



An Roinn Gnó,
Fiontar agus Nuálaíochta
Department of Business,
Enterprise and Innovation

Code of Conduct between Landlords and Tenants for Commercial Rents

PURPOSE & CONTEXT

1. This Code of Conduct (this Code) is intended to promote and reinforce good practice in landlord and tenant relationships as they deal with income shocks caused by the pandemic. This is a voluntary code with no statutory basis and does not change any underlying legal relationship or commercial lease contracts between owner / operator / landlord and tenant and any guarantor.
2. COVID-19 has had a significant impact on the economy arising from reduced customer demand and the necessary temporary cessation or disruption of business activities. It has particularly hit sectors which involve a high degree of personal contact. Cashflow is likely to remain under pressure for some time even as businesses reopen owing to reduced levels of economic activity and demand across most sectors. Particular problems have arisen in terms of liquidity with growing debt overhangs arising where businesses have incurred fixed costs without the ability to meet such costs as a result of the commercial disruption caused by COVID-19 related restrictions.
3. There is a risk that, notwithstanding their long-term viability, some businesses may become insolvent and close. This would not only have a negative impact for the business concerned but also for the landlord who is likely to have difficulties in sourcing new tenants especially in a depressed market. Landlords and tenants share a common interest in working together to enable otherwise viable businesses to continue operating and to facilitate the resumption of normal trading activities through the period of recovery. This means that landlords and tenants must work together and come to some arrangement as it is in everybody's interest that terms are amicably agreed. The aim of this Code is to facilitate those discussions in working towards achieving mutually satisfactory outcomes.
4. It is recognised that commercial leases are a matter primarily for the parties concerned and that both parties remain obliged to meet the terms of the lease unless a renegotiation is achieved. Any changes to agreements must be agreed in accordance with the terms and conditions of the existing contract.
5. Tenants who are in a position to pay in full should do so. Tenants who are unable to meet their financial and or contractual commitments should seek agreement with their landlord to pay what they can considering the principles of this Code. This will allow landlords to facilitate those tenants who are in greatest need and to maintain activity which will contribute to economic recovery. It also means landlords should provide assistance to a tenant where reasonably possible having regard to their own financial responsibilities.
6. Tenants experiencing temporary significant financial hardship as a result of the impact of COVID-19 should be able to approach their landlords to discuss a request for assistance. Landlords should be willing to consider a reasonable case put forward and whether some temporary arrangement might enable the tenant to survive.

7. It is understood that landlords have financial obligations for which they rely on rent to discharge and for which they may not have received any forbearance or relief. This may thereby limit the flexibility they can offer to tenants.

8. Both parties should take into account the impact of any changes to the long-term viability of their businesses. Any agreed arrangements should take into account the impact of the crisis on both parties, with specific regard to any resources that may be available to them and to their duties and other stakeholders. Due regard should be given to whether the tenant is in examinership or receivership, and the application of this Code modified accordingly.

9. The Government has signalled its commitment to help the business sector through a suite of measures to assist businesses, which includes the wage subsidy scheme (WSS), grants including the Restart grant, low cost loans, deferred tax liabilities and the waiver of commercial rates.¹ The Government will continue to assist businesses. However, the efforts of all actors are required to ensure economic recovery.

10. This Code applies to all commercial tenancies that have been seriously negatively impacted by the COVID-19 crisis. Further guidance is provided in paragraph 23.

11. All tenancies are different, as are their commercial arrangements, and parties will need to respond to these differently giving consideration to particular circumstances. Therefore, this Code is voluntary, providing suggestions for how to agree new arrangements. As the relationship between landlord and tenant is a legal matter, parties may wish to seek legal advice when deciding new arrangements.

12. Some landlords and tenants will have already come to new arrangements in response to COVID-19 shocks. The publication of this Code does not change that.

13. Landlords and tenants are encouraged to engage with their lenders and finance providers to seek flexible assistance in relation to their existing financial arrangements where this is needed. The retail banks, some non-bank mortgage lenders and some credit servicing firms have put in place provisions to help personal customers and businesses. Further details on these provisions can be found on the Banking and Payments Federation Ireland website² or from individual organisations.

