

Lease offering

The Model Commercial Lease should reduce the time spent negotiating lettings in a market with an increasing appetite for standardisation

Peter Williams

Speeding up real-estate deals and reducing their cost is increasingly important. Commercial letting transactions are no different: landlords want to see rent coming in at the earliest opportunity, and tenants want to start trading from their new premises. There have been various attempts over the past 25 years or so to speed up the process by using standard documents, but they have not proved popular for various reasons. However, a new product – the Model Commercial Lease (MCL) – may well succeed.

The MCL was originally proposed by the British Property Federation (BPF)'s commercial committee, which noted that a lack of standardisation in both lease structure and content mean that commercial lettings still take longer to conclude than necessary. A working party of property lawyers and landlord representatives was formed in 2011 with the remit of producing a modern document that could be used as a fair starting point for most commercial letting transactions in England and Wales. As part of the process, the working group consulted widely with BPF members and most of the major law firms.

The MCL family of documents was launched in 2014. It consists of templates for letting a variety of different

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types of commercial building, together with additional bolt-on clauses and a series of asset management documents including a rent deposit deed. A full list of the MCL documents is set out in the box, left. All are available free of charge to download (bit.ly/MCLsuite).

The Law Society has adopted the concept as well to provide its own short-form model commercial leases in two variants for office buildings, covering the whole of and part of a building. Work is also under way to produce short-form leases for other types of building. These leases are intended to be suitable for lettings of up to ten years that include at most one rent review, and are also free to use. Versions of the MCL that take account of landlord and tenant law in Scotland are likewise now available free of charge from the Property Standardisation Group (psglegal.co.uk).

The MCL has been drafted to avoid much of the unnecessary negotiation on most routine letting transactions. The aim has been to remove the ritual dance between lawyers at the start of a transaction, with routinely agreed amendments included in the draft lease from the outset. This frees up the parties to address the issues that are specific to their deal and those that actually matter to them.

Having said that, the MCL contains all the protections that landlords need that are found in any typical full repairing and insuring institutional lease; the box overleaf highlights some of the key provisions. However, a key feature of the MCL is that it does not have to be used in its unamended form straight from the website.

Every building is different, so the MCL can be tailored to fit the premises being let and the wishes of the particular landlord. Users are also free to take the MCL suite as the starting point for their own precedent documents, and amend or delete the wording in places as they wish. There is no need to brand the resulting documents as having been derived from the MCL.

The MCL complies in most respects with the current, third edition of the *Code for Leasing Business Premises*,

MCL documents

The following leases are included:

- office premises – whole and part
- office premises on an office park – whole and part
- retail premises – whole and part
- retail premises on a retail park – whole and part
- shopping centre unit (with optional turnover rent provisions)
- industrial/logistics unit
- unit on an industrial park.

There are also bolt-on clauses for:

- turnover rent provisions
- offer-back clause
- A3/A4/A5 use clauses (food and drink)
- index-linked rent review provisions
- option to renew
- service charge cap.

Asset management documents include:

- rent deposit deed
- licences to assign, underlet, change use and alter
- licences allowing undertenant to assign, underlet, change use and alter.

though a chart on the MCL website highlights where its terms depart from the code's recommendations.

Experience to date

Landlords and tenants, together with their agents and lawyers, have understandably been asking why the MCL should succeed when past attempts to standardise leases have not. Expectations at the start of this project were high for a number of reasons.

- The concept of standardised documents is now widely accepted by both the property industry and lawyers.
- Landlords and tenants are no longer willing to pay their lawyers to argue about points that have proved largely unimportant in practice.
- Landlords are keen to use artificial intelligence, and a standardised lease will make it easier to introduce this.

But perhaps most importantly, the days of landlords issuing 100-page 25-year leases on a take-it-or-leave-it basis have now gone for good. Landlords are encouraged to treat their tenants as customers not just rent-payers, and the confrontation that used to characterise a lease negotiation has now largely disappeared.

Initial signs have been extremely encouraging. Given that the documents can be downloaded free of charge and many law firms have stored copies on their own systems, there are no statistics to show how frequently the MCL documents are used. But we do know that several leading law firms have adopted new precedent leases based on the MCL or are in the course of doing so, and at least two leading institutional investors have recently done the same. We have also heard many times that the MCL provisions tend to be adopted during lease negotiations when compromise is necessary.

The original working group, now joined by representatives from more law firms, is continuing to keep the MCL up-to-date. There have been updated versions of the leases each year, with another expected to be issued this spring. Many of the drafting changes have been suggested by users themselves – there is a feedback form on the MCL website, and users can sign up there to be notified about new versions.

Please do have a look at the MCL, and recommend it to your clients; it is becoming increasingly likely that it will be adopted as the standard for the majority of commercial letting transactions.

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Related competencies include: Landlord and tenant, Leasing/letting

Further information: modelcommerciallease.co.uk

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Key MCL provisions

- **Assignment:** assignment of the whole premises is permitted with the landlord's consent other than from a tenant to its guarantor, to avoid the uncertainty of the outcome in *K/S Victoria Street v House of Fraser (Stores Management) Ltd* [2011] EWCA Civ 904. The landlord is entitled to require an authorised guarantee agreement on all assignments, rather than only where it is reasonable to do so, reflecting institutional landlords' standard requirements; this is one of the few places where the MCL does not follow the *Code for Leasing Business Premises*.
- **Underletting:** this is dealt with in a separate schedule and can be adapted to suit the building being let.
- **Break clause:** this follows the *Code for Leasing Business Premises* recommendation, and so the only conditions are that the tenant is not in arrears with the main rent and returns the premises free from occupation by a third party. A separate provision requires the landlord to repay any rent that the tenant has paid in respect of any period after the break date.
- **Alterations:** the MCL contains a schedule of covenants for tenant's works, meaning that the landlord can authorise minor works by letter rather than requiring a formal licence, although a licence is recommended in the case of more complex alterations.
- **Sustainability:** the MCL includes an optional schedule containing relatively light sustainability provisions to promote the building's environmental performance.