



Service of notices

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About the speaker

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The notices attached to these materials are provided by way of example only and have been completed with details of fictional parties, leases and premises.

The notices are not intended to be comprehensive and they do not contain all of the information that may be needed in a particular situation.

They are not a substitute for legal or other advice and should not be used as precedents or templates.

1. Introduction

I'm going to start with a quick look at what is meant when we talk about notices and provide an overview of the various elements that you need to get right to ensure that a notice is valid.

We will then look at some important statutory and contractual provisions relating to notices generally. These provisions are basically the rules about how and when notices must be given.

We'll then run through some of the common types of notice that you can expect to see in a landlord and tenant context. I'll summarise the content of these notices and also look at the rules that apply with regards to service and any special considerations such as timing of the notice.

Finally we'll run through some of the consequences of getting your notice wrong, the circumstances in which an incorrect notice can sometimes be saved and what you should be doing to make sure that you don't end up with an invalid notice.

Our focus throughout will be on notices that need to be given in a leasehold context, but most of the principles apply more widely.

2. What are notices and why do they matter?

It's probably useful to begin by just thinking about what we mean when we talk about "giving notice" or "serving a notice" on someone.

If you are involved with commercial leasehold properties, you will come across a range of different types of notice on a fairly regular basis.

If relationships between the parties are good, and you are all trying to achieve the same goal, you may be tempted not to worry too much about the way in which a notice is given: as long as the other party gets the information it'll all be okay.

However, relationships and goals change and this is when disputes tend to arise. If you have been served with a notice which you don't want to comply with you will do everything you can to try and find a way out. Any errors in the way in which the notice has been prepared or served will become the perfect excuse for not complying. On the other hand, you could be the one who served the notice in which case you want to make sure that it is absolutely watertight.

There are several different elements which affect the validity of a notice. It is helpful to break these down so that we understand what we are dealing with:

- 2.1 The **form** of the notice: this is the way in which the notice is actually structured and put together. It may have to contain prescribed wording, be on a particular form or may have to be set out in a particular way.
- 2.2 The **content** of the notice: this is what the notice actually says in it. It covers things such as who the notice is addressed to, any dates specified in it, the description of the property and a summary of breaches which have occurred.
- 2.3 The **method of service** of the notice: this is the way in which the notice actually has to be brought to the attention of the recipient. It may be that the only acceptable method of service is to actually hand the notice to the recipient personally. Usually it will also be acceptable to send it by recorded or special delivery or by first class post. In some cases you will find that service by fax is acceptable, or even service by email.
- 2.4 The **deemed date and time of service** of the notice: this is of most importance in respect of time sensitive notices which have to be served by a particular date. The deemed date and time of service is the point at which the recipient can be assumed to have received the notice regardless of whether or not he has actually received it. Including deeming provisions helps to avoid arguments about when the notice arrived and was read.

3. Notice provisions

Most legal documents contain notice provisions of some kind, whether they stretch to a couple of lines or several pages. These provisions tend not to deal with content but will focus on form, method of service and deemed date and time of service. Even where there are no notice provisions in the document, statutory provisions may still apply. Notice provisions are designed to protect the parties by ensuring that they can be certain that a notice has been served provided that the specified requirements are complied with.

Before you give a notice it's very important that you know which notice provisions apply so as to ensure you get all of the essential elements correct.

We'll start off with a look at the two main statutory provisions which may apply in respect of property related notices. We'll then run through the elements of a properly drafted contractual notice provision. Copies of the relevant statutory provisions are provided in Annex A at the end of the notes.

3.1 Statutory provisions

3.1.1 Law of Property Act 1925, section 196

Section 196 applies to any notice which is required or authorised to be served or given by the Law of Property Act 1925. It also applies to any notice required to be served by any instrument affecting property, unless a contrary intention appears.

- a) **Form:** notices must be given in writing¹.
- b) **Content:** notices to a tenant do not need to be addressed using the actual name. It is sufficient to just address it to "the tenant" or to "the persons interested". It doesn't matter if the person affected is unascertained².
- c) **Method of service:** notices are properly served if:
 - i) left at the last-known place of abode or business in the United Kingdom or, for tenants, are left at the property³; or
 - ii) sent by post in a registered letter to the last known place of abode or business in the United Kingdom and are not returned undelivered⁴.
- d) **Deemed date and time of service:** where sent by post, the notice is deemed to have been served at the time at which the letter would ordinarily be delivered⁵.

There is a great deal of case law on the interpretation of the various parts of this section. The majority of this case law also applies to other statutory provisions and to contractual provisions where the same terminology is used.

Parties to be served: where the recipient of the notice consists of more than one person (for example, there are two tenants), the notice must be served on each of them⁶.

"Leaving" a notice at a property includes:

- Handing the notice to someone at the property, provided that there are reasonable grounds for supposing that the person will pass it on to the recipient if possible⁷.
- Leaving it at the furthest place to which a member of the public can go⁸.
- Fixing the notice onto the door of the property⁹. This is the case even where the property has been so badly damaged that the intended recipient is unlikely to be able to access it, provided that the person giving the notice has acted in good faith. If the notice has been deliberately concealed this will not amount to good service¹⁰.
- Pushing it under the door, even if it is not found for several months¹¹.

"The last known place of abode" is the last address you have for the person. It can be a residential or a business address. It is worth noting that where a solicitor

¹ Law of Property Act 1925, s196(1)

² Law of Property Act 1925, s196(2)

³ Law of Property Act 1925, s196(3)

⁴ Law of Property Act 1925, s196(4)

⁵ Law of Property Act 1925, s196(4)

⁶ *Blewett v Blewett* [1936] 2 All ER 188

⁷ *Cannon Brewery Co Ltd v Signal Press Ltd* (1928) 138 LT 384

⁸ *Trustees of Henry Smith's Charity v Kyriacou* (1990) 22 HLR 66

⁹ *Major v Ward* (1847) 5 Hare 598; *Cusack-Smith v Gold* [1958] 2 All ER 361

¹⁰ *Blunden v Frogmore Investments Ltd* [2002] 29 EG 153

¹¹ *Lord Newborough v Jones* [1975] Ch 90

has been advised of a change of address, the client may be deemed to have that knowledge regardless of whether or not it has actually been passed on¹².

“**A registered letter**” includes both a letter sent by Recorded Delivery¹³ and a letter sent by Special Delivery¹⁴.

“**Deemed served at the time ordinarily delivered**” means that service is deemed to take place on a presumed date, when the notice would have been delivered in the ordinary course of business. This is the first day on which the postman attempts to deliver the notice, regardless of whether anyone is available to receive it¹⁵.

Even if the letter is never received service is still presumed to have taken place, provided that the notice is not returned undelivered¹⁶.

Once the notice has been deemed to be delivered, the giver of the notice cannot withdraw it by destroying it before the intended recipient sees it¹⁷.

Where a notice is sent by post it is sufficient that it is delivered during the last day on which the notice must be given, even though outside of business hours¹⁸.

3.1.2 Landlord and Tenant Act 1927, section 23

Section 23 applies to any notice that is required or authorised to be served or given under the Landlord and Tenant Act 1927, the Landlord and Tenant Act 1954¹⁹ and certain notices under the Landlord and Tenant (Covenants) Act 1995²⁰.

- a) **Form:** notices must be given in writing.
- b) **Content:** notices to a landlord may be served on any duly authorised agent of the landlord.
- c) **Method of service:** notices are properly served if:
 - i) served personally;
 - ii) left at the last-known place of abode or business in England and Wales; or
 - iii) sent by post in a registered letter to the last known place of abode or business in England and Wales²¹.

Most of the points mentioned in respect of section 196 also apply here. However, there are a few extra points to be aware of:

“**A duly authorised agent of the landlord**” is an agent who has been specially authorised to receive notices (for example, a solicitor who has been given this authority) or is deemed to be authorised through his employment (for example where he has general management of an estate)²². It is not sufficient that he should receive rents on behalf of the landlord. Although the section does not specify this, it is also acceptable for a landlord to serve a notice on a duly authorised agent of the tenant²³.

It should be noted that section 23 does not provide any guidance on when delivery is deemed to have occurred. As such, we have to rely on case law for guidance on this and the case law takes a generous approach from the perspective of the giver of the notice.

¹² *Arundel Corporation v Khoker* [2003] EWCA Civ 1784.

¹³ Recorded Delivery Service Act 1962, s1(1): any enactment which requires a document to be sent by registered post has effect as if it required or authorised it to be sent by registered post or the recorded delivery service.

¹⁴ Successor Postal Services Company Inland Letter Post Scheme 2001, Sch 2 (as amended): any reference to “Registered Post” must be taken as a reference to Special Delivery as this is the brand name used by the Post Office and is the same in all material particulars.

¹⁵ *WX Investments Ltd v Begg* [2002] EXHC 925 (Ch)

¹⁶ *R v Westminster Union Assessment Committee, ex p Woodward & Sons* [1917] 1 KB 832

¹⁷ *Kinch v Bullard* [1998] 4 All ER 650

¹⁸ *Papillion v Bernton* (1860) 5 H&N 518

¹⁹ Landlord and Tenant Act 1954, s66(4)

²⁰ Landlord and Tenant (Covenants) Act 1995, s27(5)

²¹ Landlord and Tenant Act 1927, s23(1)

²² *Pearse v Boulter* (1860) 2 F & F 133

²³ *Galinski v McHugh* (1988) 57 P & CR 359

Where the notice is sent by Special or Recorded Delivery, the date of service is the date on which the notice is entrusted to postal service²⁴. It doesn't matter if the notice is not, in fact, received or even if it is returned undelivered; service will still be deemed to have occurred²⁵.

3.1.3 Service by some other means

The prescribed methods of service under these statutory provisions are permissive rather than mandatory. This means that, provided the notice actually reaches the intended recipient, it is validly served even though one of the prescribed means of service have not been used²⁶. However, where a different method is used from those specified it will be necessary to prove that service has taken place. If the intended recipient can prove, on the balance of probabilities, that he did not receive the letter, the notice will not have been served.

3.2 Contractual provisions

For some types of notice the statutory provisions we have looked at will apply regardless of what the contract says. However, for other types of notice it is possible for the parties to agree provisions relating to service between them. These may be anything from a few lines to several pages depending on the level of detail that is required.

Remember that if a document does not contain any provisions with regards to service and a notice relating to property needs to be given, the provisions we have looked at in section 196 will apply.

You may well see provisions which simply incorporate one or other of the statutory provisions, but with slight variations to suit the parties, for example:

“Section 196 of the Law of Property Act 1925 shall apply to any notice which may be served under this Lease but as if the final words of Section 196(4) “and that service... be delivered” were deleted and replaced by “and that service shall be deemed to be made on the third working day after posting”

“Any notice served in connection with this Lease shall be in writing and be properly served if compliance is made with the provisions of Section 196 of the Law of Property Act 1925 (as amended by the Recorded Delivery Service Act 1962) save that any notice to be served on the Tenant shall not be validly served unless it is sent to its registered office stated above and not left at the Property”

More detailed provisions will cover some or all of the following points. An example of a very detailed notice provision in a lease covering most of these points is set out in Annex B at the end of the notes.

3.2.1 Form of notice

- a) **In writing:** notices will usually be required to be given in writing. This avoids any evidential difficulties associated with oral notices. This may or may not include faxes and emails, depending on what the parties agree.
- b) **In English:** it may not be felt necessary to specify this but where there is a risk that one party may not use English it is probably worth saying.
- c) **Signed:** the parties may wish to include a requirement that notices should be signed by the party giving them but this will often be unnecessarily onerous.

3.2.2 Addresses

Shorter provisions will state that, for a company, notices should be sent to the registered office and, for an individual, to the last known address. In addition, there may be a provision which allows notices to a tenant to be sent to the premises.

A longer notice clause may specify the addresses which notices must be sent to and also state whom they should be marked for the attention of. Where addresses are specified, provisions should also be included for changes of address and how

²⁴ *Beanby Estates v Egg Stores (Stamford Hill)* [2003] EWHC 1252; *CA Webber (Transport) Ltd v Railtrack plc* [2003] EWCA Civ 1167

²⁵ *Blunden v Frogmore Investments Ltd* [2002] EWCA Civ 573 [2003]

²⁶ *Galinski v McHugh* (1988) 21 HLR 47

notification will be given. If an individual within a company is specified it is preferable that this is a named post (eg company secretary) rather than a named individual, to avoid problems with changes of personnel.

Provisions will sometimes be included which allow notice to be given to a party's solicitor. However, care should be taken as there may be a question as to whether the solicitor was properly instructed and actually had the necessary authority to accept a notice on behalf of the party. A preferred approach is to serve notice on the relevant party, with a copy of the notice going to the solicitor.

3.2.3 **Methods of giving notice and whether mandatory or permissive**

It is a good idea to specify the acceptable methods of notice and also to be clear as to whether these methods are mandatory or permissive.

- If the methods are mandatory they will be strictly applied and if they are not followed the notice will be invalid: if personal service is required and the notice is sent by post it will be invalid even if it is fact received.
- If the methods are permissive, service by another method will not invalidate the notice, provided it is in fact received.

The example notice provisions provided give the option of stating that notices either "shall" or "may" be served by a number of different means. The use of the word "shall" makes these methods mandatory whereas "may" will make them permissive. Other wording can also be used which will achieve a similar effect so the provision should be read and followed carefully to ensure that the notice is not invalidated by sending it using the incorrect method.

It may be appropriate to specify that for certain types of notice (for example break notices) specific and mandatory methods are use so as to avoid any arguments over whether or not the notice was in fact received.

Some of the common methods of giving notice include:

- a) **Personal delivery:** this will include use of a courier or other agent to serve the notice, though these methods can be specified separately. It is possible to specify exactly who the notice must be handed to, but this will often be regarded as over-prescriptive and may cause problems with delivery if that person is, for example, away from the country. For a company, subject to contrary provisions, personal delivery can be made by leaving the notice at reception²⁷.
- b) **Post:** this may include first class post, Special Delivery and Recorded Signed For. For more important notices it is preferable to require that Recorded or Special Delivery is used as this provides a record of receipt.
- c) **Fax:** a lot of notice provisions do permit this, but there are some issues with it: it may not send properly or it may not get picked up or printed out. If service by fax is permissible, it is important to include provisions with regards to deemed service. Some provisions only allow fax service where followed up by a recorded delivery letter.
- d) **Email:** this is not generally a popular option because of the risks that the email will be intercepted, will arrive late or not at all or will be unintelligible or contain changed formatting which alters the meaning. However, there are persuasive arguments that email is no worse than fax, particularly where the notice is sent as a PDF attachment. As email becomes increasing more reliable, secure and stable, it may well be that this becomes a more usual method of service. As with fax service, a clear deemed service provision should be included and it may be appropriate to require that the email be followed up by a recorded delivery letter. If email is not an acceptable method of service it may be worth expressly stating this, particularly where the provisions are permissive rather than mandatory.

²⁷ *Bottin (International) Investments Ltd and others v Venson Group plc* [2004] EWCA Civ 1368

- e) **DX:** this is only an option if the parties to the agreement both subscribe to the Document Exchange service (a private mail network). Anything handed to the local delivery and collection point by 5.00 pm will be with the recipient by 9.00 am the next day.

3.2.4 Provisions deeming receipt

To make the provisions workable it is common to include provisions deeming the time a notice is received if it is sent by a particular method. These provisions are essential for time critical notices. However, it is important to ensure that provisions must be appropriate and realistic: for example, they should not deem receipt earlier than the notice could in reality be expected to arrive.

The parties will generally agree that notices cannot be deemed to be served on a non business day (this will often be defined in the agreement). This means that care needs to be taken where a notice is required to be given no later than a date which is a Saturday, Sunday or Bank Holiday: the notice must be served in time to ensure that it is deemed delivered no later than the last business day before this.

Some common deeming provisions include:

- a) **Personal delivery:** this will usually be deemed to be the time at which the notice is handed over to the individual or the representative of the company, or the next business day if delivered outside of business hours.
- b) **Post:** the agreement will often state that delivery is deemed to have occurred a certain number of days after posting (generally between one and three). Care needs to be taken as to whether the notice being returned undelivered will prevent the operation of the deemed service²⁸. If the parties intend that a notice should be deemed served even where it is returned undelivered it is advisable to include wording such as "...deemed served on the third working day after posting whether it is received or not" should be used.
- c) **Fax:** it will usually be provided that receipt occurs at the time of sending the fax, or the next working day if sent outside business hours. Sometimes provisions will state that it is deemed received on the next day after sending to allow for the fact that faxes aren't always immediately delivered to the intended recipient.
- d) **Email:** where email is permitted it will usually be provided that receipt occurs at the time of sending the email, or the next working day if sent outside business hours.
- e) **DX:** this will usually work in the same way as post with service deemed to occur a specified number of working days after posting.

