

# TAKING A NEW COMMERCIAL LEASE

- ⇒ Key points to consider
- ⇒ Heads of terms
- ⇒ How can we help?

Taking a new lease of premises is a serious step. You will be entering into a long term liability that you cannot get out of easily. The liabilities will extend beyond paying the rent and rates to include such things as keeping the property maintained and decorated and complying with any requirements imposed by the landlord or by statute.

You may be uncertain as to how long you want to use the property and may try and negotiate the right to end it early – a break clause. You may want to use the property for a new purpose or carry out alterations to it.

The landlord is also entering into a long term relationship and needs to be certain that you will look after their property and are capable of paying the rent.

Your landlord may hold the property under a lease and you may both have to persuade their own landlord that you are going to look after the property and be a good tenant.

Both landlords may want proof that you can pay the rent and may require bonds or guarantees. They may want to be certain that your new use of the property or alterations to it will not affect the value of the property adversely. If there are mortgages on the property their banks may also be concerned about the effect on the security.

This is why leases are much more complex than purchasing land outright, and why the documents are so long and complex.

Letting agents and the landlord will want your rent and commitment as quickly as possible and you may be keen to get in and start using the property. However it is unwise to consider something as complex as a lease without a proper assessment of the risks. Despite what the letting agents may tell you, there is no such thing as a 'standard lease'. It will cost you far more and take more time to extricate yourself from hasty decisions than it will to sort it out properly in the first place.

## Key Points to Consider Include:

- How long do I want to be there and is the proposed lease length acceptable?
- Do I want 'security of tenure' or am I happy being forced to move out at the end of the lease, perhaps against my wishes?
- Do I want to be able to give the lease back before the end – a break clause?
- If I do not need the lease any more and I can't break it, will I be able to assign it to someone else easily?

- Can I use it for the proposed use – does it have the right planning permission and permitted use in the lease?
- What am I taking a lease of – the whole building or just the inside of it?
- If just the inside of it, what does this mean in practice e.g. walls, windows, frames, floor coverings, heating, etc.?
- Will I need to alter it before I can use it?
- Do I want to get in to ‘fit out’ before the lease starts?
- Where will I park, and will I need any other shared facilities such as service yards, signboards, etc.?
- How much is the service charge going to be and are there any caps on the amount?
- Will I have to pay VAT on the rent and can I recover it?
- Will I need to pay Stamp Duty Land Tax on the transaction?
- Can I persuade the landlord to carry out works for me or agree some incentives such as a rent free period?
- Am I happy with the rent review period? (If the lease is more than say 3 or 4 years there will usually be a rent review)
- Am I happy with being responsible for the repairs to the building and should the landlord be responsible for part of them too?

- Should I limit my repairing responsibility by agreeing that I will not have to put it into a better state than the condition described in an agreed ‘Schedule of Condition’ and how much will it cost me to have such a Schedule prepared?
- Do I want the landlord to agree to provide heating, or water, or shared facilities such as w.c.’s etc.?
- Who pays the costs of the landlord, or of obtaining any necessary approvals from a superior landlord? Sometimes the superior landlord's costs can be high – up to £1,500+ VAT or more at times.
- Superior landlords often demand payment of their fees up front (or undertakings from your solicitor to pay these) before they consider anything and much time and money can be wasted arranging this.
- Should I agree with the landlord’s demands that I provide a guarantor or rent bond?

### Heads of Terms

Letting agents will produce ‘Heads of Terms’ at some stage. Once prepared they will argue that they are cast in stone, but they have no legal significance. They are very helpful, if properly prepared because they crystallise the intentions of the parties and give the landlord’s solicitor guidance as to what should be put in the draft lease.

However they are prepared by the landlord’s agents and can be biased in their favour rather than yours.

We can advise you before the Heads are prepared as to what should appear in them. Indeed the Royal Institution of Chartered Surveyors has produced a model form. We may suggest amending the Heads to restructure the transaction in a way that will protect your position or even mitigate your SDLT liabilities in some cases. As always seeking early advice is essential.

### How We Can Help ?

Our experienced property team can help you with all of your lease related issues, from structuring new lease agreements to advice on ending existing leases.

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