

## Clarity breakfast 21 January 2015: the Model Commercial Lease

Thanks to the presenters for these notes:

- Peter Williams, legal trainer at Falco Legal Training.
- Michael Callaghan, real estate Professional Support Lawyer at Eversheds LLP.

The [Model Commercial Lease](#) aims to eliminate 'pointless ritual dancing' from lease negotiation and to allow the parties to concentrate on the commercial issues that really matter to them. It represents a 'fair starting point'. It should also speed up the negotiation process. The MCL saves lawyers time. If they're already familiar with the model lease, they don't have to assimilate the contents of a new draft each time they negotiate one.

To help achieve this, it was drafted using plain English principles from the outset.

### Background to the Model Commercial Lease project

- It was initiated by the British Property Federation (BPF) 4 years ago.
- The MCL suite of documents covers both leases and asset management documents such as licences and a rent deposit deed. There are also some bolt-on clauses for provisions that are seen less frequently but are still common such as an option to renew and an offerback clause. There are two alternative rent review schedules, for turnover rent and index-linked rent.
- The model leases now incorporate standard tenants' amendments to speed up negotiation. A well-respected solicitor who is known for advising tenants was consulted on which provisions caused particular difficulties for tenants.
- It is available for anyone to use free of charge. It is not 'off the shelf'; it has to be adjusted to suit the particular letting and building. Users are also welcome to copy and paste parts of the documents into their own documents.
- It will be updated regularly (for example, there are plans to issue a revised version within the next three months in order to incorporate a few minor changes suggested by users).

### Importance of plain English in the drafting process

- Examples of language use:
  - **'must'** instead of 'is to' or 'shall'
  - **'landlord and tenant'** instead of 'you' and 'me' (which might be usual in a consumer contract, but was thought to be inappropriate for use in a commercial property document)
  - **'end date'** instead of 'expiration of the term'
- It was stressed that in order to keep the main part of the lease relatively short, the detail is in the schedules; these contain the provisions relating to rights and reservations, rent review, service charge and insurance, for example.
- Legal terminology is still required in the lease. This is a technical legal document and it would be misleading to suggest that it can be used by people who do not have an understanding of commercial property law.

### Structural points:

- Definitions are collected at the start of the lease, except where defined terms are used only in the schedules – where they are set out at the start of each one
- No 'particulars page' as this could lead to duplication of definitions
- Some innovative interpretation provisions mean that tenants need to make fewer amendments in the body of the lease.

### **Ensuring consistency across a suite of documents**

- The MCL sets a standard framework (it's easier to spot changes, too).
- It is important not only to have clear language but also a clear 'map' of the document: the same provisions are found in the same place across all the documents.
- Changes in one lease have to be replicated across all leases, and sometimes across the asset management documents as well.

### **Use of document assembly software**

- DealBuilder software helped to ensure changes were implemented across the documents.
- The initial coding of input took time and effort, but it means that now easy and full amendments can be made to all the documents.

### **Case study – the food and drink leases**

- As a result of informal feedback, a decision was made at the last minute to produce stand-alone leases containing the optional "food and drink" provisions, such as specific provisions relating to use.
- With the assistance of the DealBuilder master document, it was possible to produce stand-alone food and drink leases in only half a day.

### **Reactions from users and the legal profession**

- The website has received 1,700 hits on the Office Lease of Whole alone (they have not been analysed in detail, but it is positive to have so much 'traffic').
- There has been more support from lawyers than expected.
- There is little real concern about lawyers losing money as a result of leases being quicker to negotiate. This is probably because lawyers are not being properly paid for the work they are doing at the moment. Retail tenants in particular are reluctant to pay more than a relatively low standard fee for new or renewal leases.
- The MCL has been adopted by, or will shortly be adopted by, among others: Land Securities, Hogan Lovells, CMS Cameron McKenna and Eversheds. It is likely that many other large London and national firms will follow within a short time.
- It seems that both tenants and landlords are positive about the MCL. It has been suggested that some tenants may in future require leases to be granted to them using the MCL so that all their leases will be in similar form.

For further information, refer to website: [www.modelcommerciallease.co.uk](http://www.modelcommerciallease.co.uk). (The **FAQ** section is of particular interest; note, too, **the useful footnotes** on the lease and asset management documents.)

Peter Williams and Michael Callaghan are members of the Model Commercial Lease Working Group. Michael maintains and keeps updated the Model Commercial Lease documents. Peter looks after the [Model Commercial Lease website](http://www.modelcommerciallease.co.uk).

Peter can be contacted at [www.falcolegaltraining.co.uk](http://www.falcolegaltraining.co.uk)