3.2.5 Evidence of sending

Notice provisions may also state the evidence that will be conclusive as to whether notice has been given:

- a) **Personal delivery:** this will either be a signature of receipt or, if this cannot be obtained, a witness statement from the person who made the delivery setting out the circumstances of this.
- b) **Post:** it will be usually be that evidence of posting to the correct address is all that is required. This could be a post office certificate of posting or receipt for recorded or special delivery items. A witness statement from the person who posted the letter may also be sufficient.
- c) **Fax:** the fax transmission sheet will usually be sufficient, provided it shows that the fax was sent to the correct number.

²⁸ *Re Thundercrest Ltd* [1995] 1 BCLC 117: here the company had an article which provided that where a notice was sent by post, service was deemed to have been effected by properly addressing, pre-paying and posting the notice. However, it was held that the purpose of the provision was to deal with the case where there was uncertainty as to whether a document had been delivered and the article could not be relied upon where it was established that the document had not been delivered.

- d) **Email:** a copy of the correctly addressed “sent” email will usually be sufficient, though the question of what happens if an “undeliverable” comes back has not been addressed by the courts.
- e) **DX:** evidence that the notice was correctly addressed and placed in the DX system will usually be sufficient – this may be by way of witness statement or by using the DX tracking service.

3.2.6 Joint recipients

Where a party consists of more than one person, and in the absence of provisions to the contrary, it is necessary to serve notice on all of those people for valid service to take place. It is therefore common for a notice provision to contain a statement that service of notice on one joint party is deemed to be effective service on all of them.

3.2.7 Sending notices overseas

Special care needs to be taken where one of the parties is located overseas. It may be preferable to specify a UK based agent who is authorised to receive notices on behalf of that party. If this is not appropriate, airmail should be included as a service option, with appropriate deeming provisions for this. In addition, if times are specified it should be made clear whether these are local time in the place of receipt or the time in the UK.

3.2.8 Court proceedings

Special rules apply with regards to the service of documents in court proceedings. It is advisable to state that the notice provisions do not apply to the service of proceedings or other documents.

4. Some specific types of notice

There are a wide range of different notices that you may give or receive as the landlord or the tenant of a property. This section gives details of some of the more common notices that you may encounter and provides guidance on their form, content and method of service.

Example of completed notices can be found in Annex C at the end of the notes.

4.1 Forfeiture: Law of Property Act 1925, section 146

Most leases reserve a right of re-entry or forfeiture. Provided that this right has been reserved, a landlord can forfeit the lease for breach of covenant. It is possible to forfeit for non-payment of rent without serving any kind of a notice but a Section 146 Notice is required for breaches of other covenants.

The method of service and the deemed date and time of service of the Section 146 Notice are governed by s196 Law of Property Act 1925.

There is no prescribed form of notice, except that it must be in writing in accordance with the provisions of s196.

However, s146 does prescribe the content of the notice. The notice must:

- specify the breach
- require it to be remedied, if it is capable of being remedied
- require the tenant to pay compensation for the breach.

If the tenant fails to remedy the breach and pay compensation within a reasonable time, the Landlord may forfeit the lease.

There is extensive case law which clarifies what is meant by these various requirements.

4.1.1 Specify the breach

It is essential that the notice actually sets out the breach that has occurred: the purpose of the notice is to give the tenant a chance to remedy the breach and he cannot do so unless he knows what it is.

It is not enough to simply state that a covenant has been broken without explaining the way in which it has been broken²⁹. However, as long as general details of the breach are given, it is not necessary to tell the tenant what he has to do in order to remedy the breach³⁰. Nor is it necessary to identify every defect or provide a detailed specification³¹.

It is important that the notice correctly identifies which covenant has been broken: if the wrong covenant is specified the notice will be invalid (even if details of the breach are accurate)³². However, provided that a correct covenant is specified, together with details of a breach of that covenant which has in fact occurred, it does not matter if the notice also refers to covenants which do not exist³³ or breaches which have not occurred³⁴.

4.1.2 **Require it to be remedied, if it is capable of remedy**

If the breach is capable of remedy and the notice does not require it to be remedied the notice will be invalid.

Whether a breach is remediable is a question of fact in each case. Generally, a breach of a positive covenant, which requires the tenant to do something, is remediable by the tenant doing what he had failed to do. With negative covenants, which prevent the tenant from doing something, the position is less clear.

It used to be accepted that breaches of negative covenants must be irremediable: once the act has occurred, the breach has occurred and this cannot be changed. However, current thinking is that some negative breaches can be remedied, for example where an advertising hoarding is put up in breach of covenant, taking it down will remedy that breach.

If the landlord is in any doubt at all as to whether a particular breach can be remedied he should require the tenant to remedy the breach "if it is capable of remedy"³⁵. This avoids the landlord having to address the question of whether or not it is remediable.

4.1.3 **What is a "reasonable period"?**

It is not necessary to specify a reasonable period within the notice and it is preferable not to do so. Even if a "reasonable" period has been stated, the landlord cannot forfeit at the end of this period unless it is in fact a reasonable amount of time in which to remedy the particular breach³⁶.

Even if a breach is not capable of being remedied, a reasonable period must still be allowed before the lease is forfeit. There is no definitive answer to what would be reasonable in these circumstances but it has been held that 14 days is sufficient³⁷.

4.1.4 **Compensation for the breach**

Section 146 requires that the notice asks the tenant to pay compensation in money for the breaches. However, it has been held that a notice is valid even without this request³⁸.

4.1.5 **Who should the notice be served upon?**

The notice must be served on the current tenant even where the alleged breach is an unlawful assignment to that tenant³⁹. Sometimes the landlord will be unsure of the identity of the current tenant, in which case it is acceptable to address the notice to "the tenant" and serve it on all those with a potential interest.

²⁹ *Fletcher v Nokes* [1897] 1 Ch 271

³⁰ *Piggott v Middlesex County Council* [1909] 1 Ch 134

³¹ *Fox v Jolly* [1916] 1 AC 1

³² *Jacob v Down* [1900] 2 Ch 156

³³ *Silvester v Ostrowska* [1959] 3 All ER 642

³⁴ *Matthews v Usher* [1900] 2 QB 535

³⁵ *Hoffman v Fineberg* [1949] Ch 245

³⁶ *Horseley Estate Ltd v Steiger* [1899] 2 QB 79

³⁷ *Scala House & District Property Co Ltd v Forbes* [1974] QB 575

³⁸ *Rugby School Governors v Tannahill* [1935] 1 KB 87

³⁹ *Old Grovebury Manor Farm Ltd v Seymour Plant Sales and Hire Ltd (No 2)* [1979] 3 All ER 504

It is worth noting that if the lease is assigned after the Section 146 Notice has been served, the assignee will be bound by it⁴⁰.

4.1.6 **Special rules for breach of repair covenants: Leasehold Property (Repairs) Act 1938, section 1**

Where the lease was granted for seven years or more and still has at least three years left to run, the Leasehold Property (Repairs) Act 1938 lays down a special procedure which the landlord must follow before he can forfeit the lease for breach of the tenant's repairing covenant.

The usual Section 146 Notice must, in addition, include:

- a statement informing the tenant of his right to serve a counter-notice within 28 days, claiming the benefit of the Leasehold Property (Repairs) Act 1938; and
- a statement specifying the time within which and the manner in which the counter-notice must be served and specifying the landlord's name and address for service.

If the tenant serves a counter-notice, the landlord cannot proceed any further without the leave of the court.

The notice will be invalid if it does not contain a statement informing the tenant of his right to serve a counter-notice within 28 days.

It is sufficient that the notice specifies one good method of service but it will be invalid if it fails to specify any method at all⁴¹. It is acceptable to give the landlord's solicitor's name and address for service⁴².

The additional statements, of the tenant's right to serve a counter-notice and details of how the counter-notice should be served, must be in characters "no less conspicuous" than those used in any other part of the notice. This has been held to mean that they must be "equally readable"⁴³. It is advisable that they are printed in exactly the same font as the rest of the notice.

4.2 **Recovery of rent from former tenants: Landlord and Tenant (Covenants) Act 1995, section 17**

When a tenant fails to pay rent or other sums due under the lease the landlord can recover those arrears from a former tenant or the guarantor of a former tenant, provided that those parties remain bound through either privity of contract, direct covenants or an authorised guarantee agreement.

4.2.1 **Method and time of service**

The provisions of s23, Landlord and Tenant Act 1927 apply for the purpose of service of Section 17 Notices.

It is only possible to recover the arrears if a valid notice is served on the former tenant or guarantor within six months of the amount becoming due. This is to ensure that former tenants and guarantors do not suddenly find themselves faced with demands for many years of unpaid rent. Any notice served outside of this time limit will be invalid.

4.2.2 **The relevant parties**

Under section 17, "landlord" covers any person with a right to enforce the charge: so, for example, a management company with authority to collect the rents and other sums due is able to serve a Section 17 Notice in its own name.

The landlord is able to choose whether to pursue the former tenant, the former guarantor or both. There is no requirement that he serves a notice on the former tenant before serving a notice on that tenant's guarantor⁴⁴.

⁴⁰ *Kanda v Church Comrs for England* [1958] 1 QB 332

⁴¹ *BL Holdings Ltd v Marcolt Investments Ltd* (1978) 249 Estates Gazette 849

⁴² *Middlegate Properties Ltd v Messimeris* [1973] 1 All ER 645

⁴³ *Middlegate Properties Ltd v Messimeris* [1973] 1 All ER 645

⁴⁴ *Cheverell Estate Ltd v Harris* [1998] 02 EG 127

4.2.3 Form and content of notice

There is a prescribed form of notice⁴⁵ and it will only be valid if served on the prescribed form or on one “substantially to the like effect”⁴⁶. The notice must state that the charge is now due and that the landlord intends to recover the amount specified together with interest (if applicable) calculated as specified. The amounts due must be set out in a Schedule.

The notice will be invalid if it’s not in the correct form, but a minor error in the notice (for example, as to the way in which interest on rent arrears is calculated under the lease) does not invalidate it⁴⁷.

4.2.4 Recovery of unascertained amounts

One real problem area with regards to Section 17 Notices relates to recovery of sums which have become due but for which the final amount has not yet been ascertained. This may include, for example, the situation where rent is subject to review, with a provision that if the rent has not been agreed at the review date and is subsequently increased at review, the increase will be backdated to the review date.

The former tenant or guarantor will not be required to pay more than the amount specified in the notice unless the notice warns that the liability may subsequently be determined to be for a greater amount.

Once the final amount has been ascertained the landlord must serve a further notice within three months of the date of determination, informing the former tenant or guarantor of the greater amount due (plus any interest claimed).

Landlords have become accustomed to serving Section 17 Notices when the current tenant is in default but recent case law suggests that the landlord should consider serving a notice where the rent is being paid but a rent review is pending.

The 2006 case of *Scottish & Newcastle plc v Raguz*⁴⁸ a rent review was due in 1995 but the rent was not settled until 2000. From 1995 to 1999 the tenant paid the rent due, but in 1999 he got into financial difficulties and stopped paying rent. The landlord served Section 17 Notices in respect of this period. When the rent was finally determined in 2000 the tenant was unable to pay the back rent due from 1995. It was held that the landlord could only recover the uplift since 1999 (when initial Section 17 Notices had been served). He was not entitled to recover the amount due before that date as the former tenant had not been warned that these sums may become payable.

This means that landlords should now be considering whether they need to serve a Section 17 Notice within six months of each rent payment date while a rent review remains outstanding, even though the current tenant is completely up to date with rental payments and gives no indication of future default. Once the rent review is settled the second notice should then be served within three months, specifying the amount payable, in case the current tenant fails to pay the revised sums due.

There are of course commercial considerations with regards to whether or not a protective Section 17 Notice should be served; for example the former tenant will get the right to an overriding lease once the notice has been served and the landlord may want to consider other ongoing relationships with the former tenant. It is therefore strongly recommended that legal advice is obtained before deciding what steps to take in this situation.

4.3 Distress, payment of rent by a subtenant and recovery of commercial rent arrears

The law of distress is an ancient common law remedy which is available where a tenant has failed to pay the rent due under his lease. The landlord is able to seize goods and sell them to cover arrears of rent due. There is no need for the landlord to serve any kind

⁴⁵ Prescribed as Form 1 in the Schedule to the Landlord and Tenant (Covenants) Act 1995 (Notices) Regulations 1995, SI 1995/2964

⁴⁶ SI 1995/2964, reg 2

⁴⁷ *Commercial Union Life Assurance Co Ltd v Moustafa* [1999] 2 EGLR 44

⁴⁸ [2006] EWHC 821 (Ch)

of a notice before distraining. Related to this remedy is the ability, under the Law of Distress Amendment Act 1908, for a landlord to recover rent directly from a subtenant as an alternative to distress.

However, as part of a general review of the enforcement of civil judgments, these remedies will shortly be modified and replaced with a new procedure for the recovery of commercial rent arrears. These changes will be brought into effect by the Tribunals, Courts and Enforcement Act 2007. This act has received Royal Assent but there is currently no date specified for when it will be brought into force.

We will look briefly at notices under the old law of distress and then consider the changes that are expected when the new legislation comes into force.

4.3.1 The current law on payment of rent by a sub-tenant: Law of Distress Amendment Act 1908, section 6

Where the rent of the immediate tenant is in arrears, a superior landlord may serve a notice on a subtenant stating the amount of the arrears and requiring all future payments of rent to be paid directly to the superior landlord. There is no prescribed form, but it must be in writing.

The notice has the effect of transferring to the superior landlord the right to recover, receive and give a discharge for the rent which the sub-tenant is liable to pay.

The section states that the notice must be sent by registered post. As we have already seen, this includes recorded and special delivery. In addition, even though the section specifies registered post, it has been held that the object of the provision is that the notice should come to the attention of the person for whom it was intended and as such, personal service will also be effective⁴⁹. Presumably other methods would also be effective so long as the notice is in fact received.

4.3.2 The new law on recovery of commercial rent arrears: Tribunals, Courts and Enforcement Act 2007, Part 3

The new commercial rent arrears recovery procedure ("CRAR") has a far narrower scope than the right of distress. The procedure will apply to all leases of commercial premises, but only where the lease is in writing. It will not apply to licences to occupy.

One significant difference is that the "rent" which is recoverable is limited to the amount payable for possession and use of the property (plus interest and VAT)⁵⁰. It will not be possible to use the procedure in respect of other sums even if these have been reserved as rent. Where an inclusive rent is used, it will only be possible to recover the proportion of the rent which is reasonably attributable to possession and use of the premises.

a) Taking control of goods

Under the new procedure for taking control of goods (which replaces the old remedy of distress) it will be necessary to serve a notice on the tenant before seizing goods⁵¹.

The act itself does not make any provisions in respect of the notice, but regulations will be brought in which specify the minimum period of notice which may be given. The current intention is that this will be 14 days. The regulations will also give the form of notice (expected to be in writing), detail as to the contents of the notice and how the notice must be served (expected to be by first class post).

The clear concern with the notice procedure, as compared to the old remedy of distress where no notice is needed, is that tenants will use the notice period to dispose of goods that might otherwise have been seized. It may be that the regulations will allow an application for a reduced notice period if there are

⁴⁹ *Jarvis v Hemmings* [1912] 1 Ch 462

⁵⁰ Tribunals, Courts and Enforcement Act 2007, s76

⁵¹ Tribunals, Courts and Enforcement Act 2007, Para 7, Sch 2

reasonable grounds for believing that the goods will be relocated or disposed of, but this remains to be seen.

The tenant must be in arrears before the notice is given and the amount of arrears must be certain or capable of being calculated with certainty. In addition the “net unpaid rent” (basically the amount of arrears less interest, VAT and any deductions or set-off that the tenant is entitled to) must equal or exceed an amount to be prescribed in the regulations⁵². It is currently unknown what the “net unpaid rent” level will be set at but the initial proposal is the lesser or one week’s rent or £200.

A further notice will be required once control of the goods has been taken but before they can be disposed of. The regulations will give the minimum notice period (expected to be three days), the form of notice, detail as to the contents of the notice and how the notice must be given. The notice will have to be given within the “permitted period”, usually 12 months from the date on which control was taken.

b) Recovery of rent from a subtenant

The Law of Distress Amendment Act 1908 will be repealed by the Tribunals, Courts and Enforcement Act 2007. However, the effect of section 6 will be preserved to some extent.

Where a superior landlord would have the right to exercise CRAR against a tenant and there is a sublease in place, the superior landlord may serve a notice on the subtenant requiring that the subtenant to pay its rent directly to the superior landlord⁵³. The notice must set out the amount of arrears owed. However, detailed provisions as to the form, content, service and withdrawal of the notice have not yet been prepared: these will be contained in the regulations.

