first raised. This will be brought to their attention and the Scheme operator will need to judge whether a complaint can be pursued in confidence. It will be at the discretion of the Scheme operator whether it is possible, and if not, the Scheme operator will inform the complainant before proceeding, so they can choose to proceed or withdraw their complaint.

Voluntary cancellation of membership

It should be noted that voluntary cancellation of membership of the Scheme shall not prejudice the right of the Scheme operator or Scheme Standards Board to pursue complaints and disciplinary proceedings against landlords that were former members.

Costs

Members, complainants and the Scheme will bear their own costs in respect of any disciplinary proceedings. Thus if a member or complainant appoints someone to represent them in a complaint that will be at their own cost.

The underlying dispute

It should be stressed that the role of the Scheme Operator and Scheme Standards Board is to adjudicate on breaches of the Scheme rules, and not on the underlying dispute, which the parties to a complaint will need to pursue between themselves, using other dispute resolution methods, or the Courts. To determine and adjudicate whether the Scheme rules have been breached, however, may involve the Scheme Standards Board or Scheme Operator commenting on the underlying dispute, which it will do without prejudice.

6. SANCTIONS

The prime purpose of the Scheme is to ensure that occupiers are being treated well and where there are disagreements to get parties to resolve their differences. The Scheme sanctions are a last resort, which for breaches of the Scheme are to act as a deterrent against future breaches and engender public confidence in the Scheme. Many, and hopefully most, instances of complaint will be resolved through constructive dialogue.

Reprimands are meant to provide recommendations on remedying past conduct and directions as to future conduct.

At stage 2, case workers will only be able to issue private reprimands for breaches of the Scheme.

At stage 3, the Scheme Standards Board will have a choice of four sanctions to apply:

- a. A private reprimand.
- b. A public reprimand, which will be posted on the Scheme website.
- c. A suspension from the Scheme for a period of between 1 month and 1 year.
- d. Withdrawal of Scheme membership. Any Scheme member having their membership withdrawn will not be able to reapply for membership for at least 3 years.

In the case of c. and d., the decision to suspend or withdraw membership will also be publicised by press release, sent to a selection of local, trade and national press.

The Scheme Standards Board will take account of a number of factors in deciding what disciplinary sanction should apply:

- The regularity of breach.
- Severity of breach.
- Steps taken by the landlord to remedy the breach with the occupier.
- Changes made to procedures in light of the breach.
- Other disciplinary sanctions applied on the landlord in the past.
- Relevant precedent.

7. THE SCHEME OPERATOR'S RESPONSIBILITIES

The Scheme Operator will administer and monitor the Scheme.

Maintain a database record of accredited landlords.

Deal courteously with occupiers who have complaints and maintain appropriate records of these.

Be responsible for the issuing, administration, suspension and revocation of accredited status.

Protect the use of the Scheme Standard Mark.

Advise landlords on how to achieve accreditation status.

Promote the accreditation Scheme.

Maintain Scheme standards through a complaints procedure.

Where there is communication on the part of the Scheme operator or board in writing it will be sent 1st class post to address provided.

The rules of the Scheme, disciplinary procedures and sanctions may be amended from time to time by the Scheme Operator, with the agreement of the Scheme Standards Board. Any such changes will be notified to Scheme members with at least one calendar month's notice before they take effect. The Scheme Operator will make reasonable endeavours to communicate such changes using the contact details provided by scheme members.

In carrying out these functions and in all its dealings with Scheme members and complainants the Scheme Operator will act reasonably and in good faith.

8. THE SCHEME STANDARDS BOARD

The Scheme Standards Board shall comprise:

- i. Independent chairman
- ii. 3 landlord representatives

- iii. 3 occupier representatives
- iv. 3 independent members

To be quorate for adjudicating complaints the Board must have equal numbers of landlord, occupier and independent representatives voting on the complaint, e.g. one, two or three of each. The independent chairman also has a vote. If they are not present then the chairmanship will revert one of the 'independent' members. The minimum number of Board members for a meeting is therefore three.

Decisions of the Board, including disciplinary decisions and sanctions, will be by simple majority. Where there is a tied decision the Chair will cast a deciding vote.

The Board reserves the right to publish the details of disciplinary proceedings anonymously, unless they are applying a 'public' sanction. This is to help clarify decisions they have taken and to publicise the good practices they are trying to promote.

9. REVIEW AND EVALUATION

The Scheme Standards Board will meet from time-to-time as determined by the Chairman to review the operation of the Scheme.

Each year the Scheme Standards Board will approve an annual report prepared by the Scheme Operator, which will be publicly available.

The Owners' and Occupiers Property Forum will perform an audit function, ensuring the Scheme is being operated proficiently and fairly. It can delegate part or all of its audit functions.

Annex 1 – Leasing Business Premises: Landlord Code

Leasing Business Premises: Landlord Code



Introduction

This revised lease code is the result of pan-industry discussion between representatives of landlords, tenants and government. The objective is to create a document which is clear, concise and authoritative.

However, our aims are wider. We want the lease code to be used as a checklist for negotiations before the grant of a lease and lease renewals. Landlords should be transparent about any departures from the code in a particular case and the reasons for them.

We have provided model heads of terms and whilst we recognise the code will apply to leases in England and Wales, we believe its intent should apply to the whole of the UK.

