

Commercial Leaseholder Policy

Originator:	Policy and Strategy Team
Executive Management Team Approval Date:	April 2019
Review date:	April 2022

1	Introduction
1.1	One Vision Housing (OVH) owns and manages a number of properties that are available to rent on commercial lease terms, most notably shops, used primarily for retail purposes.
1.2	This Policy sets out the provisions OVH has in place for the: <ul style="list-style-type: none"> • Letting of commercial properties • Management of leases in commercial properties • Rights and responsibilities of OVH as the landlord • Rights and responsibilities of the leaseholder
1.3	In operating this Policy, OVH will meet all of its legal obligations in respect of commercial lease arrangements, primarily outlined in: <ul style="list-style-type: none"> • The Landlord and Tenant Act 1954 (as amended) – where these apply
1.4	OVH will also be mindful of best practice guides and voluntary codes such as: <ul style="list-style-type: none"> • The Code for Leasing Business Premises in England and Wales • The Royal Institution of Chartered Surveyors (RICS) Code of Practice on Service Charges in Commercial Property • Information and guidance produced by the British Property Federation
1.5	Access and Communication
1.5.1	OVH is committed to ensuring that our services are accessible to everyone. We will seek alternative methods of access and service delivery where barriers, perceived or real may exist, that may make it difficult for people to work for us or use our services.
1.6	Equality, Diversity and Human Rights
1.6.1	OVH is committed to ensuring that no person or group of persons will be treated less favourably than another person or group of persons and will carry out its duty with positive regard for the following core strands of equality; Age, Disability, Gender, Race, Gender Re-

	assignment, Sexual Orientation and Religion and/or Belief, Marriage and Civil partnership, Pregnancy and Maternity.
1.6.2	OVH also recognise that some people experience disadvantage due to their socio economic circumstances, employment status, class, appearance, responsibility for dependants, unrelated criminal activities, being HIV positive or with AIDS, or any other matter which causes a person to be treated with injustice.
1.6.3	OVH will also ensure that all services and actions are delivered within the context of current Human Rights legislation. Staff and others with whom we work, will adhere to the central principles of the Human Rights Act (1998).
1.7	This Policy should be read in conjunction with: <ul style="list-style-type: none"> • The OVH Anti-Fraud, Corruption and Money laundering Policy

2	Statement of Intent
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2.1	In letting and managing commercial properties OVH will meet all of its legal requirements including those that ensure the health and safety of building users and to fulfil these obligations will require access to leasehold properties when reasonable notice is provided.
2.2	To maintain viability and continue to provide excellent housing management and leaseholder services, OVH will always aim to maximise its rental income. To meet this aim OVH will endeavour to return vacant shop and commercial properties to a lettable condition and find new leaseholders that meet letting criteria, as expediently as possible.
2.3	OVH will review rents on commercial properties according to the terms of the lease issued and increase rents having regard to the local market conditions at the time of review.
2.4	OVH appreciate the role that local shopping amenities play in promoting economically viable and sustainable communities. It will work in partnership with planning authorities and applicants for lease opportunities to create a balanced mix of retail outlets.

3	Policy
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3.1	Marketing and letting of leasehold opportunities
3.1.1	Where commercial properties become vacant, OVH will use a variety of means to advertise the letting opportunity, including: <ul style="list-style-type: none"> • Direct advertising in the premises e.g. via signage displayed in the shop windows or on the exterior of the property • Via local newspapers or on the OVH website • Via estate agents
3.1.2	Lettings will usually be made on a 'first-come, first-served basis' to any applicant that meets the criteria outlined in 3.2 below.

3.1.3 OVH does, however, reserve the right to hold a waiting list of applicants that have previously met the applicant acceptance criteria (but who were not successful in securing a property to let) and will contact them in date order if there are any commercial properties that are not let on first round of advertising.

