

MODEL COMMERCIAL LEASE

User Guidance Note

1. Introduction

- 1.1 This is an overview of the Model Commercial Lease ("the MCL") to help users to review, use and amend it. It has no legal status and the Conditions of Use of the MCL apply to it.
- 1.2 Versions of the MCL are available for different uses (office, retail, food and drink and logistics/industrial) and different premises (the whole or part of a building, the whole or part of a unit on an estate and a unit in a shopping centre). The retail estate and shopping centre leases also have options for turnover rent. The logistics/industrial lease is only available for the whole of a building or unit on an estate.
- 1.3 References to clause numbers in this Note are to the clause numbers in the lease of a unit in a shopping centre. They may differ in other versions of the MCL.

2. Form

- 2.1 We have included the Land Registry Prescribed Clauses in the MCL. They must be retained whether or not the landlord's title is registered. There are no Particulars. All defined terms are in the definitions section, unless used only in a particular schedule.
- 2.2 We decided not to display key information (such as rent review dates or break dates) on the front sheet, as it can be misleading or even wrong.
- 2.3 Clause 3 covers the demise, rent and term. Clause 4 covers the tenant's specific obligations and clause 5, the landlord's specific obligations. General agreements are in clause 6. There is an optional guarantee provision in clause 7 and an optional break clause in clause 8.
- 2.4 The schedules cover:
- Schedule 1 – Tenant's rights and Landlord's reservations;
 - Schedule 2 – Rent review;
 - Schedule 3 – Service charge (not needed in leases of whole);
 - Schedule 4 – Insurance;
 - Schedule 5 – Title;
 - Schedule 6 – Permitted Works;
 - Schedule 7 – Sustainability; and
 - Schedule 8 – Underletting.
- 2.5 In the food and drink leases, Schedule 9 deals with additional catering covenants, licensing and seating areas.

2.6 In the retail leases with turnover rents, Schedule 9 deals with the turnover rent provisions.

2.7 In the logistics/industrial leases, Schedule 9 deals with optional environmental provisions where the proposed use requires environmental permits.

3. **Footnotes**

There are extensive footnotes. Please read them. Often they will explain, for example, why we have done something in a particular way or adopted a particular compromise or "concession". They will also explain square brackets and serve as prompts to delete definitions that are not needed on the facts (eg "Break Date" where there is no break clause). We have tried to avoid "taking positions" for either party, but please forgive us if one or two have slipped through.

4. **Language**

4.1 We have used modern language, but retained some traditional usage such as calling the landlord and the tenant by those names, rather than "we" and "you". It is sensible to retain this modern drafting style when amending the existing text or adding additional provisions.

4.2 In common with many modern leases, we have updated some definitions so, for example, Break Date (not Termination Date), End Date (not Expiration of the Term etc), and Rent Days (not Quarter Days).

4.3 We have used "must" to indicate an obligation to do something rather than "shall", "will" or "is to".

4.4 We have avoided expressions like "provided always that" and "for the avoidance of doubt".

4.5 We have avoided using the word "determine" as it has two different meanings. Instead we use "end" for one meaning and "decide" for the other meaning.

5. **Interpretation clause**

5.1 Check this carefully. We have included a few innovative provisions such as:

5.1.1 making consent always subject to reasonableness, except where the lease states that a party has absolute discretion;

5.1.2 requiring the landlord to act reasonably when exercising rights or imposing requirements under the MCL, except where the lease states that the landlord has absolute discretion;

5.1.3 in response to the way in which works drawings etc now tend to be transmitted and stored, a new clause allowing electronic transfers;

5.1.4 a general provision that (except where the tenant has breached its covenants), if one party has to pay money to the other, the costs must be reasonable and proper and reasonably and properly incurred – so you do not need to insert these words every time you see a reference to one party paying the other's costs;

5.1.5 strengthening the concept of "having due regard" to give the other party comfort that at least there is a process to be followed before a decision is reached, even if that final decision is to be taken at the relevant person's absolute discretion.