Only one notice will be able to have effect at any one time in relation to any one amount of arrears, so if a second notice is served which relates to the same arrears the first notice must be withdrawn. It must also be withdrawn if the arrears are subsequently paid by someone else. The only exception to this rule is that where there is more than one direct subtenant (for example, the property has been sublet in two parts) a valid notice may be served on each of the subtenants.

If the subtenant fails to pay the amount claimed the superior landlord will be able to use CRAR against the subtenant.

4.4 Compensation for improvements: Landlord and Tenant Act 1927, Part I

Part I of the Landlord and Tenant Act 1927 allows a tenant to claim compensation from the landlord at the end of the lease in respect of improvements which the tenant has obtained authorisation to carry out.

4.4.1 Notice of intention to make improvements

To obtain authorisation for improvements, the tenant must serve upon the landlord a notice of his intention to make improvements⁵⁴. This is possible even where the lease contains an absolute covenant against alterations by the tenant.

There is no prescribed form for the notice (though it must be in writing and comply with the provisions of s23 Landlord and Tenant Act 1927) but the notice must be accompanied by plans and specifications of the proposed works.

The landlord has three months from receipt of the tenant’s notice to serve written notice of objection. If the landlord does not object, the improvements are treated as authorised and attract compensation. If the landlord does object the tenant may apply to the court for a certificate that the improvement is a proper one. The court will grant the certificate if it is satisfied that the improvement qualifies. The tenant is

⁵² Tribunals, Courts and Enforcement Act 2007, s77

⁵³ Tribunals, Courts and Enforcement Act 2007, s81

⁵⁴ Landlord and Tenant Act 1927, s3(1)

then authorised to make the improvement and claim compensation at the end of the tenancy.

4.4.2 Notice of claim

The tenant must make his claim for compensation within the prescribed time limited when his tenancy comes to end. The notice of claim must give the name and address of the landlord, the property to which the claim relates, the nature of the business carried on at the property, a statement of claim, particulars of the improvement and the amount claimed.

The claim must be made within the time limits prescribed⁵⁵. Where the tenancy will end by effluxion of time, the time limit is not earlier than six nor later than three months before the end of term. Where the tenancy is terminated by notice to quit under the Landlord and Tenant Act 1954, the time for making the claim is the period of three months from the date on which the notice is given. Where it is terminated by forfeiture the period is three months from the date of the order for recovery of possession or the date of peaceable re-entry.

The parties cannot contract out of the compensation provisions⁵⁶.

4.5 Release of landlord on assignment of reversion: Landlord and Tenant (Covenants) Act 1995, section 6

Under section 6 of the Landlord and Tenant (Covenants) Act 1995, when a landlord assigns his reversion in the whole or part of premises, he can apply to be released from the landlord covenants of the tenancy. If the landlord is not released, the tenant can pursue him for a breach of the landlords' covenants (for example, to insure the building).

The landlord applies for the release by serving a notice on the tenant either before the assignment or within four weeks after the assignment takes place⁵⁷.

There is a prescribed form of notice⁵⁸ and the notice will only be valid if served on the prescribed form or on one "substantially to the like effect"⁵⁹. The notice must inform the tenant that the assignment will take, or has taken place, and must request that the covenants are released. It must also attach a response form for the tenant to complete and return.

The provisions of s23, Landlord and Tenant Act 1927 apply to the service of the notice.

The covenants will be released if the tenant:

- serves a notice consenting to the release;
- does not serve a notice objecting to the release within four weeks of the date on which the notice is served; or
- serves a notice of objection, but the court makes a declaration that it is reasonable to release the landlord.

The four week period within which the landlord is able to apply for a release is strictly applied. Any notice served outside of this period will be invalid. However, in the event that his assignee subsequently assigns on, the landlord will have another four weeks in which to apply for a release⁶⁰. The landlord can also make a further application if he applied when he assigned the reversion but did not obtain a release.

4.6 Security of tenure: notices under Landlord and Tenant Act 1954, Part II

There are a number of different notices which may need to be served under the Landlord and Tenant Act 1954. These can be divided in to three different types of notice:

- notices to contract out of the effects of the Act
- notices to terminate a tenancy which is within the Act

⁵⁵ Landlord and Tenant Act 1954, s47

⁵⁶ Landlord and Tenant Act 1927, s9

⁵⁷ Landlord and Tenant (Covenants) Act 1995, s8

⁵⁸ Forms 3 and 4 in the Schedule to the Landlord and Tenant (Covenants) Act 1995 (Notices) Regulations 1995, SI 1995/2964

⁵⁹ SI 1995/2964, reg 2

⁶⁰ Landlord and Tenant (Covenants) Act 1995, s7

- notices requesting information.

Section 23 of the Landlord and Tenant Act 1927 applies to notices served under the 1954 Act.

4.6.1 Contracting out: Landlord and Tenant Act 1954, section 38A

Prior to June 2004 it was necessary to obtain a court order if the parties to a business lease wished to contract out of the Act. However, the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003 (the "RRO") came into force on 1 June 2004 and introduced a new notice and declaration procedure.

Under this procedure the landlord gives a notice to the tenant and the tenant makes a declaration to confirm that he understands the rights which he is giving up.

- Form of notice:** the notice must be given in the prescribed form set out in Schedule 1 of the RRO (or substantially in that form)⁶¹.
- Content of notice:** the notice must contain the prescribed "health warning", advising the tenant of what he is giving up and recommending that he seek independent advice from a solicitor or surveyor and also an accountant.

The only information which the landlord needs to complete on the notice is the parties' names and addresses; there is nowhere to fill in details of the demised premises or the terms of the proposed lease.

However, the tenant's declaration must be made in respect of "the tenancy to which the notice applies". If the agreed form of lease is not sent with the notice, this leaves room for dispute as to whether the notice relates to the tenancy that is finally entered into.

Under the old law, the lease had to be in "substantially" the same form as the draft submitted with the court application and referred to in the court order⁶². Any amendment affecting the term, extent of the property or any terms that could have an impact on the effect of the lack of security of tenure would make the order ineffective and a new order would be required.

The intention of the new law was probably to simplify the procedure so that the notice can be served while negotiations are still taking place. However, as there is not yet any case law on this point and the legislation provides no further guidance, extreme care should be taken if there are any changes at all to the draft lease after the notice has been served.

- Timing of notice:** the notice must be given (and the tenant's declaration made) before the tenant becomes contractually bound to enter into the lease. This means that where an agreement for lease is used, the notice must be given before the agreement for lease is entered into. It also means that care must be taken in respect of leases which may be entered into in the future following a default by the tenant; for example, where the guarantor can be required to take a replacement lease following forfeiture or disclaimer there is an argument that he becomes bound to take this replacement lease as soon as the main lease is entered into. A notice in respect of this replacement lease should therefore be served on the guarantor at the same time as the notice is served on the tenant.

Where the notice is served more than 14 days prior to the tenant becoming contractually bound to enter into the lease the tenant can make a simple declaration. However, where the notice is served within the 14 days prior to the grant of the tenancy the tenant must make a statutory declaration before an independent solicitor.

A lot of firms took the view that they would always require statutory declarations as this would avoid subsequent disputes about when the declaration was made and lease entered into. There was some initial dispute

⁶¹ Landlord and Tenant Act 1954, s38A(3)(a)

⁶² *Receiver of the Metropolitan Police v Palacegate* [2000] 3 WLR 159

as to whether a statutory declaration made in response to a notice served more than 14 days before the lease was entered into would be valid as, technically, the legislation does not permit a statutory declaration in these circumstances. However, there is now case law which has made it clear that a statutory declaration is valid even where a simple declaration would have been sufficient⁶³.

- d) **Change in identity of the landlord:** one problem area is whether a landlord's successor is protected by a warning notice served by the previous landlord. This issue is particularly likely to arise with regards to development properties where the developer follows the contracting out procedures before entering into agreements for lease with occupational tenants but then sells the property prior to lease grant and the investor actually grants the leases. It is too late to serve new notices as the tenant is already bound but there is no guidance in the legislation as to whether the new owner can rely on the notices.

4.6.2 Terminating a protected tenancy: Landlord and Tenant Act 1954, sections 25 to 27

Where a business tenancy has not been contracted out of Part II of the Landlord and Tenant Act 1954 the lease will not come to an end on the contractual termination date. Instead it will continue to run until one party takes steps to bring the lease to an end.

a) The landlord takes steps to terminate the tenancy: section 25

Under section 25 the competent landlord is able to take steps to terminate the lease. He is able to oppose or consent to the grant of a new tenancy. Different prescribed forms must be used depending on whether or not the landlord is opposed to the grant of a new tenancy.

- i) **Form of notice:** where the grant of a new tenancy is not opposed, the notice must be given on Prescribed Form 1. Where the grant of a new tenancy is opposed the notice must be given on Prescribed Form 2.
- ii) **Content of notice (new tenancy not opposed):** where the grant of a new tenancy is not opposed, the notice has four main parts:
 - i) important note for landlord: warns the landlord to only to use this form if it is willing to grant a new tenancy
 - ii) notice to the tenant: explains the content of the notice and how it operates
 - iii) schedule: contains proposals for the new tenancy in respect of property, proposed rent and other terms
 - iv) important note and other notes for the tenant: warns the tenant of the effect of the notice and the need to seek professional advice.
- iii) **Content of notice (new tenancy opposed):** where the grant of a new tenancy is opposed, the notice has three main parts:
 - i) important note for landlord: warns the landlord to only to use this form if it is not willing to grant a new tenancy
 - ii) notice to tenant: explains the content of the notice and how it operates and sets out the grounds of opposition – it is essential that these are specified correctly as they cannot be amended later
 - iii) important note and other notes for the tenant: warns the tenant of the effect of the notice and the need to seek professional advice.
- iv) **Time of service:** the notice must be served no more than twelve months nor less than six months before the termination date specified in the notice. The termination date cannot be any earlier than the contractual end date. A notice given either too early or too late is invalid⁶⁴. Where

⁶³ *Chiltern Railway Co Ltd v Patel* [2008] All ER (D) 129 (Feb)

⁶⁴ *Kammins Ballrooms Co Ltd v Zenith Investments (Torquay) Ltd* [1971] AC 850

there is a break clause in the lease the break date can be the date specified in the notice⁶⁵.

- v) **Identity of landlord:** it is essential that the notice is given by the competent landlord. For example, where the landlord's interest was assigned from a subsidiary to a parent company and a notice was subsequently served which incorrectly named the subsidiary as landlord it was held to be invalid⁶⁶.
 - vi) **Counter-notice:** there used to be a requirement that the tenant serve a counter-notice to the landlord's section 25 notice but this is no longer necessary.
- b) **The tenant takes steps to terminate the tenancy: sections 26 and 27**

Under section 26 the tenant can serve a notice terminating the existing tenancy and requesting a new tenancy.

- i) **Form of notice:** the notice must be given on Prescribed Form 3.
- ii) **Content of notice (new tenancy opposed):** the notice has three main parts:
 - i) tenant's request: explains the content of the request and how it operates
 - ii) schedule: contains proposals for the new tenancy in respect of property, proposed rent and other terms
 - iii) important note and other notes for the landlord: warns the landlord of the effect of the notice and the need to seek professional advice.
- iii) **Time of service:** the notice must be served not more than twelve nor less than six months before the proposed commencement date of the new lease, which cannot be before the expiry of the current lease.
- iv) **Counter-notice:** if the landlord wishes to oppose the grant of the new tenancy he must serve a counter notice on the tenant within 2 months of the section 26 request.

Under section 27 the tenant is able to terminate the tenancy without requesting a new tenancy. He is able to terminate by just vacating the premises at the end of the term. However, if he wishes to do so he can serve a section 27 notice giving at least three months notice. There is no prescribed form for this.

If the tenancy is already continuing the tenant must serve a section 27 notice in order to terminate the tenancy. The tenant must give three months notice of his intention to terminate, but this notice no longer needs to expire on a quarter day.

Even where the landlord has already served a section 25 notice the tenant is still able to give a section 27 notice to expire at a date earlier than the termination date specified in the s25 notice⁶⁷.

4.6.3 Requesting information: Landlord and Tenant Act 1954, section 40

It is very important that notices served under sections 25 and 26 are served by the correct party and on the correct party. The rules with regards to who is the competent landlord are fairly complicated and require a detailed knowledge of the nature of the landlord's interest. In addition, it is essential to understand the nature of a tenant's occupation in order to determine whether the tenant is occupying the premises for business purposes.

Under section 40, a landlord or tenant can require the other party to provide information about its interest in the property and about any other third party interest of which it is aware. These provisions apply to any notice which is served within the

⁶⁵ *School Manufacturing Co Ltd v Clifton (Slimline) Ltd* [1967] Ch 41

⁶⁶ *Yamaha-Kemble Music (UK) Ltd v ARC Properties Ltd* [1990] 1 EGLR 261

⁶⁷ *Long Acre Securities Ltd v Electro Acoustic Industries Ltd* [1990] 1 EGLR 91

last two years of the lease term or within two years of the date on which the lease could be brought to an end by the landlord (where there is a break clause for example).

Failure to respond to a section 40 notice is a breach of statutory duty. The court is able to order compliance with the notice and / or award damages.

a) **Landlord's notice**

A landlord or superior landlord (or someone acting on their behalf) can serve a notice, on Prescribed Form 4, requiring information from a tenant regarding:

- whether the premises are occupied for business purposes
- details of any immediate sub-tenancies
- the name and address of anyone else with a reversionary interest in the premises.

The form sets out all of the questions that the tenant must answer in a table.

It then includes an important note which warns the tenant to seek professional advice, advises of its obligations to update the information during the six months following the notice, details what the tenant should do if it assigns the lease and explains the consequences of non-compliance with the notice.

The tenant must reply within one month of the notice being served.

b) **Tenant's notice**

A tenant (or someone acting on its behalf) can serve a notice on its landlord or any other reversioner, on Prescribed Form 5, requiring information regarding:

- whether the reversioner is the freehold owner or mortgagee of the freehold owner
- if not, then the name and address of its immediate landlord, information about its tenancy and details of whether s25 notices or s26 requests have been made in respect of its tenancy
- the name and address of anyone else with a reversionary interest in the premises
- whether there is a mortgagee in possession and the mortgagee's name and address.

The form sets out all of the questions that the landlord must answer in a table.

It then includes an important note which warns the landlord to seek professional advice, advises of its obligations to update the information during the six months following the notice, details what the landlord should do if it transfers its interest and explains the consequences of non-compliance with the notice.

The landlord must reply within one month of the notice being served.

4.7 Break clauses

A break clause may be given to either or both parties. It allows the lease to be determined at a specified time or on the happening of a specified event.

It is very important that a break clause is exercised in accordance with its terms and that any conditions are strictly complied with. The manner in which the particular break clause operates will be set out in the lease but most break clauses are exercisable by the service of a notice.

The notice must clearly and unambiguously exercise the break option. A reference to the tenant's intention to break the lease at the earliest opportunity does not amount to an exercise of that right⁶⁸.

⁶⁸ *A&J Mucklow (Birmingham) Ltd v Metro-Cammell Weymann Ltd* [1994] EGCS 64

If the notice is required to be in writing, oral notice (no matter how clear and unambiguous) will not be sufficient⁶⁹.

Unless the lease expressly states to the contrary, time is of the essence of a break clause⁷⁰. If the notice is served late the break will not be validly exercised.

Where the lease containing the break option is not contracted out of the 1954 Act a landlord wishing to exercise his break right must remember that, in order to recover possession, he also needs to comply with the provisions of the 1954 Act. An exercise of the break will end the contractual term but the lease will continue unless terminated by service of a section 25 notice.

4.8 Rent Reviews

The way in which a rent review will be conducted depends on the terms of the lease. Modern leases more usually rely on the parties to enter into negotiations and to refer to an independent third party in default of agreement. However, some leases contain provisions requiring the service of trigger notices and counter-notices.

The service of a trigger notice is a more formal approach and usually requires the parties to follow a rigid timetable. One party sets the process in motion by serving the notice, specifying his proposal for the revised rent. The other party responds with his counter notice. The timings and requirements of the notice depend on the wording of the lease.

4.8.1 Is time of the essence?

The first thing to establish is whether time is “of the essence” in respect of the notices. If time is of the essence, a party who fails to act by the specified time limit loses his rights.