3.2 **Applicant acceptance criteria**

3.2.1 All applicants for commercial leasehold properties will need to provide satisfactory proof of the following information before being offered opportunities to let properties from OVH:

- Confirmation of address (e.g. utility bill, bank statement, mortgage statement)
- National Insurance number
- Proof of nationality (passport or other permitted documentation) and leave to remain in the UK
- Company accounts / audit letter or personal bank reference

3.2.2 In addition, applicants will need to sign a disclaimer stating that there are no known lawful reasons why they cannot lease a property from OVH or operate a commercial business from the premises. If it is subsequently found that false information has been supplied in relation to this disclaimer OVH may take action to bring the lease to an end.

3.3 **Calculation of rents and service charges**

3.3.1 When a commercial property becomes empty, OVH will obtain an independent assessment of the rental charge per square footage based on local market conditions for similar commercial units.

3.3.2 An assessment will also be made of any service charges that are payable e.g. for the upkeep of communal areas and new leaseholders will be advised of these charges and dates payable.

3.3.3 The rents that are set will normally remain the same for the term of the lease (usually five years) at which point they will be reassessed. Service charges will, however, be assessed on annual basis and leaseholders will be advised in writing of any variations, given not less than 28 days' notice.

3.3.4 When negotiating the lease particulars, OVH may on a case-by-case basis agree to a rent free period at the beginning of the term, in lieu of the new leaseholder carrying out identified repairs or improvements to the property.

3.3.5 In these circumstances, OVH will agree a schedule of works with the incoming leaseholder to be completed and these will be included in the lease agreement. OVH will inspect the completed works to ensure they are of the standard required and may charge for any actions required to remedy faulty works or for failure to complete works within agreed timescales.

3.3.6 OVH would look to resolve any dispute that arises from any apportionment of major works charges using the process outlined in section 3.9 below (or as otherwise stated in the lease agreement).

3.4 **Rent payments**

3.4.1 OVH will invoice commercial leaseholders quarterly (or as otherwise stated in the lease agreement) with payment due by the following dates:

- 1st January
- 1st April
- 1st July
- 1st October

3.4.2 OVH will encourage all commercial leaseholders to set up direct debits to make rent payments, however, will also accept payments made in the following ways:

- Online via the OVH website, secure 'BillPay' facility
- At any Post Office Branch using the OVH payment card
- 24 hour payments by telephone by contacting 0300 365 1111
- Using 'Payzone' and 'Pay Point' facilities available via a number of retail outlets

3.4.3 In line with the Money Laundering Regulations 2017, OVH will show due diligence on tracing the provenance of any large payments that are made in respect of commercial rented properties e.g. payment of rent in advance over a long period.

3.4.4 Where leaseholders cannot explain or evidence the source of the payments, alerts will be made to the internal Money Laundering Reporting Officer who may choose to make referrals as required to the appropriate investigation agencies.

3.5 **Arrears pursuance and forfeiture action**

3.5.1 OVH will monitor rent accounts on all commercial leasehold properties and will commence enforcement action for any non-payments of rent or services charges within standard terms of request for payment being issued.

3.5.2 This may include warning letters and visits to the property and could ultimately result in OVH pursuing civil actions to recover monies owed or forfeiture action to bring the lease to an end.

3.5.3 The commercial leaseholder will also be liable to pay for any additional costs incurred by OVH in pursuing debts owed or in instigating forfeiture action, including costs of legal action, where required.

3.6 **Term of lease**

3.6.1 The standard term of leases issued by OVH for commercial rented properties will be five years. OVH does, however, reserve the right to issue leases for shorter periods when it is in its business interests to do so and by negotiation with the incoming leaseholder.

3.7 **Landlord rights and responsibilities**

3.7.1 OVH will conduct safety checks on commercial properties during the time they are vacant, in-between lettings and will make available to new and prospective leaseholders 'Non Domestic Energy Performance Certificates' and 'Recommendations Reports'.