Most importantly, we are launching the code with an objective to ensure that parties to a lease have easy access to information explaining the commitments they are making in clear English. We will encourage trade and professional bodies, lenders and government (at all levels) to ensure small businesses are made aware of the code and the advisory pages which accompany it.

Although the code applies to new leases, please also see the British Property Federation declaration, which applies to existing leases, in relation to applications for consent to sublet where there is an existing lease covenant requiring subleases to be at the higher of the passing rent and the market rent.

We hope the code will help the industry in its quest to promote efficiency and fairness in landlord and tenant relationships.

1 Lease Negotiations

Landlords must make offers in writing which clearly state: the rent; the length of the term and any break rights; whether or not tenants will have security of tenure; the rent review arrangements; rights to assign, sublet and share the premises; repairing obligations; and the VAT status of the premises.

Landlords must promote flexibility, stating whether alternative lease terms are available and must propose rents for different lease terms if requested by prospective tenants.

2 Rent Deposits and Guarantees

The lease terms should state clearly any rent deposit proposals, including the amount, for how long and the arrangements for paying or accruing interest at a proper rate. Tenants should be protected against the default or insolvency of the landlord.

State clearly the conditions for releasing rent deposits and guarantees.

3 Length of Term, Break Clauses and Renewal Rights

The length of term must be clear.

The only pre-conditions to tenants exercising any break clauses should be that they are up to date with the main rent, give up

occupation and leave behind no continuing subleases. Disputes about the state of the premises, or what has been left behind or removed, should be settled later (like with normal lease expiry).

The fallback position under the Landlord and Tenant Act 1954 is that business tenants have rights to renew their lease. It is accepted that there are a number of circumstances in which that is not appropriate. In such cases landlords should state at the start of negotiations that the protection of the 1954 Act is to be excluded and encourage tenants to seek early advice as to the implications.

4 Rent Review

Rent reviews should be clear and headline rent review clauses should not be used. Landlords should on request offer alternatives to their proposed option for rent review priced on a risk-adjusted basis.

For example, alternatives to upward only rent review might include up/down reviews to market rent with a minimum of the initial rent, or reference to another measure such as annual indexation.

Where landlords are unable to offer alternatives, they should give reasons.

Leases should allow both landlords and tenants to start the rent review process.

5 Assignment and Subletting

Leases should:

- allow tenants to assign the whole of the premises with the landlord's consent not to be unreasonably withheld or delayed; and
- not refer to any specific circumstances for refusal, although a lease would still be Code compliant if it requires that any group company taking an assignment, when assessed together with any proposed guarantor, must be of at least equivalent financial standing to the assignor (together with any guarantor of the assignor).

Authorised Guarantee Agreements should not be required as a condition of the assignment, unless at the date of the assignment the proposed assignee, when assessed together with any proposed guarantor:

- is of lower financial standing than the assignor (and its guarantor); or
- is resident or registered overseas.

For smaller tenants a rent deposit should be acceptable as an alternative.

If subletting is allowed, the sublease rent should be the market rent at the time of subletting.

Subleases to be excluded from the 1954 Act should not have to be on the same terms as the tenant's lease.

6 Service Charges

Landlords must, during negotiations, provide best estimates of service charges, insurance payments and any other outgoings that tenants will incur under their leases.

Landlords must disclose known irregular events that would have a significant impact on the amount of future service charges.

Landlords should be aware of the RICS 2006 Code of Practice on Service Charges in Commercial Property and seek to observe its guidance in drafting new leases and on renewals (even if granted before that Code is effective).

7 Repairs

Tenants' repairing obligations should be appropriate to the length of term and the condition of the premises.

Unless expressly stated in the heads of terms, tenants should only be obliged to give the premises back at the end of their lease in the same condition as they were in at its grant.

8 Alterations and Changes of Use

Landlords' control over alterations and changes of use should not be more restrictive than is necessary to protect the value, at the time of the application, of the premises and any adjoining or neighbouring premises of the landlord.

Internal non-structural alterations should be notified to landlords but should not need landlords' consent unless they could affect the services or systems in the building.

Landlords should not require tenants to remove permitted alterations and make good at the end of the lease, unless reasonable to do so. Landlords should notify tenants of their requirements at least six months before the termination date.

9 Insurance

Where landlords are insuring the landlord's property, the insurance policy terms should be fair and reasonable and represent value for money, and be placed with reputable insurers.

Landlords must always disclose any commission they are receiving and must provide full insurance details on request.

Rent suspension should apply if the premises are damaged by an insured risk or uninsured risk, other than where caused by a deliberate act of the tenant. If rent suspension is limited to the period for which loss of rent is insured, leases should allow landlords or tenants to terminate their leases if reinstatement is not completed within that period.

Landlords should provide appropriate terrorism cover if practicable to do so.

If the whole of the premises are damaged by an uninsured risk as to prevent occupation, tenants should be allowed to terminate their leases unless landlords agree to rebuild at their own cost.

10 Ongoing Management

Landlords should handle all defaults promptly and deal with tenants and any guarantors in an open and constructive way.

At least six months before the termination date, landlords should provide a schedule of dilapidations to enable tenants to carry out any works and should notify any dilapidations that occur after that date as soon as practicable.

When receiving applications for consents, landlords should where practicable give tenants an estimate of the costs involved.

Landlords should normally request any additional information they require from tenants within five working days of receiving the application. Landlords should consider at an early stage what other consents they will require (for example, from superior landlord or mortgagee) and then seek these. Landlords should make decisions on consents for alterations within 15 working days of receiving full information.