Because of the rigidity introduced when time is of the essence, it has been held that time will be presumed not to be of the essence in the absence of any contrary indications⁷¹. However, time will be of the essence where:

- The lease contains an express stipulation that time is of the essence.
- The lease contains any other contrary indication: for example, where the clause required the landlord to serve notice of intention to review upon the tenant 12 months before the relevant review date “but not at any other time” time was held to be of the essence⁷². Similarly where the lease provided for service of a trigger notice by the landlord specifying the amount of rent payable for the following period and stated that if the tenant failed to provide a counter notice within a specified period the tenant would be “deemed to have agreed to pay the increased rent specified in that notice” it was held that the deeming provision was a sufficient contra-indication to rebut the usual presumption⁷³.
- The interrelation of the review clause with other clauses in the lease indicates that time should be of the essence: for example where the tenant is given an option to break on or shortly after each review date the inference will be that if the tenant cannot afford to pay the revised rent or the level is not yet known he is given an opportunity to get out of the lease. As time is usually of the essence in a break clause it may also be construed to be of the essence in the rent review clause. It does not matter that they are separate clauses provided that the court can infer an inter-relation.

4.8.2 Use of trigger notices

A typical clause may require the landlord to serve a trigger notice between 6 and 12 months before the rent review date, in which the landlord must specify what he believes to be an appropriate revised rent. The tenant will have the right to dispute the proposal by serving a counter-notice within, say, three months of the trigger notice. Time may be of the essence in respect of all or part of this timetable.

⁶⁹ *Legg v Scot v Benion* (1738) Willes 43

⁷⁰ *United Scientific Holdings v Burnley Borough Council* [1978] AC904

⁷¹ *United Scientific Holdings Ltd v Burnley Borough Council* [1977] 2 All ER 62

⁷² *First Property Growth Partnership v Royal & Sun Alliance Services Ltd* [2002] EWHC 305 (Ch)

⁷³ *Starmark Enterprises Ltd v CPL Distribution Ltd* [2001] 32 EG 89 (CS)

There are some dangers with the use of trigger notices, and even more so where time is of the essence. In particular:

- If the landlord misses an initial deadline for serving a trigger notice he may find that he is unable to review the rent under the lease for the next eg five years. This is particularly problematic in a rising market.
- There is no implied requirement that the landlord be reasonable when making his proposal⁷⁴. This is particularly dangerous for the tenant where time is of the essence for his counter-notice. If he fails to respond he will be bound by the rent specified by the landlord.
- Some clauses only allow the landlord to initiate review; this can be very problematic for a tenant who needs certainty because, for example, he wishes to assign the lease. The tenant should make sure that the timetable allows him to initiate the review and refer the review for third party determination.
- There is some doubt as to the form of communication which amounts to a “notice”. If a communication is to take effect as a notice it should be clear and unequivocal and worded in such a way that the sender is obviously taking a formal step. Phrases such as “subject to contract” and “without prejudice” are not necessarily fatal but should be avoided.

Unless a rigid timetable for conducting the review is required by either party it is unusual for time to be made of the essence because of the fatal consequences arising from a delay; it may be advisable to expressly state that time is not of the essence.

4.9 Notice of assignment, sub-letting or other dealings

There is no common law obligation for a tenant to give a landlord any notice of his dealings with the lease but a well drafted lease will always contain a provision to this effect. This ensures that the landlord knows at any given time in whom the lease is vested and whether any sublease has been granted or mortgage created.

The provision will usually require that notice be given within a specified period and that a fee be paid for each notice given.

Failure to give the notice will be a breach of covenant.

5. What happens if you get it wrong?

We have considered the requirements which apply to different types of notice and looked at the provisions which govern their content, form and service. The basic rule is that for the notice to be valid, all of these rules must be strictly complied with. If there are any defects in the way in which the notice is prepared or served, it cannot be relied upon.

However, this rule may sometimes produce results which seem overly harsh. Whilst we all intend to get notices right, mistakes are inevitably made. Depending on your perspective you may want to argue that the mistake completely invalidates the notice, or that it is still perfectly valid despite the mistake.

So the question is whether a notice can be saved even if it is defective in some way. There are numerous ways in which notices may be defective: dates can be incorrect, names can be spelt wrongly, statements can be missed out and the notice can be served late or at the wrong address. Which of these mistakes will invalidate the notice and which might you be able to get away with?

There is a body of still developing case law which provides us with some help on this. In particular, the House of Lords in the case of *Mannai Investment Co Ltd v Eagle Star Life Assurance Co Ltd*⁷⁵ developed a principle under which, in certain circumstances, defects in a notice will not invalidate it.

⁷⁴ *Amalgamated Estates Ltd v Joystretch Manufacturing Ltd* (1980) 257 EG 489

⁷⁵ [1997] AC 749

5.1 What is the “Mannai” principle?

In the Mannai case it was held that minor defects in contractual notices will not necessarily invalidate the notice provided that a reasonable recipient, with knowledge of the background, would not be confused by the error.

This case related to a break clause in a lease. The tenant had a right to break the lease by “serving not less than six months’ notice in writing to expire on the third anniversary of the term commencement date”. The tenant served a notice stating that the termination date was 12 January 1995 but the third anniversary of the term was in fact 13 January 1995.

The House of Lords took the view that even though there was an error in the notice, it was otherwise clear and unambiguous and there was no reasonable doubt as to the tenant’s intention. As such the notice was held to be valid.

5.2 How far does this principle go?

Since the Mannai decision there have been cases which both extend and contain this principle.

It has been held that the principle can apply to statutory notices⁷⁶, though it is unclear exactly how far it will extend in this context.

Mannai was followed in a case relating to the validity of a counter-notice in rent review proceedings where it was held that even though the counter-notice did not comply strictly with the lease requirements it was clear what the tenant had intended and the notice was valid⁷⁷.

There is disagreement over the relevance of the reaction of the actual recipient. While some judges take the view that the reaction of the recipient is permissible evidence as to how a reasonable recipient would react, others feel that this would lead to inconsistency and unfairness and should be disregarded.

The intention of the sender is also irrelevant. A document that is not even intended to be a valid notice may be one if it complies with the necessary requirements⁷⁸.

However, this is an area of law which is very much still under development. As such there will always be some uncertainty as to whether or not any particular defect invalidates the notice. It is difficult to reconcile some of the decisions that have been made and, as such, difficult to predict the outcome of any case where the notice is potentially defective.

5.3 How is the principle applied in practice?

A two stage approach has been developed which can be used when deciding whether a notice complies with the requirements of the provision pursuant to which it is given⁷⁹:

- Stage 1: what, on its true construction, does the notice say? This relates to the content of the notice.
- Stage 2: how does the notice given compare to the requirements for that notice? This is the form of the notice and the way in which it is served.

It has been held that while Mannai may be relevant to the first stage of the process, it has no application to the second stage. Mannai can only save notices which have a defect in their content, not in their form or service.

5.3.1 The first stage

The first stage is applied by looking at what the notice says and deciding whether the reasonable recipient would have had any doubt as to the intentions of the person giving the notice.

If the reasonable recipient would have been in no doubt as to what was intended, the Mannai principle will apply to save what would otherwise have been an invalid notice.

⁷⁶ *York v Casey* [1998] 2 EGLR 25

⁷⁷ *Lancecrest Ltd v Asiwaju* [2005] EWCA Civ 117

⁷⁸ *Rennie v Westbury Homes (Holdings) Ltd* [2007] EWHC 164

⁷⁹ *Trafford Metropolitan Borough Council v Total Fitness UK Ltd* [2002] EWCA Civ 1513

However, if there would be any doubt in the mind of the reasonable recipient as to what was intended, the notice will be invalid.

5.3.2 The second stage

There is sometimes a grey area between “first stage defects” and “second stage defects”. It is therefore helpful to consider some examples of what amounts to a second stage defect which cannot be saved by Mannai:

- a) The notice must be served in a particular form: in the Manni case itself it was made clear that “if the clause had said that the notice had to be on blue paper, it would have been no good serving it on pink paper, however clear it might have been”.
- b) A statutory notice must be given on a prescribed form: regardless of whether or not the recipient was misled or prejudiced by the notice, it will not be valid if it is not on the correct form⁸⁰. However, where the legislation permits the notice to be in a form “substantially of the same effect” and there are slight variations from the prescribed form, the question of form becomes one of content and Mannai may be able to assist to save it.
- c) The notice is served at the wrong address: if the notice provisions require that the notice be served at a particular location (for example the tenant’s registered address) and instead it is served somewhere else (eg the premises) the notice will be invalid⁸¹.
- d) There is incorrect or missing information in a statutory notice: where a statutory notice does not contain all of the required information it will be invalid⁸².
- e) The notice is served on or by the wrong person⁸³: it is very important to ensure that the correct recipient is named on the notice and that the person giving the notice has authority to do so. However, there have been cases where this requirement has been relaxed where it has been found that the reasonable recipient would not have been misled⁸⁴.

6. Conclusion

It is very important that great care is taken whenever serving or receiving notices. As we have seen the rules are slightly different for every kind of notice and there is a lot to think about. You need to make sure that:

- **The correct form of notice is used:** check whether a prescribed form is required or whether there are any requirements as to the layout and formatting of the notice.
- **The content of the notice is complete and accurate:** make sure that the parties’ names, the property address and any relevant dates are correct. Also ensure that all required information is included.
- **The correct method of service is used:** check the provisions which apply in respect of your notice; is first class post sufficient or do you need to serve your notice personally? Remember that failure to serve a notice in the correct way, even if it is in fact received and read, can potentially invalidate the notice.
- **The notice is served by any specified deadlines:** remember that certain types of notice need to be served by a particular date. A notice which is served even a day late will be invalid where time is of the essence.

Preparing and serving notices can be a complete minefield and there is plenty of room for mistakes. Innocent and minor errors with regards to form, content or service of a notice can potentially invalidate the notice. These mistakes can often prove very expensive.

⁸⁰ *Sabella v Montgomery* [1998] 09 EG 153

⁸¹ *Claire’s Accessories v Kensington High Street* [2001]; *Capital Land Holdings Ltd v Secretary of State for the Environment* [1996] SLT 1379

⁸² *Speedwell Estates Ltd and another v Dalziel and others* [2002] 1 EGLR 55

⁸³ *Lemmerbell Ltd v Britannia LAS Direct Ltd* [1998] 3 EGLR 97

⁸⁴ *Havant International Holdings Ltd v Lionsgate (H) Investments Ltd* [1999] EGCS 144; *Bridgers v Stanford* [1991] 2 EGLR 265

It is recommended that lawyers are always involved in the process of serving and responding to notices. This should ensure that the notices are correctly prepared and properly served within the required time limits.

Annex A
Statutory notice provisions

Law of Property Act 1925, section 196

- (1) Any notice required or authorised to be served or given by this Act shall be in writing.
- (2) Any notice required or authorised by this Act to be served on a lessee or mortgagor shall be sufficient, although only addressed to the lessee or mortgagor by that designation, without his name, or generally to the persons interested, without any name, and notwithstanding that any person to be affected by the notice is absent, under disability, unborn, or unascertained.
- (3) Any notice required or authorised by this Act to be served shall be sufficiently served if it is left at the last-known place of abode or business in the United Kingdom of the lessee, lessor, mortgagee, mortgagor, or other person to be served, or, in case of a notice required or authorised to be served on a lessee or mortgagor, is affixed or left for him on the land or any house or building comprised in the lease or mort-gage, or, in case of a mining lease, is left for the lessee at the office or counting-house of the mine.
- (4) Any notice required or authorised by this Act to be served shall also be sufficiently served, if it is sent by post in a registered letter addressed to the lessee, lessor, mortgagee, mortgagor, or other person to be served, by name, at the aforesaid place of abode or business, office, or counting-house, and if that letter is not returned [by the postal operator (within the meaning of the Postal Services Act 2000) concerned] undelivered; and that service shall be deemed to be made at the time at which the registered letter would in the ordinary course be delivered.

Landlord and Tenant Act 1927, section 23

- (1) Any notice, request, demand or other instrument under this Act shall be in writing and may be served on the person on whom it is to be served either personally, or by leaving it for him at his last known place of abode in England or Wales, or by sending it through the post in a registered letter addressed to him there, or, in the case of a local or public authority or a statutory or a public utility company, to the secretary or other proper officer at the principal office of such authority or company, and in the case of a notice to a landlord, the person on whom it is to be served shall include any agent of the landlord duly authorised in that behalf.

Annex B
Contractual notice provisions

1. Notices

- 1.1 A notice given to a party under or in connection with this lease:
- (a) shall be in writing and in English or accompanied by a properly prepared translation into English;
 - (b) shall be signed by or on behalf of the party giving it;
 - (c) shall be sent to the party for the attention of the person at the address, fax number, email address or DX number number specified in this clause (or to such other person or to such other address, fax number, email address or DX number as that party may notify to the other, in accordance with the provisions of this clause), any such change to take effect five Business Days after the notice is deemed to have been received or, if later, on the date specified in that notice; and
 - (d) shall or may be:
 - (i) delivered personally; or
 - (ii) sent by commercial courier; or
 - (iii) sent by pre-paid first-class post or recorded or special delivery; or
 - (iv) sent by fax provided that a confirmatory copy is delivered personally, sent by commercial courier or sent by pre-paid first-class post or recorded or special delivery on the same day; or
 - (v) sent by email provided that a confirmatory copy is delivered personally, sent by commercial courier or sent by pre-paid first-class post or recorded or special delivery on the same day; or
 - (vi) sent by airmail requiring signature on delivery; or
 - (vii) sent through Document Exchange.
- 1.2 The addresses for delivery of a notice are as follows:
- (a) Landlord:
 - (i) address: [insert address]
 - (ii) for the attention of: [insert name]
 - (iii) fax number: [insert number]
 - (iv) email: [insert address]
 - (v) Document Exchange number: [insert number]
 - (b) Tenant:
 - (i) address: [insert address]
 - (ii) for the attention of: [insert name]
 - (iii) fax number: [insert number]
 - (iv) email: [insert address]
 - (v) Document Exchange number: [insert number]
- 1.3 If a notice has been properly sent or delivered in accordance with this clause, it will be deemed to have been received as follows:
- (a) if delivered personally, at the time of delivery; or
 - (b) if sent by commercial courier, on the date and at the time of signature of the courier's delivery receipt; or

- (c) if sent by pre-paid first-class post or recorded or special delivery, 9.00 am on the second Business Day after posting whether it is received or not, provided that it is not returned undelivered; or
 - (d) if sent by fax, at the time of transmission whether it is received or not, provided that the confirmatory copy is not returned undelivered; or
 - (e) if sent by email, at the time of sending whether it is received or not, provided that the confirmatory copy is not returned undelivered; or
 - (f) if sent by airmail, 9.00 am on the fifth Business Day after posting; or
 - (g) if sent through Document Exchange, 9.00 am on the second Business Day after being put into the Document Exchange.
- 1.4 For the purposes of this clause:
- (a) all times are to be read as local time in the place of deemed receipt; and
 - (b) if deemed receipt under this clause is not within business hours (meaning 9.00 am to 5.30 pm Monday to Friday on a day that is not a public holiday in the place of receipt), the notice is deemed to have been received when business next starts in the place of receipt.
- 1.5 To prove delivery, it is sufficient to prove that:
- (a) if sent by pre-paid first-class post, the envelope containing the notice was properly addressed and posted; or
 - (b) if sent by fax, the notice was transmitted by fax to the fax number of the party and a transmission receipt was received; or
 - (c) if sent by email, the notice was transmitted by email to the email address of the party and no notice of non-delivery was received; or
 - (d) if sent by Document Exchange, the envelope containing the notice or other communication was properly addressed and put into the Document Exchange.
- 1.6 If the party receiving a notice consists of more than one person, a notice to one of them is notice to all.
- 1.7 The provisions of this clause shall not apply to the service of any proceedings or other documents in any legal action.
- 1.8 A notice required to be given under or in connection with this lease shall not be validly given if sent by e-mail.