6. **Clause 3 – Demise, term and rent**

- 6.1 There is provision for an optional title guarantee. Any carve-outs are contained in Schedule 5.
- 6.2 There is an option for monthly rents.
- 6.3 The default position is that all sums are paid by electronic transfer rather than by cheque or direct debit.
- 6.4 Clause 3.4 reserves service charge and insurance as rent and clause 3.5 reserves VAT as rent. Other periodic payments are not reserved as rent.
- 6.5 Turnover rent clauses can be included in the MCL using the MCL Turnover Rent additional clauses. As noted above, some of the retail leases already include this option.
- 6.6 Set-off is addressed at clause 3.8.

7. **Tenant’s obligations – Financial**

- 7.1 The main financial obligations are set out in clauses 4.1 to 4.7.
- 7.2 There is a ten business day period of grace for all payments (other than the Main Rent), but interest runs from the due date (or date of demand) if they are not paid within that time.
- 7.3 We have softened the indemnity considerably so that it does not cover tenant breaches. Instead, the normal rules of loss and damage will apply. It also requires the landlord to keep the tenant properly informed and to mitigate its loss (at the tenant’s cost).

8. **Tenant’s obligations – repair**

- 8.1 The repairing obligation is a normal good and substantial repair and condition obligation.
- 8.2 There is an optional schedule of condition clause, bearing in mind how common these are now.
- 8.3 Except in the logistics/industrial leases there are optional provisions requiring the tenant to replace any damaged glass.
- 8.4 The repairing and redecorating obligations exclude damage by Insured Risks and Uninsured Risks.
- 8.5 The decorating obligation is as and when necessary, rather than at an artificially specified frequency. However, it must be undertaken in the last six months of the term. Where the tenant has an external redecorating obligation, there is an option to require external redecoration at regular intervals or as and when necessary.
- 8.6 The right for the landlord to enter and carry out repairs (the *Jervis v Harris* clause) is in clause 4.10. There is no specified time limit for the tenant to fail to carry out its obligations before the landlord can enter; simply a reasonable time. The tenant must then repay the costs as a debt on demand, optimising the landlord’s ability to recover the costs. These costs are covered by the interpretation provision, so no amendment is required to state that they must be reasonable and proper.

9. **Tenant’s obligations – alterations and signage**

- 9.1 The MCL allows the tenant to install Electronic Communications apparatus to facilitate its business at the premises.
- 9.2 Following the Code for Leasing Business Premises (2007) (the “Lease Code”), internal non-structural works that have no adverse impact on the environmental performance or

the building systems do not require landlord's consent. Other alterations do require consent.

9.3 We have used different phrases for the many different types of alterations the tenant might make. You can decide which of these suit your particular situation:

- Tenant's Business Alterations (see paragraph 9.4);
- Permitted Works;
- Permitted Apparatus; and
- External Works.

There are also various crossover references such as Aerials, Conducting Media, Plant and Wireless Data Services. It is probably worth an initial review of the definitions before you get into the detail of the clauses.

9.4 In leases of part, the phrase "Tenant's Business Alterations" means works that require fixing to structural elements that are not part of the Premises, such as fitting the shopfront (in the case of retail premises) or installing service media. These would usually be prohibited as they involve structural alterations. Landlord's consent is required for these alterations.

9.5 Clause 4.11.4 in the retail leases requires the tenant to comply with any shop fitting guides.

9.6 If the landlord and the tenant decide it is appropriate, Schedule 6 contains a streamlined protocol for the landlord to grant consent to Permitted Works. It applies to any works that the tenant can carry out without consent (for example, internal non-structural works), and also to Permitted External Alterations or External Works. It contains "good housekeeping" clauses with which any reasonably minded tenant would comply in any event. It can be used for more complicated works, but it is most likely to be used for run-of-the-mill works that tenants want to get on with quickly (and which are often done at the tenant's risk simply because the process of licensing them takes too long).