3.7.2	<p>OVH will retain responsibility for repairs and maintenance of the exterior of commercial properties and communal areas as defined in each individual lease agreement. This will normally include:</p> <ul style="list-style-type: none">• The main structure of the building including external walls, door and window frames, (although not glazing) roofs and rain water services (this excludes signage or the power supply to signage erected by the commercial leaseholder)• Common services to the building• Common areas within the building• Common areas around a property and within the curtilage of the building• Responsibility for ensuring appropriate buildings insurance is in place
3.7.3	<p>To ensure it meets the above responsibilities or for any other legitimate reason in exercising rights under the lease agreement, OVH may require access to the commercial leasehold property</p>
3.7.4	<p>Where access is required, OVH will provide reasonable notice to the commercial leaseholder (not less than 24 hours) or make suitable arrangements by mutual agreement, except in emergency situations when access may be gained without notice.</p>
3.7.5	<p>When OVH has to carry out repairs or maintenance to a commercial property it will endeavour as far as is reasonably possible to maintain customer access and ensure the leaseholder can continue trading.</p>
3.7.6	<p>Where there is a breach of the lease agreement or condition, OVH may use its right to terminate the lease through forfeiture by:</p> <ul style="list-style-type: none">• ‘Peaceable re-entry- OVH reserves the right to obtain possession of the property by re-entering and securing premises (after giving a written notice of at least 24 hours), if:<ul style="list-style-type: none">○ Rent remains unpaid after 21 days from when it falls due after it has been formally demanded• Issuing court proceedings- OVH will pursue court possession proceedings (having served a Section 146 Notice) with the intention to terminate the lease, if (but not limited to):<ul style="list-style-type: none">○ The tenant has breached any lease condition or tenant covenant○ The tenant has committed an act of insolvency
3.7.7	<p>Following forfeiture actions or in cases when leases are abandoned, OVH reserves the right to remove goods and possessions left in the premises. It will follow the requirements of the Torts (Interference with Goods) Act 1977.</p>
3.7.8	<p>In these circumstances OVH will serve the Tort notice at the commercial premises and attempt to make reasonable contact with the commercial leaseholder to collect the goods within 28 days and if no forwarding address is available.</p>
3.7.9	<p>OVH reserves the right to charge the leaseholder for the costs of removal and storage of goods and for disposing of the goods. Where the abandoned goods are to be sold, any costs incurred by OVH will be retained out of the sale proceeds.</p>

3.7.10 In all cases where possessions and goods are left in commercial leasehold properties when the lease has been terminated, OVH will take photographs and prepare a detailed a inventory.

3.8 **Leaseholder rights and responsibilities**

3.8.1 At the commencement of the lease, OVH will ensure the incoming lessee's are aware of their rights and responsibilities as outlined in the lease.

3.8.2 As leases are complex legal documents this will allow the incoming leaseholder to seek clarification over any points they do not understand.

3.8.3 In summary, commercial leaseholders will be responsible for:

- Complying with all conditions of the lease, including but not limited to:
 - Payment of all rent and service charges that are due on the property within the permitted timescales when demand for payment is received
 - Ensuring the health and safety of users of the property. If employing staff this will include:
 - Ensuring the workplace temperature is appropriate
 - Providing sufficient ventilation and lighting
 - Providing toilet and washing facilities
 - Providing drinking water
 - Meeting all other health and safety requirements associated with the property use including fire prevention and safety arrangements, gas safety checks etc.
 - Ensuring the property is in a good state of repair and decorative order
 - Completing any works stipulated by OVH at the time of letting and to the standards required (as per agreement on a case-by-case basis)
 - Not carrying out any alterations to the property that affect the structure, including internal walls without OVH's written permission
 - Complying with all statutory obligations and legal requirements and providing a copy to OVH of any notices / enforcement communications in relation to the property within five working days of receipt
 - Allowing OVH or agents acting on its behalf access to the property when required, to fulfil legitimate landlord duties, after reasonable notice is received (except in emergency situations)
 - Not assigning or underletting the lease in any way without OVH's written permission
 - Not causing or allowing any statutory nuisance from the premises e.g. noise disturbance
 - Informing OVH of any defects to the property that may come under OVH's repair obligations at the earliest opportunity
 - Only using the premises for the purposes for which they are let i.e. not using them as a residential address or for any illegal or immoral purposes
 - Not breaching any of the conditions of OVH's insurance covenants
 - Obtaining and providing evidence of appropriate contents and public liability insurance cover
 - Not having any form of outside display which could be hazard or obstruct public footpaths