Annex C
Example notices

- 1. Forfeiture: Law of Property Act 1925, section 146**
 - 1.1 Notice before forfeiture
 - 1.2 Notice before forfeiture (repairs)
- 2. Recovery of rent from former tenants: Landlord and Tenant (Covenants) Act 1995, section 17**
 - 2.1 Notice to former tenant or guarantor of intention to recover fixed charge (Form 1)
 - 2.2 Further notice to former tenant or guarantor of revised amount due in respect of a fixed charge (Form 2)
- 3. Distress, payment of rent by a subtenant and recovery of commercial rent arrears**

Section 6 notice to recover rent from a subtenant
- 4. Compensation for improvements: Landlord and Tenant Act 1927, Part I**
 - 4.1 Notice of intention to make improvements
 - 4.2 Notice objecting to proposed improvements
 - 4.3 Notice of claim for compensation
- 5. Release of landlord on assignment of reversion: Landlord and Tenant (Covenants) Act 1995**

Notice applying for release from landlord covenants of a tenancy on assignment of whole of reversion (Form 3)
- 6. Security of tenure: notices under Landlord and Tenant Act 1954, Part II**
 - 6.1 Notice that sections 24 to 28 of the Landlord and Tenant Act 1954 are not to apply to a business tenancy
 - 6.2 Section 25 notice ending a business tenancy with proposals for a new one (Form 1)
 - 6.3 Section 25 notice ending a business tenancy and reasons for refusing a new one (Form 2)
 - 6.4 Section 26 request for a new business tenancy (Form 3)
 - 6.5 Counter notice to Section 26 request
 - 6.6 Section 27(1) notice to terminate (before the expiry of the contractual term)
 - 6.7 Section 27(2) notice to terminate (following expiry of the contractual term)
 - 6.8 Section 40(1) request for information about occupation and sub-tenancies (Form 4)
 - 6.9 Section 40(3) request for information from landlord or landlord's mortgagee about landlord's interest (Form 5)
- 7. Break clauses**

Notice to determine the lease
- 8. Rent review**
 - 8.1 Rent review notice
 - 8.2 Rent review counter notice
- 9. Notice of assignment, sub-letting or other dealings**
 - 9.1 Notice of assignment
 - 9.2 Notice of sublease
 - 9.3 Notice of mortgage

**Law of Property Act 1925, section 146
Notice before Forfeiture**

Lease made on 9 March 2001 between (1) Satsuma Properties Limited (2) Avina Trading Limited and (3) David Mark Collins (the "Lease") of Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN (the "Property")

To: Avina Trading Limited whose registered office is at 200 Park Road, Dibbleham, Oxfordshire OX16 9PM, the tenant of the Property (the "**Tenant**")

From: Satsuma Properties plc whose registered office is at Savelon House, 300 The Broadway, Honington, Oxfordshire OX29 7YH, the landlord of the Property (the "**Landlord**")

The Landlord **gives you notice** as follows:

1. The Lease contains a covenant by the tenant at clause 4.9.1 not to use the Property otherwise than for the Permitted Use. At clause 1.1 the Permitted Use of the Property is defined as offices within Class B1 of the Town and Country Planning (Use Classes) Order 1987.
2. There has been a breach of the covenants as follows: the Property has been used since September 2006 as a storage and distribution centre within Class B8 of the Town and Country Planning (Use Classes) Order 1987.
3. The Landlord requires you within a reasonable time to remedy the breach of covenant in so far as it is capable of remedy.
4. You are required to pay compensation in money for the breach and also to pay pursuant to clause 4.19.2 of the Lease all costs, fees, charges, disbursements and expenses incurred by the Landlord, and any VAT payable on them, in relation or incidental to the preparation and service of this notice.
5. If you fail to remedy the breaches within a reasonable time the Landlord intends to enforce the right of re-entry or forfeiture under clause 7.1 of the Lease that has arisen by reason of the facts set out in the this notice by action or otherwise and also to claim damages.

Dated: 12 May 2008

Signed:*BrookStreet des Roches LLP*.....

On behalf of the Landlord

BrookStreet des Roches LLP, 25 Milton Park, Abingdon, Oxfordshire OX14 4SH

**Law of Property Act 1925, section 146
Leasehold Property (Repairs) Act 1938, section 1
Notice before Forfeiture**

Lease made on 9 March 2001 between (1) Satsuma Properties Limited (2) Avina Trading Limited and (3) David Mark Collins (the "Lease") of Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN (the "Premises")

To: Avina Trading Limited whose registered office is at 200 Park Road, Dibbleham, Oxfordshire OX16 9PM, the tenant of the Premises (the "**Tenant**")

From: Satsuma Properties plc whose registered office is at Savelon House, 300 The Broadway, Honington, Oxfordshire OX29 7YH, the landlord of the Property (the "**Landlord**")

The Landlord **gives you notice** as follows:

1. The Lease contains covenants by the tenant in the following terms:
 - "4.4.1 To keep the Property in good and substantial repair and condition...
 - 4.5.1 To clean, prepare and paint or treat and generally decorate:
 - (i) all external parts of the Property in every third year ... of the Term;
 - (ii) all internal parts of the Property in every fifth year ... of the Term"
2. The dilapidations set out in the schedule to this notice have been allowed to accrue in breach of these covenants.
3. The Landlord requires you to remedy all the breaches and to pay compensation in money for the breaches and also to pay pursuant to clause 4.19.2 of the Lease all costs, fees, charges, disbursements and expenses incurred by the Landlord, and any VAT payable on them, in relation or incidental to the preparation and service of this notice.
4. A reasonable time for remedying the breaches is three (3) months from today's date. If you fail to remedy the breaches within that time I shall exercise my rights of re-entry under clause 7.1 of the Lease and also claim damages.
5. You have the right to serve a counter-notice claiming the benefit of the Leasehold Property (Repairs Act) 1938. The counter-notice must be in writing, must be to the effect that you claim the benefit of that Act, and must be served within 28 days of the service upon you of this notice. It may be served by leaving it at the address of the Landlord's solicitors as set out below, or by sending it to that address by post in a registered letter or a letter sent by recorded delivery service and, provided it is not returned through the post undelivered, if you use such a letter your counter-notice will be deemed to be served at the time when the letter would in the ordinary course be delivered.

Dated: 12 May 2008

Signed:*BrookStreet des Roches LLP*.....

On behalf of the Landlord

BrookStreet des Roches LLP, 25 Milton Park, Abingdon, Oxfordshire OX14 4SH

Schedule of Dilapidations

[A schedule specifying all breaches of the covenants must be attached to the notice; the notice will be invalid if the breaches are not specified]

Form 1

Landlord and Tenant (Covenants) Act 1995, section 17

Notice to former tenant or guarantor of intention to recover fixed charge

To: **Avina Trading Limited**, 200 Park Road, Dibbleham, Oxfordshire OX16 9PM

Important: the person giving this notice is protecting the right to recover the amount(s) specified from you now or at some time in the future. There may be action which you can take to protect your position. Read the notice and all the notes overleaf carefully. If you are in any doubt about the action you should take, seek advice immediately, for instance from a solicitor or citizens advice bureau.

1. This notice is given under section 17 of the Landlord and Tenant (Covenants) Act 1995. ^(See Note 1)
2. It relates to **Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN** let under a lease dated **9 March 2001** and made between **(1) Satsuma Properties plc (2) Avina Trading Limited and (3) David Mark Collins** (of which you were formerly tenant).
3. We as landlord ("*Landlord*" for these purposes includes any person who has the right to enforce the charge) hereby give you notice that the fixed charge(s) of which details are set out in the attached Schedule (*The Schedule must be in writing, and must indicate in relation to each item the date on which it became payable, the amount payable and whether it is rent, service charge or a fixed charge of some other kind (in which case particulars of the nature of the charge should be given). Charges due before 1 January 1996 are deemed to have become due on that date, but the actual date on which they became due should also be stated*) are now due and unpaid, and that we intend to recover from you the amount(s) specified in the Schedule (and interest from the date and calculated on the basis specified in the Schedule) (*Delete words in brackets if not applicable. If applicable, the Schedule must state the basis on which interest is calculated (for example, rate of interest, date from which it is payable and provision of Lease or other document under which it is payable)*). ^(See Notes 2 and 3)
4. (*Delete this paragraph if not applicable. It applicable (for example, where there is an outstanding rent review or service charge collected on account) a further notice must be served on the former tenant or guarantor within three (3) months beginning with the date on which the greater amount is determined. If this is only applicable to one or more charge of several, the Schedule should specify which.*)

There is a possibility that your liability in respect of the fixed charge(s) detailed in the Schedule will subsequently be determined to be for a greater amount. ^(See Note 4)
5. All correspondence about this notice should be sent to the landlord's agent at the address given below.

Date: 26 April 2007

Signature of landlord's agent: *BrookStreet des Roches LLP*

Name and address of landlord:

Satsuma Properties plc, 300 The Broadway, Honington, Oxfordshire OX29 7YH

Name and address of agent:

BrookStreet des Roches LLP, 25 Milton Park, Abingdon, Oxfordshire OX14 4SH

Notes

1. The person giving you this notice alleges that you are still liable for the performance of the tenant's obligations under the tenancy to which this notice relates, either as a previous tenant bound by privity of contract or an authorised guarantee agreement, or because you are the guarantor of a previous tenant. By giving you this notice, the landlord (or other person entitled to enforce payment, such as a management company) is protecting his right to require you to pay the amount specified in the notice. There may be other sums not covered by the notice which the landlord can also recover because they are not fixed charges (for example in respect of repairs or costs if legal proceedings have to be brought). If you pay the amount specified in this notice in full, you will have the right to call on the landlord to grant you an 'overriding lease', which puts you in the position of landlord to the present tenant. There are both advantages and drawbacks to doing this, and you should take advice before coming to a decision.

Validity of notice

2. The landlord is required to give this notice within six months of the date on which the charge or charges in question became due (or, if it became due before 1 January 1996, within six months of that date). If the notice has been given late, it is not valid and the amount in the notice cannot be recovered from you. The date of the giving of the notice may not be the date written on the notice or the date on which you actually saw it. It may, for instance, be the date on which the notice was delivered through the post to your last address known to the landlord. If you are in any doubt, you should seek advice immediately.

Interest

3. If interest is payable on the amount due, the landlord does not have to state the precise amount of interest, but he must state the basis on which the interest is calculated to enable you to work out the likely amount, or he will not be able to claim interest at all. This does not include interest which may be payable under rules of court if legal proceedings are brought.

Change in amount due

4. Apart from interest, the landlord is not entitled to recover an amount which is more than he has specified in the notice, with one exception. This is where the amount cannot be finally determined within six months after it is due (for example, if there is dispute concerning an outstanding rent re-view or if the charge is a service charge collected on account and adjusted following final determination). In such a case, if the amount due is eventually determined to be more than originally notified, the landlord may claim the larger amount if and only if he completes the paragraph giving notice of the possibility that the amount may change, and gives a further notice specifying the larger amount within three months of the final determination.

Schedule

The landlord intends to recover a total of £20,386.22, calculated as set out below (including interest on the amount due as provided for in clause 13 of the Lease at the rate of 4% above Barclays Bank plc base rate), plus interest at a daily rate of £4.92.

Nature of charge	Due date	Amount	Interest period	Interest due	Total
Rent (for the period 25/12/06 to 24/03/07)	25/12/06	£10,000.00	25/12/06 – 24/03/07 25/03/07 – 26/04/07	£223.86 £81.18 £305.04	£10,305.04
Rent (for the period 25/03/07 to 23/06/06)	25/03/07	£10,000.00	25/03/07 – 26/04/07	£81.18	£10,081.18
Total		£20,000.00		£386.22	£20,386.22

Please note there is an outstanding rent review pursuant to clause 7 of the Lease and there is a possibility that your liability in respect of the fixed charges detailed above will subsequently be determined to be for a greater amount.

Form 2
Landlord and Tenant (Covenants) Act 1995, section 17
Further notice to former tenant or guarantor of revised amount due in respect
of a fixed charge

To: Avina Trading Limited whose registered office is at 200 Park Road, Dibbleham, Oxfordshire OX16 9PM, the tenant of the Premises (the “**Tenant**”)

Important: the person giving this notice is protecting the right to recover the amount(s) specified from you now or at some time in the future. There may be action which you can take to protect your position. Read the notice and all the notes overleaf carefully. If you are in any doubt about the action you should take, seek advice immediately, for instance from a solicitor or citizens advice bureau.

1. This notice is given under section 17 of the Landlord and Tenant (Covenants) Act 1995. ^(See Note 1)
2. It relates to **Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN** let under a lease dated **9 March 2001** and made between **(1) Satsuma Properties plc (2) Avina Trading Limited and (3) David Mark Collins** (of which you were formerly tenant).
3. You were informed on 26 April 2007 of the amount due in respect of a fixed charge or charges, and of the possibility that your liability in respect of the charge(s) might subsequently be determined to be for a greater amount.
4. We as landlord (“*Landlord*” for these purposes includes any person who has the right to enforce the charge) hereby gives you notice that the fixed charge(s) of which details are set out in the attached Schedule (*The Schedule can be in any form, but must indicate in relation to each item the date on which it was revised, the revised amount payable and whether it is rent, service charge or a fixed charge of some other kind (in which case particulars of the nature of the charge should be given)*) have now been determined to be for a greater amount than specified in the original notice, and that we intend to recover from you the amount(s) specified in the Schedule (and interest from the date and calculated on the basis specified in the Schedule) (*Delete words in brackets if not applicable. If applicable, the Schedule must state the basis on which interest is calculated (for example, rate of interest, date from which it is payable and provision of Lease or other document under which it is payable)*). ^(See Notes 2 and 3)
5. All correspondence about this notice should be sent to the landlord's agent at the address given below.

Date: 8 July 2007

Signature of landlord's agent: *BrookStreet des Roches LLP*.....

Name and address of landlord:

Satsuma Properties plc, 300 The Broadway, Honington, Oxfordshire OX29 7YH

Name and address of agent:

BrookStreet des Roches LLP, 25 Milton Park, Abingdon, Oxfordshire OX14 4SH

Notes

1. The person giving you this notice alleges that you are still liable for the performance of the tenant's obligations under the tenancy to which this notice relates, either as a previous tenant bound by privity of contract or an authorised guarantee agreement, or because you are the guarantor of a previous tenant. You should already have been given a notice by which the landlord (or other person entitled to enforce payment, such as a management company) is protected his right to require you to pay the amount specified in the notice. The purpose of this notice is to protect the landlord's right to require you to pay a larger amount, because the amount specified in the original notice could not be finally determined at the time of the original notice (for example, because there was a dispute concerning an outstanding rent review or if the charge was a service charge collected on account and adjusted following final determination).

Validity of notice

2. The notice is not valid unless the original notice contained a warning that the amount in question might subsequently be determined to be a greater amount. In addition, the landlord is required to give this notice within three months of the date on which the amount was finally determined. If the original notice did not include that warning, or if this notice has been given late, then this notice is not valid and the landlord cannot recover the greater amount, but only the smaller amount specified in the original notice. The date of the giving of the notice may not be the date written on the notice or the date on which you actually saw it. It may, for instance, be the date on which the notice was delivered through the post to your last address known to the person giving notice. If you are in any doubt, you should seek advice immediately.

Interest

3. If interest is payable on the amount due, the landlord does not have to state the precise amount of interest, but he must state the basis on which the interest is calculated to enable you to work out the likely amount, or he will not be able to claim interest at all.

Schedule

The revised rent due under the Lease was determined on 1 July 2007. The rent increased from £40,000 per annum to £48,000 per annum.

The landlord intends to recover the increased total of £24,956.80, calculated as set out below (including interest on the amount due as provided for in clause 13 of the Lease at the rate of 4% above Barclays Bank plc base rate), plus interest at a daily rate of £5.92.

Nature of charge	Due date	Amount	Interest period	Interest due	Total
Rent (for the period 25/12/06 to 24/03/07)	25/12/06	£12,000.00	25/12/06 – 24/03/07 25/03/07 – 23/06/07 23/06/07 – 08/07/07	£269.36 £269.36 <u>£47.36</u> £640.08	£12,640.08
Rent (for the period 25/03/07 to 23/06/06)	25/03/07	£12,000.00	25/03/07 – 26/04/07	£269.36 <u>£47.36</u> £316.72	£12,316.72
Total		£24,000.00		£956.80	£24,956.80

Law of Distress Amendment Act 1908, section 6
Head landlord's notice to subtenant to pay rent to head landlord directly

To: **Fina plc** whose registered office is at 35 The Westgate, London W12 5FG

We, Satsuma Properties plc, whose registered office is at 300 The Broadway, Honington, Oxfordshire OX29 7YH, **give you notice that:**

1. There is due to us as owner of the premises known as Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN from Avina Trading Limited, our immediate tenant, the sum of £22,500 plus VAT in respect of arrears of rent of the premises.
2. We require you as subtenant of the premises or some part of them to make to us direct at 300 The Broadway, Honington, Oxfordshire OX29 7YH all future payments of rent whether now accrued due or to accrue due in the future from you to Avina Trading Limited until such arrears have been duly paid.

Dated: 12 May 2008

Signed:*Sillman and Sons LLP*.....

On behalf of the head landlord

Sillman and Sons LLP, 94 Highway, Catteringham, Oxford OX17 8HJ

Landlord and Tenant Act 1927, section 3(1)
Notice of intention to make improvements

To: **Satsuma Properties plc** whose registered office is at 300 The Broadway, Honington, Oxfordshire OX29 7YH

Lease made on 9 March 2001 between (1) Satsuma Properties Limited (2) Avina Trading Limited and (3) David Mark Collins of Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN (the "Premises")

This notice is given under the Landlord and Tenant Act 1927 and relates to the Premises, of which you are the landlord.