9.7 Where works are external to the Premises (such as plant on the roof of the Centre or the Building), clause 4.12 requires the tenant to keep them in good repair and condition and allows the landlord to require their temporary or permanent removal (at the landlord's cost).

9.8 In the lease of a shopping centre unit, clause 4.13 allows the tenant to display the sort of signage you would expect, such as signage approved by the landlord, or normal trade signs. The obligation to display in or near the windows is in accordance with good retailing practice and this is as close as we get to a "keep open" clause. If you want a keep open clause you will have to draft one and explain to the tenant why you need it. The MCL Turnover rent clauses, however, contain an optional keep open clause.

10. **Tenant's obligations – User**

10.1 The user clause (clause 4.15) is a negative (not to use) obligation, not a positive (keep open) obligation.

10.2 The traditional lengthy list of purposes for which the tenant cannot use the premises has been reduced considerably. If you want a longer list, you will need to put them back in and explain why you are doing so (e.g. immorality, indecency, pornography, manufacturing processes etc.)

10.3 Otherwise, much of the user clause deals with neighbourly matters, such as nuisance and interference. In the retail leases there are some specific obligations such as collecting customer trolleys.

- 10.4 Leases of part also deal with how the tenant exercises its rights, and how it uses for example, parking spaces.
- 10.5 Where the use will be A3/A4/A5, you can use the MCL A3/A4/A5 User clauses to include appropriate additional provisions. The food and drink leases already contain these provisions.
- 11. Tenant's obligations – Alienation**
- 11.1 There is the usual prohibition of assignment of part, but there is no prohibition against virtual assignments.
- 11.2 There is no offer-back clause. If you want one, a separate MCL Offerback clause is available. This can be used in conjunction with the MCL Turnover rent clauses.
- 11.3 There is no industry-accepted way of dealing with the uncertainties created by the *K/S Victoria Street* case. The standard MCL drafting prevents the tenant from assigning to a current guarantor. Prohibition of intra-group assignments has become more common since *K/S Victoria Street*, but the MCL does not prevent them. Reasonableness will govern whether the landlord can refuse a consent where it thinks its covenant is being diluted. That may be insufficient for some landlords. Other solutions, such as a minimum "value" for the AGA from the incoming tenant, may be a way forward. Standard practice is yet to evolve.
- 11.4 The requirement to give an AGA is "if reasonably required" and complies with the Lease Code. The "reasonableness" is imported by the interpretation wording in clause 2.8.
- 11.5 There is a condition that the Main Rent has been paid.
- 11.6 There are no other potentially controversial conditions or circumstances, such as not assigning to an immune diplomatic entity, or to an assignee based in a location where enforcement may be difficult. That sort of circumstance is left to reasonableness, which is where many leases now often end up anyway.
- 11.7 There is, however, a condition that a guarantor and/or a rent deposit may be required. The MCL Rent Deposit Deed can be used where a rent deposit is required on the grant of the lease or a later assignment.
- 11.8 The alienation clause allows the tenant to charge the whole of the premises to a genuine lending institution without consent. This recognises modern business reality and how rarely a landlord can legitimately object to such an arrangement.
- 11.9 The MCL automatically allows group sharing and (optionally) sharing with a Service Provider such as a catering, cleaning or other outsourced service. The usual safeguards apply. The retail leases also allow sharing with concessionaires.
- 11.10 The tenant must provide the landlord with details of any disposition, but there is no requirement for a fee to be paid.
- 11.11 Underletting is dealt with as a separate schedule. This makes it easy to remove the underletting provisions entirely where (as is common in a lease of a shopping centre unit) underletting is prohibited,.
- 11.12 Optionally, you can restrict the number of occupiers within the premises if they are capable of being underlet in parts.
- 12. Ending the contractual term normally**
- 12.1 This is dealt with in a number of ways.
- 12.2 Clause 4.14 covers what the tenant must do by the End Date. As you would expect he must remove:

- 12.2.1 tenant's and trade fixtures;
 - 12.2.2 loose contents;
 - 12.2.3 signage;
 - 12.2.4 Permitted Works; and
 - 12.2.5 Permitted Apparatus.
- 12.3 Clause 4.14.3 contains a new mechanism relating to reinstatement at the end of the lease. It has proved uncontentious on informal consultation, but you should take specific instructions on it. The tenant can serve a request on the landlord no more than nine months (and no less than two months) before the End Date. The notice asks the landlord to tell the tenant, within six weeks of receiving it, which works the landlord reasonably wants the tenant to remove. Obviously these dates and time periods are for discussion and agreement in each deal. However, the principle may help both parties to avoid the brinkmanship that typically occurs towards the end of a lease.
- 12.4 The landlord can only specify works that it reasonably considers should be removed. This complies with the Lease Code.
- 12.5 At the End Date, clause 4.14.4 requires the tenant to give the premises back with vacant possession, except to the extent that any permitted undertenant has the right to stay. This is different from the position when the lease ends as a result of exercising a break right (when vacant possession must be given).
- 12.6 Where the tenant will have an option to renew, you can incorporate the MCL Option to renew clause into the lease.
13. **Ending the contractual term early**
- 13.1 There is a specific optional break clause at clause 8.
- 13.2 Best practice is to specify the calendar date for the break and to make the break clause the day before a rent payment date (rather than the rent payment date itself). This ensures the tenant is not legally obliged to pay a full month's or quarter's rent on the day the lease ends.
- 13.3 The conditions for exercising the break are simply payment of the Main Rent up to the Break Date and the return of the premises to the landlord free of the occupation by the tenant and any other lawful occupier. Again this complies with the Lease Code.
- 13.4 Other provisions are as you would expect, including a clause that time is of the essence.
- 13.5 Importantly, however, there is a repayment of rent obligation in clause 5.4. This clause applies regardless of how the lease ends (unless due to tenant default), but it is particularly appropriate for break clauses. It requires any main rent and insurance rent paid in advance to be refunded. A similar provision relating to service charge is in the service charge schedule.
14. **Tenant's obligations: letting the landlord in**
- 14.1 We have already mentioned the rights of entry at paragraph 8.6.
- 14.2 There is a remarketing provision in clause 4.18, which allows the landlord entry for prospective buyers and tenants.
- 14.3 Schedule 1, Part 2 contains the landlord's reservations.

15. **Tenant's obligations: good housekeeping**

- 15.1 The tenant must tell the landlord as quickly as possible after it receives a notice (clause 4.19).
- 15.2 The tenant's obligation to comply with statute is in clause 4.20. Clause 4.21 expands that obligation in relation to the Planning Acts. If, as a landlord, you have a property where it is appropriate to make the tenant give you security before it implements a planning permission, you will need to explain that and insert appropriate provisions.
- 15.3 Clause 4.22 requires the tenant to preserve the property by not allowing any rights or easements to be acquired over it. Any action that the landlord requires is at the landlord's cost, and cannot be adverse to the tenant's business interests. This seems a fair default position, but if you think it is not right for your property, explain that and amend it.
- 15.4 Clause 4.23 contains general management obligations. You should check these carefully and see if anything else is needed.
- 15.5 Land Registry registration requirements are in clause 4.25. Consider carefully whether you need to exempt certain information, and whether that is appropriate for this type of property.
- 15.6 If the tenant makes an application to the landlord for consent, clause 4.27 requires it to provide the landlord with the application's context in the form of a complete and accurate copy of the heads of terms.

