

**Draft Covid19 Code of Practice for commercial property (“the Code”)**

[Introduction to be added]

**Code Scope and Objectives** - This Code is designed to set out principles of behaviour and responses to difficulties experienced by businesses in order to share the property-related costs and business risks of the COVID-19 crisis in a proportionate and measured way. It is a voluntary Code which seeks to set out principles and good practice in how to balance the interests of landlords and tenants reasonably and responsibly, through as swift and efficient means as possible.

The relationship between landlord and tenant is defined by law and it is not the intention of this Code to undermine or alter the basis of the legal relationship or existing lease contracts, or override arrangements which have already been put in place (for example through side letters or deeds of variation). It remains the case that tenants remain liable for rent arrears, unless this is renegotiated by agreement with landlords.

We recognise however the impact that COVID-19 and the associated closures measures have had generally, and on the income of the hospitality, leisure and retail industries in particular. This means that landlords and tenants must work together collaboratively and many will want to find temporary, and where possible sustainable, agreements 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 for the industry.

Where government support has been provided to businesses, whether landlord (e.g. employee schemes and VAT deferral) or tenant (e.g. loans and grants), this support is intended to help them meet the costs of maintaining their businesses. We recognise rent is one of these costs.

We support protection for otherwise healthy businesses unable to meet their financial obligations due to the impact of COVID-19. Protection should be proportionate and targeted to benefit businesses in reasonable need of it. This Code reflects two fundamental principles ensuring the payment burden is not shouldered by any one party:

- tenants who are in a position to pay in full should do so, and tenants who are unable to pay in full (taking into account alternative financial resources that may be available to them, where applicable) should pay what they can. This will help ensure that as many of those in distress as possible can be given landlord support. While lifting of the closures measures may help increase income for some businesses, this change in itself is not an indicator of ability to pay.
- landlords who can provide support to businesses who need it should do so (taking into account their own financial commitments and fiduciary duties, where applicable), so that viable businesses affected by the current circumstances are able to continue.

This Code applies to all commercial tenancies held by businesses which have been impacted by the COVID-19 crisis, whether in the hospitality, retail, leisure, hotel, offices, industrial and logistics sectors, ports, or agricultural sectors – but it is expected that the hospitality, leisure and retail sectors, especially those based in high streets and town centres, will have most need of it.

It is acknowledged that this Code is not the only government intervention in the commercial rental industry that either has been implemented or may be necessary going forward to support the

financial health of the sector. The government continues to monitor the situation. <insert reference to the Corporate Governance and Insolvency Bill, depending on its progress through the house at point of publication>

**Code Time Period** – The signatories' support of this Code will apply until 24 June 2021.

**Supporters** - <insert a list of bodies that support the code>

### The Code

1. **Basis** – This is a voluntary Code and does not change the underlying legal relationship or lease contracts between landlord and tenant.
2. **Transparency and Partnership** - We have a mutual community interest in business continuity that reaches far beyond COVID-19. 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, transparently and in good faith.
3. **A Unified Approach** - We will help and support each other in all of our dealings with other stakeholders including governments, utility companies, banks and financial institutions to achieve outcomes reflecting this Code's objectives, and to help manage COVID-19's economic and social consequences.
4. **Government support** - Where businesses (whether landlord or tenant) have received government COVID-19 related subsidies or reliefs, 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.
5. **Acting Reasonably and Responsibly** – We will operate reasonably and responsibly, recognising that everyone is impacted by COVID-19, in order to provide support where it is most needed. This means that tenants who are in a position to pay in full should do so, and tenants who are unable to pay in full should pay what they can. This will help landlords to support those tenants who are in greater need and to maintain development activity which will contribute to economic recovery. It also means if a landlord is able to, whilst having regard to their own financial commitments and fiduciary duties, they should provide support to a tenant who needs it.

Where landlords and tenants, acting reasonably and responsibly, have been unable to reach a specific agreement but both feel that a negotiated outcome could still be achieved, a third party mediator could be employed by mutual agreement (if the cost of this is proportionate) to help facilitate negotiations.

6. **Rental Payment or Waiver Plans** - We recognise every landlord and tenant relationship is different. As part of that, we respect the rights of landlords and tenants to settle on the rental payment plan that suits them best. However, in seeking a reasonable rental payment plan, both parties should act in good faith, reasonably and flexibly. Tenants seeking concessions should be prepared to provide justification for their request through a transparent approach to the properties in question. Landlords refusing concessions should be similarly transparent should they do so. In both cases this transparency should include

## DRAFT – NOT GOVERNMENT POLICY

financial information to the extent appropriate and relevant, which may differ from case to case.

Agreeing and adhering to a formal written rent payment plan should protect against forfeiture 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 is lifted or for leases not covered by the moratorium (e.g. agricultural), for so long as the rent payment plan applies. To help the parties in those discussions we note that rental payment plans should bear in mind the extent of the impact on the tenant business during the lockdown period and may include (but will not be limited to) any one or more of the following options:

- a. a deferral of the whole or part of the rent for one or more payment periods, to be paid back over a reasonable period to be agreed having regard to the circumstances of the case, up to the remaining payment periods of the lease;
- b. a full or partial rent-free period for a set number of payment periods – for example the period of forced closure of a retail unit - which may be in return for a number of measures such as a reversionary lease on reasonable terms, the removal of a break right in favour of the tenant, extension of the lease by a period longer than the closed period, or other concession to the landlord;
- 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 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, in return for a reversionary lease on reasonable terms, the removal of a break right in favour of the tenant, or an extension of the lease;
- e. landlords drawing from rent deposits on the basis that the landlord will not then be required 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, in return for concessions to the landlord, as part of a negotiated agreement applying to a portfolio of units;
- g. landlords waiving contractual interest rates on unpaid rents to make payment plans more affordable;
- h. provisions for ending the solutions on a fixed date, or on the happening of particular circumstances;
- i. tenants and landlords agreeing to split the cost of the rent for the unoccupied period equally between them;
- j. any of the above in return for 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.

7. **Service and Insurance Charge** - In so far as possible, any service charge and insurance charge payable under the Lease should continue to be paid in full. Tenants should prioritise payment of service charge and insurance charge ahead of payments of rent, to ensure that buildings can continue to be insured and safely maintained so that they are ready to support the economy's recovery after the COVID-19 crisis. 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 reasonably possible and frequency of payment should be spread over shorter periods.
  - d. 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 ahead of the end of year reconciliation;
  - e. Landlords should ensure that all management fees reflect any reduced levels of expenditure.

Any solution the parties reach in relation to service charge should take account of the RICS Professional Statement Service Charges in Commercial Property, 1<sup>st</sup> edition, and of all RICS guidance in relation to service charges and COVID-19.

8. **Lender engagement** – landlords and tenants are encouraged to engage with their lenders and financial providers to seek flexible support in relation to their existing financial arrangements where this is needed. UK Finance and the Prudential Regulation Authority have issued the following guidance in advance of this Code:
- a. UK Finance statement: <https://www.ukfinance.org.uk/covid-19/business-support/support-for-commercial-landlords>
  - b. PRA guidance: <https://www.bankofengland.co.uk/-/media/boe/files/prudential-regulation/publication/2020/statement-on-application-regulatory-capital-ifs9.pdf?la=en&hash=C284FCD84FFE3D0381068B50AE6942F0945547DF>