We, Avina Trading Limited, whose registered office is at 200 Park Road, Dibbleham, Oxfordshire OX16 9PM, **give you notice** as follows:

1. We propose to make the improvements to the Premises described in the schedule to this notice and in the plan and specification annexed to this notice (the "Improvements").
2. We intend to proceed with the making of the Improvements unless, within 3 months after service of this notice, we receive notice of objection from you.

Any correspondence about this notice, and any notices that you may wish to serve on us relating to the subject matter of this notice, should be sent to our agent, who is authorised to accept service of notices on our behalf at the address given below.

Schedule

[A schedule describing the proposed improvements and attaching plans and specifications must be included; the notice will be invalid if this information is not provided]

Dated: 3 April 2004

Signed:*Cuttleton Binks Reilly LLP*.....

as agents for Avina Trading Limited

Cuttleton Binks Reilly LLP, 100 Thurrock Square, Fincham, Oxfordshire OX20 7YH

Landlord and Tenant Act 1927, section 3(1)
Notice objecting to proposed improvements

To: **Avina Trading Limited** whose registered office is at 200 Park Road, Dibbleham, Oxfordshire OX16 9PM

Lease made on 9 March 2001 between (1) Satsuma Properties Limited (2) Avina Trading Limited and (3) David Mark Collins of Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN (the "Premises")

This notice is given under the Landlord and Tenant Act 1927 and relates to the Premises, of which you are the tenant.

We, **Satsuma Properties plc** whose registered office is at 300 The Broadway, Honington, Oxfordshire OX29 7YH **give you notice** that we object to such of the proposed improvements described in your notice dated 3 April 2004 as are specified in the schedule to this notice.

Schedule

[A schedule describing particulars of the improvements objected to should be included (unless all improvements are objected to, in which case this is not required)]

Dated: 12 May 2004

Signed: *BrookStreet des Roches LLP*

as agents for Satsuma Properties plc

BrookStreet des Roches LLP, 25 Milton Park, Abingdon, Oxfordshire OX14 4SH

Landlord and Tenant Act 1927
Notice of claim for compensation

To: **Satsuma Properties plc** whose registered office is at 300 The Broadway, Honington, Oxfordshire OX29 7YH

Lease made on 9 March 2001 between (1) Satsuma Properties Limited (2) Avina Trading Limited and (3) David Mark Collins of Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN (the "Premises")

We, Avina Trading Limited, whose registered office is at 200 Park Road, Dibbleham, Oxfordshire OX16 9PM, **give you notice** that we claim to be entitled to compensation, on quitting the Premises on the termination of our tenancy, for the improvements particulars of which are set out in the schedule below, which improvements have been made by us and will add to the letting value of the Premises at the termination of our tenancy.

Any correspondence about this notice, and any notices that you may wish to serve on us relating to the subject matter of this notice, should be sent to our agent, who is authorised to accept service of notices on our behalf at the address given below.

Schedule

[A schedule describing the improvements made, by whom, when, the cost of them and the amount of compensation claimed should be included]

Dated: 12 May 2008

Signed: *Cuttleton Binks Reilly LLP*

as agents for Avina Trading Limited

Cuttleton Binks Reilly LLP, 100 Thurrock Square, Fincham, Oxfordshire OX20 7YH

**Landlord and Tenant (Covenants) Act 1995, sections 6 and 8
Landlord's notice applying for release from landlord covenants of a tenancy on
assignment of whole of reversion**

Part I

To: **Avina Trading Limited** whose registered office is at 200 Park Road, Dibbleham, Oxfordshire OX16 9PM

Important: this notice is intended to release your landlord from his obligations when he transfers his interest to a new landlord. If you consider that there is good reason for your landlord not to be released, you must act quickly. Read the notice and all the notes overleaf carefully. If you are in any doubt about the action you should take, seek advice immediately, for instance from a solicitor or citizens advice bureau.

1. This notice is given under section 8 of the Landlord and Tenant (Covenants) Act 1995.^(See Note 1)
2. It relates to **Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN** let under a lease dated **9 March 2001** and made between **(1) Satsuma Properties plc (2) Avina Trading Limited and (3) David Mark Collins** of which you are the tenant.
3. We propose to transfer the whole of the landlord's interest and wish to be released from the landlord's obligations under the tenancy with effect from the date of the transfer.^(See Note 2)
4. If you consider that it is reasonable for us to be released, you do not need to do anything, but it would help us if you notify us using Part II of this Form.^(See Note 3)
5. If you do not consider it reasonable for us to be released, you must notify us of your objection, using Part II of this Form, within the period of **four weeks** beginning with the giving of this notice, or we will be released in any event. You may withdraw your objection at any time by notifying us in writing.^(See Notes 4-6)
6. All correspondence about this notice should be sent to the landlord's agent at the address given below.

Date: 20 April 2008

Signature of landlord's agent:.....*BrookStreet des Roches LLP*.....

Name and address of landlord:

Satsuma Properties plc, 300 The Broadway, Honington, Oxfordshire OX29 7YH

Name and address of agent:

BrookStreet des Roches LLP, 25 Milton Park, Abingdon, Oxfordshire OX14 4SH

Notes to Part I

Release of landlord

1. The landlord is about to transfer his interest to a new landlord, or has just done so, and is applying to be released from the obligations of the landlord under your tenancy. You have a number of options: you may expressly agree to the landlord's being released; you may object to his being re-leased (with the option of withdrawing your objection later); or you may do nothing, in which case the landlord will automatically be released, with effect from the date of the transfer, once four weeks have elapsed from the date of the giving of the notice. If you choose to oppose release, you must act within four weeks of the giving of the notice.

Validity of notice

2. The landlord must give this notice either before the transfer or within the period of four weeks beginning with the date of the transfer. If the notice has been given late, it is not valid. You should read Note 4 below concerning the date of the giving of the notice.

Agreeing to release

3. If you are content for the landlord to be released, you may notify him of this using Part II of this Form, and the landlord will then be released as from the date of the transfer. If you do this, you may not later change your mind and object.

Objecting to release

4. If you think that it is not reasonable for the landlord to be released, you may object to release by notifying the landlord, using Part II of this Form. You must, however, do this within four weeks of the date of the giving of the notice. The date of the giving of the notice may not be the date written on the notice or the date on which you actually saw it. It may, for instance, be the date on which the notice was delivered through the post to your last address known by the landlord. If there has been any delay in your seeing this notice you may need to act very quickly. If you are in any doubt, you should seek advice immediately. If you change your mind after objecting, you may consent instead, at any time, by notifying the landlord in writing that you now consent to his being released and that your objection is withdrawn.
5. If you object within the time limit, the landlord will only be released if either he applies to a court and the court decides that it is reasonable for him to be released, or you withdraw your objection by a notice in writing as explained in Note 4 above.
6. In deciding whether to object, you should bear in mind that if the court finds that it is reasonable for the landlord to be released, or if you withdraw your objection late, you may have to pay costs.

**Landlord and Tenant (Covenants) Act 1995, sections 6 and 8
Tenant's response to landlord's notice applying for release from landlord
covenants of a tenancy on assignment of whole of reversion**

Part II

To: **Satsuma Properties plc** whose registered office is at Savelon House, 300 The Broadway, Honington, Oxfordshire OX29 7YH

1. This notice is given under section 8 of the Landlord and Tenant (Covenants) Act 1995.
2. It relates to **Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN** let under a lease dated **9 March 2001** and made between **(1) Satsuma Properties plc (2) Avina Trading Limited and (3) David Mark Collins** of which you are the landlord or have just transferred the landlord's interest.
3. You propose to transfer the landlord's interest and have applied to be released from the landlord's obligations under the tenancy with effect from the date of the transfer.
4. We do not consider it reasonable that you should be released from the landlord's obligations, and object to the release. (See Notes 2 and 3)
5. All correspondence about this notice should be sent (See Note 1) to the tenant's agent at the address given below.

Date: 12 May 2008

Signature of tenant's agent:.....*Cuttleton Binks Reilly LLP*.....

Name and address of tenant:
Avina Trading Limited, 200 Park Road, Dibbleham, Oxfordshire OX16 9PM

Name and address of agent:
Cuttleton Binks Reilly LLP, 100 Thurrock Square, Fincham, Oxfordshire OX20 7YH

Notes to Part II

Agreement to release

1. If the tenant has indicated agreement in paragraph 4 of the notice, you will automatically be released from the landlord's obligations under the tenancy with effect from the date of your transfer of the landlord's interest.

Objection to release

2. If the tenant has indicated an objection in paragraph 4 of the notice, you will not be released unless either the tenant later withdraws his objection or you apply to the County Court to declare that it is reasonable for you to be released, and the court so declares. If you are not released, you may still apply for release when the landlord's interest, or part of it, is next transferred, and it may therefore be sensible to make arrangements for the person to whom you are making the transfer to inform you when he intends to transfer the landlord's interest in his turn.

Validity of notice of objection

3. A notice of objection by the tenant is only valid if he has given it to you within the period of four weeks beginning with the date on which you gave him your notice applying for release. If you are in any doubt, you should seek advice before applying to the court.

Notice that sections 24 to 28 of the Landlord and Tenant Act 1954 are not to apply to a business tenancy

To: **Avina Trading Limited**, 200 Park Road, Dibbleham, Oxfordshire OX16 9PM

From: **Satsuma Properties plc**, 300 The Broadway, Honington, Oxfordshire OX29 7YH

IMPORTANT NOTICE

You are being offered a lease without security of tenure. Do not commit yourself to the lease unless you have read this message carefully and have discussed it with a professional adviser.

Business tenants normally have security of tenure - the right to stay in their business premises when the lease ends.

If you commit yourself to the lease you will be giving up these important legal rights.

--You will have **no right** to stay in the premises when the lease ends.

--Unless the landlord chooses to offer you another lease, you will need to leave the premises.

--You will be unable to claim compensation for the loss of your business premises, unless the lease --If the landlord offers you another lease, you will have no right to ask the court to fix the rent.

It is therefore important to get professional advice - from a qualified surveyor, lawyer or accountant - before agreeing to give up these rights.

If you want to ensure that you can stay in the same business premises when the lease ends, you should consult your adviser about another form of lease that does not exclude the protection of the Landlord and Tenant Act 1954.

If you receive this notice at least 14 days before committing yourself to the lease, you will need to sign a simple declaration that you have received this notice and have accepted its consequences, before signing the lease.

But if you do not receive at least 14 days notice, you will need to sign a "statutory" declaration. To do so, you will need to visit an independent solicitor (or someone else empowered to administer oaths).

Unless there is a special reason for committing yourself to the lease sooner, you may want to ask the landlord to let you have 14 days to consider whether you wish to give up your statutory rights. If you then decide to go ahead with the agreement to exclude the protection of the Landlord and Tenant Act 1954, you would only need to make a simple declaration, and so would not need to make a separate visit to an independent solicitor.

Landlord's notice ending a business tenancy with proposals for a new one

Section 25 of the Landlord and Tenant Act 1954

IMPORTANT NOTE FOR THE LANDLORD: If you are willing to grant a new tenancy, complete this form and send it to the tenant. If you wish to oppose the grant of a new tenancy, use form 2 in Schedule 2 to the Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004 or, where the tenant may be entitled to acquire the freehold or an extended lease, form 7 in that Schedule, instead of this form.

(insert name and address of tenant)

To: Avina Trading Limited
200 Park Road, Dibbleham, Oxfordshire OX16 9PM

(insert name and address of landlord)

From: Satsuma Properties plc
300 The Broadway, Honington, Oxfordshire OX29 7YH

(insert address or description of property)

1. This notice applies to the following property:
Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN

(insert date)

2. I am giving you notice under section 25 of the Landlord and Tenant Act 1954 to end your tenancy on 3 December 2008
3. I am not opposed to granting you a new tenancy. You will find my proposals for the new tenancy, which we can discuss, in the Schedule to this notice.
4. If we cannot agree on all the terms of a new tenancy, either you or I may ask the court to order the grant of a new tenancy and settle the terms on which we cannot agree.
5. If you wish to ask the court for a new tenancy you must do so by the date in paragraph 2, unless we agree in writing to a later date and do so before the date in paragraph 2.
6. Please send all correspondence about this notice to:

Name: BrookStreet des Roches LLP
Address: 25 Milton Park, Abingdon, Oxfordshire OX14 4SH

Signed: BrookStreet des Roches LLP Date: 12 May 2008

(*delete if inapplicable)

~~Landlord~~ * [On behalf of the landlord] ~~Mortgagee~~ * [On behalf of the mortgagee]

SCHEDULE
Landlord's proposals for a new tenancy

(attach or insert proposed terms of the new tenancy)

1. Property to be comprised in the tenancy is Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN
2. For a Term of 15 years from 4 December 2008
3. At an initial rent of £50,000 per annum
4. Rent to be reviewed every 5 years
5. Full repairing obligations
6. Use to be as an office within Class B1 of the Town and Country Planning (Use Classes) Order 1987
7. Subject to necessary modernisation but otherwise on the same terms and conditions as contained in the current Lease

IMPORTANT NOTE FOR THE TENANT

This Notice is intended to bring your tenancy to an end. If you want to continue to occupy your property after the date specified in paragraph 2 you must act quickly. If you are in any doubt about the action that you should take, get advice immediately from a solicitor or a surveyor.

The landlord is prepared to offer you a new tenancy and has set out proposed terms in the Schedule to this notice. You are not bound to accept these terms. They are merely suggestions as a basis for negotiation. In the event of disagreement, ultimately the court would settle the terms of the new tenancy.

It would be wise to seek professional advice before agreeing to accept the landlord's terms or putting forward your own proposals.

NOTES

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003).

Ending of tenancy and grant of new tenancy

This notice is intended to bring your tenancy to an end on the date given in paragraph 2. Section 25 contains rules about the date that the landlord can put in that paragraph.

However, your landlord is prepared to offer you a new tenancy and has set out proposals for it in the Schedule to this notice (section 25(8)). You are not obliged to accept these proposals and may put forward your own.

If you and your landlord are unable to agree terms either one of you may apply to the court. You may not apply to the court if your landlord has already done so (section 24(2A)). If you wish to apply to the court you must do so by the date given in paragraph 2 of this notice, unless you and your landlord have agreed in writing to extend the deadline (sections 29A and 29B).

The court will settle the rent and other terms of the new tenancy or those on which you and your landlord cannot agree (sections 34 and 35). If you apply to the court your tenancy will continue after the date shown in paragraph 2 of this notice while your application is being considered (section 24).

If you are in any doubt about what action you should take, get advice immediately from a solicitor or a surveyor.

Negotiating a new tenancy

Most tenancies are renewed by negotiation. You and your landlord may agree in writing to extend the deadline for making an application to the court while negotiations continue. Either you or your landlord can ask the court to fix the rent that you will have to pay while the tenancy continues (sections 24A to 24D).

You may only stay in the property after the date in paragraph 2 (or if we have agreed in writing to a later date, that date), if by then you or the landlord has asked the court to order the grant of a new tenancy.

If you do try to agree a new tenancy with your landlord remember:

- that your present tenancy will not continue after the date in paragraph 2 of this notice without the agreement in writing mentioned above, unless you have applied to the court or your landlord has done so, and
- that you will lose your right to apply to the court once the deadline in paragraph 2 of this notice has passed, unless there is a written agreement extending the deadline.

Validity of this notice

The landlord who has given you this notice may not be the landlord to whom you pay your rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about whether this notice is valid, get advice immediately from a solicitor or a surveyor.

Further information

An explanation of the main points to consider when renewing or ending a business tenancy, 'Renewing and Ending Business Leases: a Guide for Tenants and Landlords', can be found at www.odpm.gov.uk. Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

Landlord's notice ending a business tenancy and reasons for refusing a new one

Section 25 of the Landlord and Tenant Act 1954

IMPORTANT NOTE FOR THE LANDLORD: If you wish to oppose the grant of a new tenancy on any of the grounds in section 30(1) of the Landlord and Tenant Act 1954, complete this form and send it to the tenant. If the tenant may be entitled to acquire the freehold or an extended lease, use form 7 in Schedule 2 to the Landlord and Tenant Act 1954, Part 2 (Notices) Regulations 2004 instead of this form.

(insert name and address of tenant)

To: Avina Trading Limited
200 Park Road, Dibbleham, Oxfordshire OX16 9PM

(insert name and address of landlord)

From: Satsuma Properties plc
300 The Broadway, Honington, Oxfordshire OX29 7YH

(insert address or description of property)

1. This notice applies to the following property:
Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN

(insert date)

2. I am giving you notice under section 25 of the Landlord and Tenant Act 1954 to end your tenancy on 3 December 2008

3. I am opposed to the grant of a new tenancy.

(insert letter(s) of the paragraph(s) relied on)

4. You may ask the court to order the grant of a new tenancy. If you do, I will oppose your application on the ground(s) mentioned in paragraph(s)* (a) and (f) of section 30(1) of that Act. I draw your attention to the Table in the Notes below, which sets out all the grounds of opposition.