14. This Code will apply until 31st July 2021.

¹ Full details on all supports are available at: <https://dbei.gov.ie/en/What-We-Do/Supports-for-SMEs/COVID-19-supports/>

² [Banking & Payments Industry COVID-19 Support FAQs](#)

OVERARCHING PRINCIPLES

16. Landlords and tenants should act reasonably, swiftly, transparently and in good faith, recognising the impact of COVID-19, in order to identify and implement mutually beneficial solutions. This is without prejudice to requirements of reasonableness as exist in any regulatory regime or in relation to legislation.

17. Landlords and tenants should endeavour to assist each other in all of their dealings with other stakeholders including government, 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.

18. Where businesses (whether landlord or tenant) have received Government COVID-19 related subsidies or reliefs (for example WSS, loans, grants, business rates waiver, tax warehousing etc.), it should be recognised that this assistance has been provided to help businesses meet their commitments. Landlords should seek to share any benefit received due to deferral of loan payments under the provisions proposed by the BPF1 with the tenant in a proportionate manner.³

19. It is recognised that there will be cases where landlords and tenants have followed these principles but have been unable to reach a specific agreement. Both might feel that a negotiated outcome could still be achieved, and therefore the alternative dispute resolution mechanisms as per the existing commercial lease agreement between both parties could be exercised. Alternatively, 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). Mediation processes should not prolong or frustrate the facilitation of amicable resolution outcomes.

³ [Minister Donohoe outlines measures to support individuals and businesses impacted by COVID-19](#)

NEGOTIATING ARRANGEMENTS

20. Every landlord and tenant relationship is different, and the Government respects the rights of parties to settle on an arrangement that reflects this. However, in seeking an arrangement, both parties should act in good faith, reasonably and flexibly as set out in the principles above.

21. Landlords and tenants should act in an open, honest and transparent manner, and will each provide sufficient and accurate information within the context of negotiations to achieve outcomes consistent with this Code. Tenants seeking concessions should be clear with their landlords about why this is needed, explaining their request by providing financial information about their business and the specific business unit that is the subject of the Landlord and Tenant relationship. This should be to an appropriate and relevant extent, which may differ from case to case. Landlords should provide concessions where they reasonably can, considering their own fiduciary duties and financial commitments. Landlords seeking to refuse concessions should be clear with their tenants about why they are doing so and provide a reasonable explanation of their decision which clearly takes into account the information provided by the tenant. Likewise, tenants should meet their contractual rent and service charge obligations where they reasonably can, considering their own scale of operations and their ability to trade (including by other means). Both parties will want to consider how to protect commercially sensitive information as part of this approach.

22. 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 parties. 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 obligations and costs incurred through measures to protect employees and customers and to adhere to social distancing requirements;
- d. ability to absorb losses;
- e. needs of other stakeholders such as banks, employees, suppliers during this period;
- f. Government assistance received and how this has been used; and
- g. the tenant's previous track record under its lease terms and any concessions to the tenant already agreed.

23. The below sets out options for new arrangements that could be agreed to by both parties. 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:

- 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 rent 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 (sliding scale), 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 particular trigger points;
- i. tenants and landlords agreeing to split the cost of the rent for the unoccupied period between them;
- j. compromising by extending the term of the lease to cover the period of closure;
- k. 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.

24. Care should be taken to ensure that any repayment of the deferred rent does not compromise the ability of the affected tenant to recover from the crisis.

SERVICE & INSURANCE CHARGES

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

- a. these could be reduced accordingly where the lack of use of a property has lowered the service charge or other 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 costs 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 attributable 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 to help with cash flow and business viability and, at the very least, be fully reflected in the year end reconciliation with any savings credited to the tenant's account in a timely manner;
- 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 reduction in statutory charges (e.g. local authority rates) or insurance will be passed on to the tenant in the appropriate proportion applicable under the terms of the lease.