16. **Landlord's obligations**

- 16.1 These are usual, apart from the repayment of rent requirement in clause 5.4 (see paragraph 14.5).
- 16.2 There are express provisions protecting the tenant if the landlord needs to enter the property. These entry safeguards at clause 5.5 are normal, but you should check them carefully.
- 16.3 The turnover information in clause 5.7 of the retail leases is optional, so it is in square brackets.
- 16.4 There may not be a head lease, so clause 5.8 is in square brackets.
- 16.5 Extensions or other modifications to the extent of a centre or estate can prove controversial. Therefore, under clause 5.9, the landlord must tell the tenant if there is a change. The change must not result in a material increase in the amount of service charge or prejudice how the tenant can use its premises.
- 16.6 In leases of part, clause 5.10 introduces a general obligation to ensure that where the landlord has the right to designate specific Common Parts for the tenant's use, it must include those Common Parts reasonably required for the use and enjoyment of the Premises. If no designation is made, the tenant has the right to use all Common Parts required for the use and enjoyment of the Premises.
- 16.7 In the lease of a shopping centre unit, optional provisions are included in clause 5.11 for use where the landlord has agreed sightlines or exclusion zones.

17. **General provisions**

- 17.1 The forfeiture provision in clause 6.1 is normal. Rents must be unpaid for 21 days, but otherwise non-compliance (not material non-compliance) is the trigger.
- 17.2 Clauses 6.2 and 6.3 deal with easement acquisition and works to adjoining property and are in normal form.

- 17.3 The notices clause has been slightly modified so that there is a reference to special delivery rather than recorded delivery or registered post.
- 17.4 There is an optional provision for contracting-out the lease in clause 6.6. We decided not to include wording for guarantors. New leases under these clauses are so rare that the cost of allowing for a 1954 Act exclusion is likely to outweigh the benefit.
- 17.5 The superior landlord's consent clause requires the landlord to apply for consent at the tenant's cost. If the landlord is consenting, it must take reasonable steps to obtain the superior landlord's consent.
- 17.6 The guarantee obligations are in clause 7 and contain the usual provisions.

18. **Schedule 1 – Rights**

- 18.1 Tenant's Rights are in Schedule 1, Part 1. Landlord's reservations are in Schedule 1, Part 2.
- 18.2 In many buildings, and particularly a shopping centre, there will almost certainly be some other rights that you need to grant. Indeed, some of the rights in the MCL may need to be modified or may not be appropriate, and so a number of them are in square brackets.

19. **Schedule 2 – Rent review**

- 19.1 This is a neutral rent review clause and is not intended to achieve a headline rent.
- 19.2 You will need to consider how you deal with break clauses, the length of the assumed term, and the frequency of rent reviews (the default is five years).
- 19.3 The market rent is not best rent, nor best rent reasonably obtainable, but simply the rent for which the premises might reasonably be expected to be let.
- 19.4 There is a qualification to the assumption that the landlord's covenants have been complied with where the landlord has been in material or persistent breach.
- 19.5 The disregards specifically address tenant's initial fitting out works and (in the retail leases) any mezzanine floor areas. You will need to check these carefully.
- 19.6 A choice needs to be made now on whether the rent review surveyor will act as an expert or arbitrator. The landlord does not have the choice of deciding later.
- 19.7 There is a simple arbitration provision if that is the choice you make. Otherwise there is an expert alternative.
- 19.8 As it has not been relevant for 30 years, and may or may not be for the next 30 years, we have not drafted for rent restriction legislation, not least as any rent restriction legislation will probably cater for existing leases.
- 19.9 Interest is due, but at base rate on rent once it has been reviewed and only for the period since each increased rent payment became payable.
- 19.10 Time is expressly not of the essence.
- 19.11 The MCL Index Linked Rent Review clause can be used to replace Schedule 2, where the landlord has agreed that rent reviews will be by reference to a percentage increase in an agreed index.

20. **Schedule 3 – Service charge**

20.1 **Structure**

20.1.1 The service charge is split into five sections: administrative, landlord's obligations, actual services, service charge exclusions and (for retail leases of an estate or centre) weighting. You will obviously need to take specific instructions on the sample figures that have been inserted in square brackets.