5. If you wish to ask the court for a new tenancy you must do so before the date in paragraph 2 unless, before that date, we agree in writing to a later date.

6. I can ask the court to order the ending of your tenancy without granting you a new tenancy. I may have to pay you compensation if I have relied only on one or more of the grounds mentioned in paragraphs (e), (f) and (g) of section 30(1). If I ask the court to end your tenancy, you can challenge my application.

6. Please send all correspondence about this notice to:

Name: BrookStreet des Roches LLP
Address: 25 Milton Park, Abingdon, Oxfordshire OX14 4SH

Signed: BrookStreet des Roches LLP Date: 12 May 2008

(*delete if inapplicable)

~~[Landlord]~~ * [On behalf of the landlord] ~~[Mortgagee]~~ * [On behalf of the mortgagee]

IMPORTANT NOTE FOR THE TENANT

This notice is intended to bring your tenancy to an end on the date specified in paragraph 2.

Your landlord is not prepared to offer you a new tenancy. You will not get a new tenancy unless you successfully challenge in court the grounds on which your landlord opposes the grant of a new tenancy.

If you want to continue to occupy your property you must act quickly. The notes below should help you to decide what action you now need to take. If you want to challenge your landlord's refusal to renew your tenancy, get advice immediately from a solicitor or a surveyor.

NOTES

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003).

Ending of your tenancy

This notice is intended to bring your tenancy to an end on the date given in paragraph 2. Section 25 contains rules about the date that the landlord can put in that paragraph.

Your landlord is not prepared to offer you a new tenancy. If you want a new tenancy you will need to apply to the court for a new tenancy and successfully challenge the landlord's grounds for opposition (see the section below headed "*Landlord's opposition to new tenancy*"). If you wish to apply to the court you must do so before the date given in paragraph 2 of this notice, unless you and your landlord have agreed in writing, before that date, to extend the deadline (sections 29A and 29B).

If you apply to the court your tenancy will continue after the date given in paragraph 2 of this notice while your application is being considered (section 24). You may not apply to the court if your landlord has already done so (section 24(2A) and (2B)).

You may only stay in the property after the date given in paragraph 2 (or such later date as you and the landlord may have agreed in writing) if before that date you have asked the court to order the grant of a new tenancy or the landlord has asked the court to order the ending of your tenancy without granting you a new one.

If you are in any doubt about what action you should take, get advice immediately from a solicitor or a surveyor.

Landlord's opposition to new tenancy

If you apply to the court for a new tenancy, the landlord can only oppose your application on one or more of the grounds set out in section 30(1). If you match the letter(s) specified in paragraph 4 of this notice with those in the first column in the Table below, you can see from the second column the ground(s) on which the landlord relies.

Paragraph of section 30(1)

Grounds

- (a) Where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations.
- (b) That the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due.
- (c) That the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding.
- (d) That the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve

goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding.

- (e) Where the current tenancy was created by the sub-letting of part only of the property comprised in a superior tenancy and the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy, that the aggregate of the rents reasonably obtainable on separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purposes of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy.
- (f) That on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding.
- (g) On the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence.

In this Table "the holding" means the property that is the subject of the tenancy.

In ground (e), "the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy" means that the landlord has an interest in the property that will entitle him or her, when your immediate landlord's tenancy comes to an end, to exercise certain rights and obligations in relation to the property that are currently exercisable by your immediate landlord.

If the landlord relies on ground (f), the court can sometimes still grant a new tenancy if certain conditions set out in section 31A are met.

If the landlord relies on ground (g), please note that "the landlord" may have an extended meaning. Where a landlord has a controlling interest in a company then either the landlord or the company can rely on ground (g). Where the landlord is a company and a person has a controlling interest in that company then either of them can rely on ground (g) (section 30(1A) and (1B)). A person has a "controlling interest" in a company if, had he been a company, the other company would have been its subsidiary (section 46(2)).

The landlord must normally have been the landlord for at least five years before he or she can rely on ground (g).

Compensation

If you cannot get a new tenancy solely because one or more of grounds (e), (f) and (g) applies, you may be entitled to compensation under section 37. If your landlord has opposed your application on any of the other grounds as well as (e), (f) or (g) you can only get compensation if the court's refusal to grant a new tenancy is based solely on one or more of grounds (e), (f) and (g). In other words, you cannot get compensation under section 37 if the court has refused your tenancy on other grounds, even if one or more of grounds (e), (f) and (g) also applies.

If your landlord is an authority possessing compulsory purchase powers (such as a local authority) you may be entitled to a disturbance payment under Part 3 of the Land Compensation Act 1973.

Validity of this notice

The landlord who has given you this notice may not be the landlord to whom you pay your rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about whether this notice is valid, get advice immediately from a solicitor or a surveyor.

Further information

An explanation of the main points to consider when renewing or ending a business tenancy, "Renewing and Ending Business Leases: a Guide for Tenants and Landlords", can be found at www.odpm.gov.uk. Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

Landlord and Tenant Act 1954, Part 2 (Notices(Regulations 2004 – Schedule 2 - Form 3

Tenant's request for a new business tenancy

Section 26 of the Landlord and Tenant Act 1954

*(insert name and
address of landlord)*

To: Satsuma Properties plc
300 The Broadway, Honington, Oxfordshire OX29 7YH

*(insert name and
address of tenant)*

From: Avina Trading Limited
200 Park Road, Dibbleham, Oxfordshire OX16 9PM

*(insert address or
description
of property)*

1. This notice applies to the following property:
Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN

(insert date)

2. I am giving you notice under section 26 of the Landlord and Tenant Act 1954 that I request a new tenancy beginning on 3 December 2008
3. You will find my proposals for the new tenancy, which we can discuss, in the Schedule to this notice.
4. If we cannot agree on all the terms of a new tenancy, either you or I may ask the court to order the grant of a new tenancy and settle the terms on which we cannot agree.
5. If you wish to ask the court to order the grant of a new tenancy you must do so by the date in paragraph 2, unless we agree in writing to a later date and do so before the date in paragraph 2.
6. You may oppose my request for a new tenancy only on one or more of the grounds set out in section 30(1) of the Landlord and Tenant Act 1954. You must tell me what your grounds are within two months of receiving this notice. If you miss this deadline you will not be able to oppose renewal of my tenancy and you will have to grant me a new tenancy.
6. Please send all correspondence about this notice to:

Name: Cuttleton Binks Reilly LLP

Address: 100 Thurrock Square, Fincham, Oxfordshire OX20 7YH

Signed:.....*Cuttleton Binks Reilly LLP*..... Date: 12 May 2008..

*(*delete whichever
is inapplicable)*

~~XXXXXX~~ * [On behalf of the tenant]

SCHEDULE

Tenant's proposals for a new tenancy

(attach or insert proposed terms of the new tenancy)

1. Property to be comprised in the tenancy is Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN
2. For a Term of 15 years from 3 December 2008
3. At an initial rent of £45,000 per annum
4. Rent to be reviewed every 5 years
5. Full repairing obligations
6. Use to be as an office within Class B1 of the Town and Country Planning (Use Classes) Order 1987
7. Subject to necessary modernisation but otherwise on the same terms and conditions as contained in the current Lease

IMPORTANT NOTE FOR THE LANDLORD

This notice requests a new tenancy of your property or part of it. If you want to oppose this request you must act quickly.

Read the notice and all the Notes carefully. It would be wise to seek professional advice.

NOTES

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003)

Tenant's request for a new tenancy

This request by your tenant for a new tenancy brings his or her current tenancy to an end on the day before the date mentioned in paragraph 2 of this notice. Section 26 contains rules about the date that the tenant can put in paragraph 2 of this notice.

Your tenant can apply to the court under section 24 for a new tenancy. You may apply for a new tenancy yourself, under the same section, but not if your tenant has already served an application. Once an application has been made to the court, your tenant's current tenancy will continue after the date mentioned in paragraph 2 while the application is being considered by the court. Either you or your tenant can ask the court to fix the rent which your tenant will have to pay whilst the tenancy continues (sections 24A to 24D). The court will settle any terms of a new tenancy on which you and your tenant disagree (sections 34 and 35).

Time limit for opposing your tenant's request

If you do not want to grant a new tenancy, you have two months from the making of your tenant's request in which to notify him or her that you will oppose any application made to the court for a new tenancy. You do not need a special form to do this, but the notice must be in writing and it must state on which of the grounds set out in section 30(1) you will oppose the application. If you do not use the same wording of the ground (or grounds), as set out below, your notice may be ineffective.

If there has been any delay in your seeing this notice, you may need to act very quickly. If you are in any doubt about what action you should take, get advice immediately from a solicitor or a surveyor.

Grounds for opposing tenant's application

If you wish to oppose the renewal of the tenancy, you can do so by opposing your tenant's application to the court, or by making your own application to the court for termination without

renewal. However, you can only oppose your tenant's application, or apply for termination without renewal, on one or more of the grounds set out in section 30(1). These grounds are set out below. You will only be able to rely on the ground(s) of opposition that you have mentioned in your written notice to your tenant.

In this Table "the holding" means the property that is the subject of the tenancy.

Paragraph of section 30(1)

Grounds

- (a) Where under the current tenancy the tenant has any obligations as respects the repair and maintenance of the holding, that the tenant ought not to be granted a new tenancy in view of the state of repair of the holding, being a state resulting from the tenant's failure to comply with the said obligations.
- (b) That the tenant ought not to be granted a new tenancy in view of his persistent delay in paying rent which has become due.
- (c) That the tenant ought not to be granted a new tenancy in view of other substantial breaches by him of his obligations under the current tenancy, or for any other reason connected with the tenant's use or management of the holding.
- (d) That the landlord has offered and is willing to provide or secure the provision of alternative accommodation for the tenant, that the terms on which the alternative accommodation is available are reasonable having regard to the terms of the current tenancy and to all other relevant circumstances, and that the accommodation and the time at which it will be available are suitable for the tenant's requirements (including the requirement to preserve goodwill) having regard to the nature and class of his business and to the situation and extent of, and facilities afforded by, the holding.
- (e) Where the current tenancy was created by the sub-letting of part only of the property comprised in a superior tenancy and the landlord is the owner of an interest in reversion expectant on the termination of that superior tenancy, that the aggregate of the rents reasonably obtainable on separate lettings of the holding and the remainder of that property would be substantially less than the rent reasonably obtainable on a letting of that property as a whole, that on the termination of the current tenancy the landlord requires possession of the holding for the purposes of letting or otherwise disposing of the said property as a whole, and that in view thereof the tenant ought not to be granted a new tenancy.
- (f) That on the termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof and that he could not reasonably do so without obtaining possession of the holding.
- (g) On the termination of the current tenancy the landlord intends to occupy the holding for the purposes, or partly for the purposes, of a business to be carried on by him therein, or as his residence.

Compensation

If your tenant cannot get a new tenancy solely because one or more of grounds (e), (f) and (g) applies, he or she is entitled to compensation under section 37. If you have opposed your tenant's application on any of the other grounds mentioned in section 30(1), as well as on one or more of grounds (e), (f) and (g), your tenant can only get compensation if the court's refusal to grant a new tenancy is based solely on ground (e), (f) or (g). In other words, your tenant cannot get compensation under section 37 if the court has refused the tenancy on other grounds, even if one or more of grounds (e), (f) and (g) also applies.

If you are an authority possessing compulsory purchase powers (such as a local authority), your tenant may be entitled to a disturbance payment under Part 3 of the Land Compensation Act 1973.

Negotiating a new tenancy

Most tenancies are renewed by negotiation and your tenant has set out proposals for the new tenancy in paragraph 3 of this notice. You are not obliged to accept these proposals and may put forward your own. You and your tenant may agree in writing to extend the deadline for making an application to the court while negotiations continue. Your tenant may not apply to the court for a new tenancy until two months have passed from the date of the making of the request contained in this

notice, unless you have already given notice opposing your tenant's request as mentioned in paragraph 6 of this notice (section 29A(3)).

If you try to agree a new tenancy with your tenant, remember:

- that one of you will need to apply to the court before the date in paragraph 2 of this notice, unless you both agree to extend the period for making an application.
- that any such agreement must be in writing and must be made before the date in paragraph 2 (sections 29A and 29B).

Validity of this notice

The tenant who has given you this notice may not be the person from whom you receive rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about whether this notice is valid, get advice immediately from a solicitor or a surveyor.

Further information

An explanation of the main points to consider when renewing or ending a business tenancy, "Renewing and Ending Business Leases: a Guide for Tenants and Landlords", can be found at www.odpm.gov.uk. Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

**Landlord and Tenant Act 1954, section 26
Counter-notice**

To: **Avina Trading Limited** whose registered office is at 200 Park Road, Dibbleham, Oxfordshire
OX16 9PM

From: **Satsuma Properties plc** whose registered office is at 300 The Broadway, Honington,
Oxfordshire OX29 7YH

Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN

We have received your request for a new tenancy of the above premises dated 12 May 2008 given under the Landlord and Tenant Act 1954 Section 26 and now give you notice that we will oppose an application to the court for the grant of a new tenancy on the grounds set out in paragraphs (a) and (f) of Section 30(1) of that Act.

Date: 14 May 2008

Signed: *BrookStreet des Roches LLP*

On behalf of the Landlord

BrookStreet des Roches LLP, 25 Milton Park, Abingdon, Oxfordshire OX14 4SH

**Landlord and Tenant Act 1954, section 27(1)
Notice to terminate**

To: **Satsuma Properties plc** whose registered office is at 300 The Broadway, Honington, Oxfordshire OX29 7YH

From: **Avina Trading Limited** whose registered office is at 200 Park Road, Dibbleham, Oxfordshire OX16 9PM

Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN

We are the tenant of the above premises by virtue of a lease dated 9 March 2001 and made between (1) Satsuma Properties plc (2) Avina Trading Limited and (3) David Mark Collins which will expire on 8 March 2009 and now give you notice under the Landlord and Tenant Act 1954 Section 27(1) that we do not desire the tenancy to be continued under the provisions of Part II of that Act.

Dated: 12 May 2008

Signed: *Cuttleton Binks Reilly LLP*

On behalf of the tenant

Cuttleton Binks Reilly LLP, 100 Thurrock Square, Fincham, Oxfordshire OX20 7YH

**Landlord and Tenant Act 1954, section 27(2)
Notice to terminate**

To: **Satsuma Properties plc** whose registered office is at 300 The Broadway, Honington, Oxfordshire OX29 7YH

From: **Avina Trading Limited** whose registered office is at 200 Park Road, Dibbleham, Oxfordshire OX16 9PM

Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN

We are the tenant of the above premises by virtue of a lease dated 9 March 2001 and made between (1) Satsuma Properties plc (2) Avina Trading Limited and (3) David Mark Collins which expired on 8 March 2008 and which continues after that date under the Landlord and Tenant Act 1954 Section 24, and now give you notice under Section 27(2) of that Act that the tenancy will be brought to an end on 18 August 2008 by virtue of this notice.

Dated: 12 May 2008

Signed: *Cuttleton Binks Reilly LLP*

On behalf of the tenant

Cuttleton Binks Reilly LLP, 100 Thurrock Square, Fincham, Oxfordshire OX20 7YH

**Landlord's request for information about
occupation and sub-tenancies**

Section 40(1) of the Landlord and Tenant Act 1954

*(insert name and
address of tenant)*

To: Avina Trading Limited
200 Park Road, Dibbleham, Oxfordshire OX16 9PM

*(insert name and
address of landlord)*

From: Satsuma Properties plc
300 The Broadway, Honington, Oxfordshire OX29 7YH

*(insert address or
description
of premises)*

1. This notice relates to the following premises:
Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN

2. I give you notice under section 40(1) of the Landlord and Tenant Act 1954 that I require you to provide information--
 - (a) by answering questions (1) to (3) in the Table below;
 - (b) if you answer "yes" to question (2), by giving me the name and address of the person or persons concerned;
 - (c) if you answer "yes" to question (3), by also answering questions (4) to (10) in the Table below;
 - (d) if you answer "no" to question (8), by giving me the name and address of the sub-tenant; and
 - (e) if you answer "yes" to question (10), by giving me details of the notice or request.