<p>3.9</p> <p>3.9.1</p> <p>3.9.2</p> <p>3.9.3</p>	<p>Dispute Resolution</p> <p>OVH aims to have a good working relationship with all of its commercial leaseholders and in cases of dispute will look to resolve issues to both parties satisfaction through open discourse and negotiation.</p> <p>If for any reason this does not prove possible, in for example disputes over service charge calculations, OVH will look to adopt the principles of ‘Alternative Dispute Resolution – (ADR)’ as outlined in the ‘RICS Service Charges In Commercial Property Guidance’. This may include the following options:</p> <ul style="list-style-type: none"> • Early neutral evaluation • Mediation • Independent expert determination • Arbitration <p>All attempts at ADR are voluntary and are intended to be used to prevent the need for legal action on behalf of either party, although this may be necessary as a last resort if attempts at ADR are refused or agreement cannot be reached.</p>
<p>4</p>	<p>Implementation</p>
<p>4.1</p> <p>4.2</p>	<p>All OVH staff need to be aware of the Commercial Leasehold Policy to be able to direct any customer queries that may arise.</p> <p>The OVH Leasehold Team will have specific responsibility for:</p> <ul style="list-style-type: none"> • Arranging advertising and marketing of vacant commercial leasehold properties • Instigating independent market rent assessments, as required • Carrying out acceptance criteria verification checks on potential applicants • Negotiating lease conditions on a case-by-case basis with new lessees (in conjunction with the OVH Legal Team) and completing sign-up procedures • Issuing demand for payments, including calculation of any service charges and arrears perusal actions, as required • Being a point of contact for any queries in regard to commercial leasehold management • Negotiating the issue of new leases at the end of terms, as required • Dealing with any requests or requirements to activate break clauses
<p>5</p>	<p>Performance</p>
<p>5.1</p> <p>5.2</p>	<p>The OVH Executive Management Team will receive quarterly reports on the management of commercial leasehold properties including the following key performance indicator:</p> <ul style="list-style-type: none"> • Rent collected as a percentage of rent due <p>All other reporting will be by exception e.g. any commercial leasehold properties that OVH fail to let within target periods.</p>

6	Consultation		
6.1	All OVH staff have been consulted in the development of this Policy. The Tenant Policy Review Group were also consulted in the development of this Policy on 5 th April 2019.		
6.2	The Policy has been subject of external legal review in November 2017.		
7	Review		
7.1	The Policy will be reviewed every three years as near as is possible to date of approval by the Executive Management Team to ensure it continues to remain fit for purpose or sooner if necessitated by any change in legislation impacting on commercial leasehold property management or as result of system audit findings.		
8	Equality Impact Assessment		
8.1	Was a full Equality Impact Assessment (EIA) required?	No	
8.2	When was EIA conducted and by who?	An Equality Impact Assessment Relevance Test was conducted by the Leasehold Manager and the Policy and Strategy Manager on 24-07-17	
8.3	Results of EIA	The EIA Relevance Test did not identify any adverse or differential impacts for any groups with protected characteristics.	
9	Scheme of Delegation		
9.1	Responsible committee for approving and monitoring implementation of the Policy and any amendments to it	Executive Management Team	
9.2	Responsible officer for formulating Policy and reporting to committee on its effective implementation	Operations Director – Support Services	
9.3	Responsible officer for formulating, reviewing and monitoring implementation of procedures	Operations Director – Support Services	
10	Amendment Log		
Date of revision:	Reason for revision:	Consultation record:	Record of amendments:
First version of this Policy – Not applicable	Not applicable	See section 6	Not applicable
16 April 2019	In line with changes to OVH business practices	See section 6	Change at 3.7.6 - Inclusion that OVH has the right to

			'peaceable re-entry' and 'forfeiture' if the tenant breaches any of lease agreement or conditions.
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