20.1.2 If the landlord has agreed a service charge cap, an optional clause can be added from the MCL Index linked service charge cap clause.

20.2 **Service charge – administrative**

20.2.1 The landlord must try to supply the service charge statements within four months of the end of each accounting period.

20.2.2 There are provisions for reconciliation once the service charge has been calculated and for dealing with a surplus or a deficit. The tenant has rights to inspect the service charge paperwork. There is a dispute resolution mechanism. The landlord must vary the tenant's proportion if the extent of the building, centre or estate changes. The guiding rule is that adjustments must be fair and reasonable, having regard to the relative degree of benefit obtained by the tenant and other tenants. Voids are expressly catered for.

20.3 **Service charge – landlord's obligations**

The landlord must supply the services in an efficient manner acting reasonably. Although this is an absolute obligation, there are the usual protective provisions for interruption of supply. There is no obligation to comply with all of the Service Charge Code. However, where it is sensible to do so, the landlord must take into consideration its administrative, accounting, procurement management and operational provisions,.

20.4 **Service charge – services**

20.4.1 There is a long list of services and also charges for services. You should check these carefully with your clients. You will need to ensure that the services to be provided are appropriate for the building, centre or estate.

20.4.2 It may not always be appropriate to audit the service charge, so the checking process allows for examinations. They will often be the first step.

20.4.3 If the landlord uses its own capital to provide the services (in advance of being paid), it can charge an amount equal to what it would have incurred had it borrowed to do so.

20.5 The MCL allows you to distinguish between "core" services that must be provided and "discretionary" services that may be provided.

20.6 **Service charge – exclusions**

20.6.1 There is a long list of the sort of exclusions a well-advised tenant might require. They do not refer expressly to inherent defects in the original construction being irrecoverable. However, item 2 (capital costs of constructing or redeveloping) will implicitly cover that. So consider whether to include expressly the costs of enforcing remedies against inherent defects contractors/consultants.

20.6.2 Upgrading is always a problematic area. We have addressed this by saying that general upgrading and improvement is not allowed. However, in certain circumstances it may be sensible to upgrade, innovate or improve' and so we have also provided for circumstances where, on balance, that could be fair.

20.6.3 In the context of leases of shopping centre units, promotional and advertising costs are specifically excluded. You should take instructions on whether that is the right thing to do for your Centre. Similarly, car parking charges are in square brackets, as different landlords approach car parking in different ways.

21. **Schedule 4 – Insurance**

- 21.1 The landlord covenants to insure the whole of the Building, Centre or Estate. So, where the lease is a lease of part, that includes the Premises. But it expressly does not include tenant's fixtures (which are not part of the Premises). They will therefore remain the tenant's responsibility to insure and reinstate if necessary. The landlord must also insure Rents for the Risk Period and may (reasonably) opt for between three and five years. You will need to discuss the appropriate period with your client.
- 21.2 The list of Insured Risks has been "modernised" using feedback from the BPF Insurance Committee. Some old favourites like "tempest" are gone. We have also adopted the common practice of including terrorism as an insured risk rather than its technically correct status as an exclusion.
- 21.3 There are no qualifications on the excesses, limitations and exclusions that the insurers may impose. However, the Insurer must be a reputable insurance company (Schedule 4, para 2.1).
- 21.4 Tenants must comply with insurers' requirements, but not their recommendations.
- 21.5 We have continued the common practice of double insurance for public liability risks, with the tenant required to insure their public liability risks relating to the Premises and the landlord doing the same for the Centre. Whilst technically inconsistent and leading to double insurance for liability for the Premises, it never seems to be an issue in practice.
- 21.6 The landlord must insure against terrorism (if cover is available). The landlord cannot choose not to insure against it.
- 21.7 Again in accordance with current practice, there is an obligation on the landlord to procure that the tenant's interest is noted, either specifically or generally. Most insurance policies do this as a matter of course. However, the obligation to procure a waiver of subrogation requires reasonable steps only, as policies do not seem to be consistent on this point.
- 21.8 As part of good housekeeping, the landlord must tell the tenant of any material variations to the policy and give the tenant a summary of its main terms upon the tenant's request. This is important as the tenant's insurance managers will need to know the key terms.
- 21.9 Insurance premiums must be reasonable and proper in amount and reasonably and properly incurred – see the interpretation provision in clause 2.11. Even with that provision, and due to the controversial nature of insurance commissions, paragraph 2.7 in Schedule 4 re-states that insurance premiums must be reasonable and proper and reasonably and properly incurred, and only on that basis will the landlord be able to retain insurance commissions. This reflects the Lease Code.
- 21.10 If the Building, Centre or Estate is damaged by an insured risk, so that the premises are unfit for occupation or use, various tenant protections apply (always subject to vitiating not having occurred). So:
- 21.10.1 rent suspension starts;
 - 21.10.2 the landlord must refund advance payments of Main Rent; and
 - 21.10.3 the landlord must obtain any consents required and then apply the insurance proceeds to the reinstatement of the Premises (or, in the case of the lease of a shopping centre unit, the Centre).