TABLE

- (1) Do you occupy the premises or any part of them wholly or partly for the purposes of a business that is carried on by you?
- (2) To the best of your knowledge and belief, does any other person own an interest in reversion in any part of the premises?
- (3) Does your tenancy have effect subject to any sub-tenancy on which your tenancy is immediately expectant?
- (4) What premises are comprised in the sub-tenancy?
- (5) For what term does it have effect or, if it is terminable by notice, by what notice can it be terminated?
- (6) What is the rent payable under it?
- (7) Who is the sub-tenant?
- (8) To the best of your knowledge and belief, is the sub-tenant in occupation of the premises or of part of the premises comprised in the sub-tenancy?
- (9) Is an agreement in force excluding, in relation to the sub-tenancy, the provisions of sections 24 to 28 of the Landlord and Tenant Act 1954?

(10) Has a notice been given under section 25 or 26(6) of that Act, or has a request been made under section 26 of that Act, in relation to the sub-tenancy?

3. You must give the information concerned in writing and within the period of one month beginning with the date of service of this notice.

4. Please send all correspondence about this notice to:

Name: BrookStreet des Roches LLP

Address: 25 Milton Park, Abingdon, Oxfordshire OX14 4SH

Signed: BrookStreet des Roches LLP Date: 12 May 2008

~~[Landlord]~~ [On behalf of the landlord] ~~[Mortgagee]~~ [On behalf of the mortgagee]

(delete whichever is inapplicable)

IMPORTANT NOTE FOR THE TENANT

This notice contains some words and phrases that you may not understand. The Notes below should help you, but it would be wise to seek professional advice, for example, from a solicitor or surveyor, before responding to this notice.

Once you have provided the information required by this notice, you must correct it if you realise that it is not, or is no longer, correct. This obligation lasts for six months from the date of service of this notice, but an exception is explained in the next paragraph. If you need to correct information already given, you must do so within one month of becoming aware that the information is incorrect.

The obligation will cease if, after transferring your tenancy, you notify the landlord of the transfer and of the name and address of the person to whom your tenancy has been transferred.

If you fail to comply with the requirements of this notice, or the obligation mentioned above, you may face civil proceedings for breach of the statutory duty that arises under section 40 of the Landlord and Tenant Act 1954. In any such proceedings a court may order you to comply with that duty and may make an award of damages.

NOTES

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003)

Purpose of this notice

Your landlord (or, if he or she is a tenant, possibly your landlord's landlord) has sent you this notice in order to obtain information about your occupation and that of any sub-tenants. This information may be relevant to the taking of steps to end or renew your business tenancy.

Time limit for replying

You must provide the relevant information within one month of the date of service of this notice (section 40(1), (2) and (5)).

Information required

You do not have to give your answers on this form; you may use a separate sheet for this purpose. The notice requires you to provide, in writing, information in the form of answers to questions (1) to (3) in the Table above and, if you answer "yes" to question (3), also to provide information in the form of answers to questions (4) to (10) in that Table. Depending on your answer to question (2) and, if applicable in your case, questions (8) and (10), you must also provide the information referred to in paragraph 2(b), (d) and (e) of this notice. Question (2) refers to a person who owns an interest in reversion. You should answer "yes" to this question if you know or believe that there is a person who receives, or is entitled to receive, rent in respect of any part of the premises (other than the landlord who served this notice).

When you answer questions about sub-tenants, please bear in mind that, for these purposes, a sub-tenant includes a person retaining possession of premises by virtue of the Rent (Agriculture) Act 1976 or the Rent Act 1977 after the coming to an end of a sub-tenancy, and "sub-tenancy" includes a right so to retain possession (section 40(8)).

You should keep a copy of your answers and of any other information provided in response to questions (2), (8) or (10) above.

If, once you have given this information, you realise that it is not, or is no longer, correct, you must give the correct information within one month of becoming aware that the previous information is incorrect. Subject to the next paragraph, your duty to correct any information that you have already given continues for six months after you receive this notice (section 40(5)). You should give the correct information to the landlord who gave you this notice unless you receive notice of the transfer of his or her interest, and of the name and address of the person to whom that interest has been transferred. In that case, the correct information must be given to that person.

If you transfer your tenancy within the period of six months referred to above, your duty to correct information already given will cease if you notify the landlord of the transfer and of the name and address of the person to whom your tenancy has been transferred.

If you do not provide the information requested, or fail to correct information that you have provided earlier, after realising that it is not, or is no longer, correct, proceedings may be taken against you and you may have to pay damages (section 40B).

If you are in any doubt about the information that you should give, get immediate advice from a solicitor or a surveyor.

Validity of this notice

The landlord who has given you this notice may not be the landlord to whom you pay your rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about whether this notice is valid, get advice immediately from a solicitor or a surveyor.

Further information

An explanation of the main points to consider when renewing or ending a business tenancy, "Renewing and Ending Business Leases: a Guide for Tenants and Landlords", can be found at www.odpm.gov.uk. Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

Tenant's request for information from landlord or landlord's mortgagee about landlord's interest

Section 40(3) of the Landlord and Tenant Act 1954

*(insert name and address of reversioner or reversioner's mortgagee in possession)
(insert name and address of landlord)*

To: Satsuma Properties plc
300 The Broadway, Honington, Oxfordshire OX29 7YH

From: Avina Trading Limited
200 Park Road, Dibbleham, Oxfordshire OX16 9PM

(insert address or description of premises)

1. This notice relates to the following premises:
Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN

2. In accordance with section 40(3) of the Landlord and Tenant Act 1954 I require you --
 - (a) to state in writing whether you are the owner of the fee simple in respect of the premises or any part of them or the mortgagee in possession of such an owner,
 - (b) if you answer "no" to (a), to state in writing, to the best of your knowledge and belief --
 - (i) the name and address of the person who is your or, as the case may be, your mortgagor's immediate landlord in respect of the premises or of the part in respect of which you are not, or your mortgagor is not, the owner in fee simple;
 - (ii) for what term your or your mortgagor's tenancy has effect and what is the earliest date (if any) at which that tenancy is terminable by notice to quit given by the landlord; and
 - (iii) whether a notice has been given under section 25 or 26(6) of the Landlord and Tenant Act 1954, or a request has been made under section 26 of that Act, in relation to the tenancy and, if so, details of the notice or request;
 - (c) to state in writing, to the best of your knowledge and belief, the name and address of any other person who owns an interest in reversion in any part of the premises;
 - (d) if you are a reversioner, to state in writing whether there is a mortgagee in possession of your interest in the premises; and
 - (e) if you answer "yes" to (d), to state in writing, to the best of your knowledge and belief, the name and address of the mortgagee in possession.

3. You must give the information concerned within the period of one month beginning with the date of service of this notice.

4. Please send all correspondence about this notice to:

Name: Cuttleton Binks Reilly LLP

Address: 100 Thurrock Square, Fincham, Oxfordshire OX20 7YH

Signed:..... *Cuttleton Binks Reilly LLP* Date: 12 May 2008..

(delete whichever is
inapplicable)

~~XXXXXX~~ [Tenant] [On behalf of the tenant]

IMPORTANT NOTE FOR LANDLORD OR LANDLORD'S MORTGAGEE

This notice contains some words and phrases that you may not understand. The Notes below should help you, but it would be wise to seek professional advice, for example, from a solicitor or surveyor, before responding to this notice.

Once you have provided the information required by this notice, you must correct it if you realise that it is not, or is no longer, correct. This obligation lasts for six months from the date of service of this notice, but an exception is explained in the next paragraph. If you need to correct information already given, you must do so within one month of becoming aware that the information is incorrect.

The obligation will cease if, after transferring your interest, you notify the tenant of the transfer and of the name and address of the person to whom your interest has been transferred.

If you fail to comply with the requirements of this notice, or the obligation mentioned above, you may face civil proceedings for breach of the statutory duty that arises under section 40 of the Landlord and Tenant Act 1954. In any such proceedings a court may order you to comply with that duty and may make an award of damages.

NOTES

The sections mentioned below are sections of the Landlord and Tenant Act 1954, as amended, (most recently by the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003)

Terms used in this notice

The following terms, which are used in paragraph 2 of this notice, are defined in section 40(8):

"mortgagee in possession" includes a receiver appointed by the mortgagee or by the court who is in receipt of the rents and profits;

"reversioner" means any person having an interest in the premises, being an interest in reversion expectant (whether immediately or not) on the tenancy; and

"reversioner's mortgagee in possession" means any person being a mortgagee in possession in respect of such an interest.

Section 40(8) requires the reference in paragraph 2(b) of this notice to your mortgagor to be read in the light of the definition of "mortgagee in possession".

A mortgagee (mortgage lender) will be "in possession" if the mortgagor (the person who owes money to the mortgage lender) has failed to comply with the terms of the mortgage. The mortgagee may then be entitled to receive rent that would normally have been paid to the mortgagor.

The term "the owner of the fee simple" means the freehold owner.

The term "reversioner" includes the freehold owner and any intermediate landlord as well as the immediate landlord of the tenant who served this notice.

Purpose of this notice and information required

This notice requires you to provide, in writing, the information requested in paragraph 2(a) and (c) of the notice and, if applicable in your case, in paragraph 2(b), (d) and (e). You do not need to use a special form for this purpose.

If, once you have given this information, you realise that it is not, or is no longer, correct, you must give the correct information within one month of becoming aware that the previous information is incorrect. Subject to the last paragraph in this section of these Notes, your duty to correct any information that you have already given continues for six months after you receive this notice (section 40(5)).

You should give the correct information to the tenant who gave you this notice unless you receive notice of the transfer of his or her interest, and of the name and address of the person to whom that interest has been transferred. In that case, the correct information must be given to that person.

If you do not provide the information requested, or fail to correct information that you have provided earlier, after realising that it is not, or is no longer, correct, proceedings may be taken against you and you may have to pay damages (section 40B).

If you are in any doubt as to the information that you should give, get advice immediately from a solicitor or a surveyor.

If you transfer your interest within the period of six months referred to above, your duty to correct information already given will cease if you notify the tenant of that transfer and of the name and address of the person to whom your interest has been transferred.

Time limit for replying

You must provide the relevant information within one month of the date of service of this notice (section 40(3), (4) and (5)).

Validity of this notice

The tenant who has given you this notice may not be the person from whom you receive rent (sections 44 and 67). This does not necessarily mean that the notice is invalid.

If you have any doubts about the validity of the notice, get advice immediately from a solicitor or a surveyor.

Further information

An explanation of the main points to consider when renewing or ending a business tenancy, "Renewing and Ending Business Leases: a Guide for Tenants and Landlords", can be found at www.odpm.gov.uk. Printed copies of the explanation, but not of this form, are available from 1st June 2004 from Free Literature, PO Box 236, Wetherby, West Yorkshire, LS23 7NB (0870 1226 236).

Notice to determine the lease

To: **Satsuma Properties plc** whose registered office is at 300 The Broadway, Honington, Oxfordshire OX29 7YH

Lease made on 9 March 2001 between (1) Satsuma Properties Limited (2) Avina Trading Limited and (3) David Mark Collins (the "Lease") of Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN (the "Premises")

In pursuance of clause 24 of the Lease, we, **Avina Trading Limited** whose registered office is at 200 Park Road, Dibbleham, Oxfordshire OX16 9PM, **give you notice** that we intend to determine the term created by the Lease on 8 March 2009 and that we will on that date deliver up possession of the Premises.

Dated: 12 May 2008

Signed: *Cuttleton Binks Reilly LLP*

On behalf of the tenant

Cuttleton Binks Reilly LLP, 100 Thurrock Square, Fincham, Oxfordshire OX20 7YH

Rent review notice

To: **Avina Trading Limited** whose registered office is at 200 Park Road, Dibbleham, Oxfordshire OX16 9PM

Lease made on 9 March 2001 between (1) Satsuma Properties Limited (2) Avina Trading Limited and (3) David Mark Collins (the "Lease") of Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN (the "Premises")

We, **Satsuma Properties plc** whose registered office is at 300 The Broadway, Honington, Oxfordshire OX29 7YH the landlord of the Premises under the Lease, **give you notice** under clause 5.3 of the Lease that we wish the rent payable under the Lease to be reviewed in accordance with clause 5.5 of the Lease as at 9 March 2006 and, in accordance with clause 5.6 of the Lease, we **specify** a reviewed rent of £50,000 a year exclusive of VAT.

Date: 3 December 2005

Signed: *BrookStreet des Roches LLP*.....

On behalf of the Landlord

BrookStreet des Roches LLP, 25 Milton Park, Abingdon, Oxfordshire OX14 4SH

Rent review counter-notice

To: **Satsuma Properties plc** whose registered office is at 300 The Broadway, Honington, Oxfordshire OX29 7YH

Lease made on 9 March 2001 between (1) Satsuma Properties Limited (2) Avina Trading Limited and (3) David Mark Collins (the "Lease") of Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN (the "Premises")

We, **Avina Trading Limited** whose registered office is at 200 Park Road, Dibbleham, Oxfordshire OX16 9PM the tenant of the Premises under the Lease, **give you notice** that we elect, in accordance with clause 5.8 of the Lease, that the reviewed rent payable from 9 March 2006 under the Lease is to be determined by an expert.

Dated: 15 December 2005

Signed: *Cuttleton Binks Reilly LLP*

On behalf of the tenant

Cuttleton Binks Reilly LLP, 100 Thurrock Square, Fincham, Oxfordshire OX20 7YH

Notice of transfer

To: **Satsuma Properties plc** whose registered office is at 300 The Broadway, Honington, Oxfordshire OX29 7YH

Lease made on 9 March 2001 between (1) Satsuma Properties Limited (2) Avina Trading Limited and (3) David Mark Collins (the "Lease") of Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN (the "Premises")

1. **We** Goddard Bell LLP of 27 Hubble Place, Oxford OX2 6HY, solicitors for **Fina plc**, **give you notice** that by a transfer (the "Transfer") made on 26 April 2008 between (1) **Avina Trading Limited** and (2) **Fina plc** (the "Assignee") **Avina Trading Limited** transferred the Premises to the Assignee, and in future the rent will be paid by the Assignee, to whom future rent demands and other communications should be sent at **35 The Westgate, London W12 5FG**.
2. We request you to acknowledge receipt by signing and returning the accompanying copy of this notice.
3. A certified copy of the Transfer accompanies this notice.
4. The registration fee amounting to £50 (inclusive of VAT) accompanies this notice.
5. Please note that the insurers will be asked to note the interest of the Assignee.

Dated: 12 May 2008

Signed: *Goddard Bell LLP*

Notice of sublease

To: **Satsuma Properties plc** whose registered office is at 300 The Broadway, Honington, Oxfordshire OX29 7YH

Lease made on 9 March 2001 between (1) Satsuma Properties Limited (2) Avina Trading Limited and (3) David Mark Collins (the "Lease") of Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN (the "Premises")

1. **We** Cuttleton Binks Reilly LLP of 100 Thurrock Square, Fincham, Oxfordshire OX20 7YH, solicitors for **Avina Trading Limited**, **give you notice** that by a sublease (the "Sublease") made on 26 April 2008 between (1) **Avina Trading Limited** and (2) **Fina plc** (the "Subtenant") the Premises were sublet to the Subtenant for the term of 3 years.
2. We request you to acknowledge receipt by signing and returning the accompanying copy of this notice.
3. A certified copy of the Sublease accompanies this notice.
4. The registration fee amounting to £50 (inclusive of VAT) accompanies this notice.
5. Please note that the insurers will be asked to note the interest of the Subtenant.
6. The deed of covenant by the Subtenant accompanies this notice.

Dated: 12 May 2008

Signed: *Cuttleton Binks Reilly LLP*

Notice of mortgage

To: **Satsuma Properties plc** whose registered office is at 300 The Broadway, Honington, Oxfordshire OX29 7YH

Lease made on 9 March 2001 between (1) Satsuma Properties Limited (2) Avina Trading Limited and (3) David Mark Collins (the "Lease") of Unit 56, Camden Park, Honington, Oxfordshire OX29 3PN (the "Premises")

1. **We Klippit & Sons of 12 The High Street, Grimley, Oxford OX14 5TH, solicitors for Flailing Bank plc, give you notice** that by a mortgage (the "Mortgage") made on 26 April 2008 between (1) **Avina Trading Limited** and (2) **Flailing Bank plc** (the "Lender") the Premises were charged by way of legal mortgage to the Lender.
2. Please notify the Lender of any default by the Tenant under the terms of the Lease of which you may become aware.
3. Please note that the Mortgage contains a floating charge on the Tenant's chattels in or about the Premises.
4. We request you to acknowledge receipt by signing and returning the accompanying copy of this notice.
5. A certified copy of the Mortgage accompanies this notice.
6. The registration fee amounting to £50 (inclusive of VAT) accompanies this notice.
7. Please note that the insurers will be asked to note the interest of the Lender.

Dated: 12 May 2008

Signed: *Klippit & Sons*