

# How to negotiate a new commercial lease

## A tenant's perspective

By Alan Zeffertt

### Landlord's advantage

The leasehold system in the UK is complex and has evolved over centuries – traditionally in favour of the landlord.

Naturally, the perfect scenario from the landlord's point of view is a tenant who is financially sound, pays a full market rent and is fully responsible for all repairs and insurance for the property or for their costs. This clearly places something of a burden on the tenant, who may not appreciate the full implications of the lease.

The definition of a lease is a contract between the landlord and tenant and any other parties to it. So, like all contracts, it is negotiable. A tenant should understand the basic lease terms before entering into negotiations to take a new lease.

As the tenant, you are likely to find yourself negotiating the lease with an agent, rather than the landlord himself. While the agent might be seen as an intermediary, he is in fact paid to market the premises for the landlord and negotiate the best deal for him – not for you.

This is the reason why prospective tenants should seek legal advice at an early stage and certainly before commencing negotiations for a new lease.

### How long should the lease term be?

Ideally, you should be offered a choice of lease term including, where appropriate, break rights and a choice whether the lease should be protected by or excluded from the Landlord and Tenant Act (1954). Given the protection of the Act a tenant will have a legal right to claim a new lease on expiry of the old one.

Typically lease terms vary from short terms of one or two years to longer terms of 15, 20 or 25 years. If the location of the premises matters to you, for example if you are running a shop or restaurants, the security of a longer lease term is the preferred option. If this is your situation, you should ensure that your contract includes the right to a new lease at the end of the lease term.

Another issue you will need to consider when negotiating the lease term is stamp duty land tax. The amount of this will vary according to the length of term and the rental amount. One way of reducing duty is to take a shorter term but with a tenant's option to renew it.

### The rent

Landlords will usually require rent reviews on any lease terms longer than five years, although some landlords may seek to impose three-yearly rent reviews, whereas tenants generally prefer a longer period.

Landlords normally stipulate that rent reviews should be upward only, but tenants should try and negotiate upwards or downwards, according to the then market conditions, with perhaps a minimum of the initial rent payable, or perhaps indexed linked.

### Repairs and service charges

Tenants should be extremely careful before agreeing what are known as 'full repairing and insuring' terms. Being liable for repairs can be very onerous since, in law, this means putting and keeping the property at all times in good repair.

You do not want to find yourself responsible for extensive repairs way out of proportion to the length of time you will be renting the property. You should, therefore, negotiate repairing and service charge obligations which are appropriate to the term of the lease and, significantly, the condition of the premises.

Consider limiting your repairing liability to keeping the premises in no worse condition than they are at the commencement of the lease term. Where landlords are responsible for repairs to the exterior and main structure of the building and any common parts, tenants should consider imposing a cap on the level of service charges a landlord can impose.

You should also try to agree paying service charges towards routine repairs and maintenance only, as opposed to structural repairs and renewals, including inherent defects in the building. If you don't, it could cost you even more to repair the property than the sum you pay in rental over the entire term of your lease.

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#### **Alienation**

A tenant usually likes to be able to deal with his rented premises in the most cost-effective way, even if this means subletting parts – in legal terms, 'alienating' the property. Landlords, on the other hand, prefer to exercise fairly strict control over alienation, by seeking a guarantee that any assignee or sub-tenant will be able to pay the rent and perform the tenant's obligations. The landlord will also wish to ensure that he is not left at the end of the lease term with a tenant occupying a small part of the premises, which could affect the value of the landlord's interest in the premises as a whole.

If you anticipate subletting your rented property, you should take this into account and also check that you will be able to sublet at the appropriate current market rent.

#### **Alterations**

Another area landlords like to control is when structural or other alterations are to be carried out by the tenant. A normal clause in the lease would be that any such alterations will require the prior written consent of the landlord, but that consent should not be unreasonably withheld or delayed. Where tenants wish to carry out minor internal alterations, such as internal removable partitioning, they should negotiate for these to be carried out without the need for the landlord's consent.

#### **Other terms**

Each case and circumstance is different. It is more difficult to renegotiate terms at a later stage than at the time when both landlord and tenant are keen to secure the deal. Make sure you obtain professional advice at the outset, in order to avoid committing yourself to a rental agreement that could restrict you and drain your finances.

#### **For further information, please contact:**

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