- 21.11 Uninsured risks are more controversial. The MCL gives the tenant all the benefits it would have if damage were caused by an insured risk except that the landlord has a choice as to whether to reinstate. It must make this choice by telling the tenant within twelve months of the damage whether or not it wishes it reinstate. If it does not, the lease will end after that twelve month period. These provisions are only a starting point, as standard practice continues to evolve on the detail. So you will need to take specific instructions on this provision, as different landlords will have different approaches.
22. **Schedule 5 – Title**
- Schedule 5 needs to be completed with the relevant title information. Where the landlord has given a title guarantee, any carve-outs will appear in this schedule and some specimen wording has been included.
23. **Schedule 6 – Permitted works**
- 23.1 You need to take specific instructions on this Schedule. Many landlords will think it is a good idea to have a Permitted Works structure to streamline things in the lease. Some will not. Those who do may still want to look at this carefully to see whether (for example) it applies to all Permitted Works. As Permitted Works include External Works and Tenant’s Business Alterations, those are obvious areas where you need specific instructions. But for internal non-structural works, and anything else appropriate for the property, you may find this works well.
- 23.2 Clause 4.11.4 enables the landlord to give its consent to alterations by simple letter licence because the tenant must comply with its obligations when carrying out any of these works.
24. **Schedule 7 – Sustainability**
- 24.1 We have included this as a separate schedule because not all landlords will wish to include these sustainability provisions. There are legitimate and differing views on whether sustainability clauses should be mingled with other clauses in the lease or whether they should be set out separately. There is no right answer. We have opted for a separate schedule so that you can easily answer the question “how is sustainability addressed”?
- 24.2 The schedule is, however, light green. It imposes only obligations that are administrative in nature. Clearly you will need to take specific instructions on whether you want to go darker green than this, or indeed whether to include it at all.
25. **Schedule 8 – Underletting**
- 25.1 Schedule 8 covers underletting and allows underletting at a market rent, rather than at the higher of market rent and the passing rent. This complies with the Lease Code.
- 25.2 Also it defines the Approved Underlease as an underlease in a form that includes various different provisions (which some landlords may wish to modify) but which ultimately do not require the lease to be on exactly the same terms as the main lease.
- 25.3 For convenience, the form may well be the same, but some provisions may not be appropriate. Reviewing the rent at the same intervals as the main lease (although not necessarily on the same dates) is provided for.
- 25.4 The question of whether the underletting is to be contracted-out is optional. Drafting is provided for both options.
- 25.5 The tenant can end any approved underlease without the landlord’s consent, but, as you would expect, variation and surrender need the landlord’s (reasonable) consent.