



BUSINESS TOOLKIT

**Guide to
Commercial
Property Rental**



West & North
Yorkshire Chamber
of Commerce
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Accredited

10 TOP TIPS

Guide to Commercial Property Rental



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The leasing of commercial premises can be complex with lease documents often running to dozens or hundreds of pages, however, there are key issues which form the important outline of any commercial letting and which we consider below.

Jonathan O'Connor is a Director at Walker Singleton with significant experience across Yorkshire advising both landlords and tenants alike on the leasing and acquisition of commercial premises.

1 Lease Length

Although there are exceptions to the rule generally commercial landlords would seek as long a lease length as possible and tenants often seek as much flexibility as they can. Flexibility can be important given that businesses can grow or contract and, therefore, property needs may change over the years, however, a suitable lease length is required to satisfy the landlord and demonstrate commitment to the property being acquired. It is possible for longer leases to contain breaks whereby (usually) the tenant can serve notice at a certain point to bring the lease to an end before lease expiry. Such breaks are often time sensitive and have to be served in a specific way and it is not uncommon for conditions to be attached to a break being acceptable including the rental being up to date, the property being provided with vacant possession and any works needed being undertaken at the break date.

2 Rent Frees/Incentives/Stepped Rents

Some form of incentive on a commercial lease transaction is not unusual often granted in lieu of tenants undertaking works to improve the property (particularly generic improvements rather than tenants specific items) but also granted to soften the blow of initial costs whilst a tenant sets up/relocates. The level of incentive varies according to covenant strength, lease length, reason for incentive and various other factors.

3 Tenant Covenant - Bonds and Guarantors

Landlords clearly seek the strongest tenant covenant possible, however, often tenants are start ups, individuals or companies with limited trading history. The strength of tenant covenant required will depend upon the property type and individual landlords requirements, however, where additional surety is needed this is often dealt with by way of either a rental bond or some form of lease guarantee. A rental bond is kept securely by the landlords usually for the term of the lease and returned upon expiry providing that the tenant has complied with the lease terms. Alternatively, or additionally some form of guarantor may be sought from an alternative company or indeed a personal guarantee from the directors of the business.

4 Rent Reviews

In longer term leases inclusion of the ability to review the rent is commonplace. Usually such reviews would be on an upward only basis and, therefore, the rent would only remain static or increase depending upon market conditions. Whilst some leases will contain fixed rental increases or indeed minimum/maximum increases most rent reviews are on the basis of a market rent which needs to be a proven position to justify any increase proposed. Rent review provisions can contain numerous assumptions and these should be carefully considered at the outset of the lease.

5 Repairing Obligations

Leases of many commercial premises are granted on a full repairing and insuring basis with the tenant being responsible for all maintenance and repairs to the interior and exterior of the buildings during the lease term. Tenant should be aware that such obligations can be financially significant particularly where the premises are in a current poor condition and at the end of a lease can lead to a potential significant dilapidations claim from the landlord. Many tenants seek to restrict the scope of repairing obligations by obtaining a photographic Schedule of Condition at the outset of the lease and this financial outlay at the commencement of the term can significantly outweigh the potential liabilities upon expiry. Leases of shared buildings generally deal with repairing obligations by way of a service charge as detailed below.

6 Tenants and Landlords Works/Reinstatement

It is not uncommon for either the landlord or the tenant to undertake works either prior to or during a lease. Depending upon the nature of such works where they are undertaken by the tenant a Licence for Alterations

may be required documenting the exact nature and specification of the works and whether these need to be removed/reinstated upon expiry. Understanding where reinstatement is required is important as this can be a significant expense at the expiry of the lease. Where the works are being undertaken by the landlords or the tenants it is important that both sides are fully aware of the specification and timescales involved.

7 Service Charges/Insurance

Buildings insurance is usually acquired by the landlords with the tenant then being recharged this premium on a pro-rotta basis. A quotation for this cost should, therefore, be obtained at the outset of negotiations. Where a property is within a shared building or on a shared estate it is often a commonplace that a service charge is payable by the tenants. Such service charge often covers items such as property management but depending upon the nature of the building can also include external repairs, common area maintenance, window cleaning, refuse and a whole host of other items. Again, a quotation for budget service charges should be obtained at the outset and tenants should consider whether a cap on such service charges is possible in order to protect them against potential significant future liabilities.

8 Alienation

The lease will contain provisions detailing whether the tenants are able to assign or sub-let the property either as a whole or in parts. Generally some ability to assign or sub-let the premises is desirable by tenants to give them maximum flexibility with regards to their occupation of the property, however, the nature of such clauses should be carefully considered as they may contain restrictions or indeed requirements of ongoing liability for the original tenant themselves.

9 Landlord and Tenant Protection

Commercial leases are generally subject to the Security of Tenure Provisions of the 1954 Landlord and Tenant Act which essentially (other than in specific circumstances) means that the tenants are entitled to a new lease at the end of their current term. This can be extremely important if a tenant has invested significantly in their occupation of a building or indeed where the prospect of finding alternative premises would be difficult. It is possible for a lease to be contracted out of the security of tenure provisions and whilst there are often reasons behind doing so, it is important that tenants understand the consequences of entering a lease on this basis.

10 Professional Advice

A lease is a legal document and as can be seen above the terms can be complex. The liability on a tenant depending upon the way terms are negotiated can be significant either during the term such as rent review, service charge or break provisions or indeed can be extremely onerous upon expiry of the lease subject to the negotiation of items such as reinstatement, limitation of repairing obligations and yielding up provisions. Whilst clearly professional fees must be considered in the context of any transaction, advice from lawyers, surveyors or building surveyors prior to entering into a lease generally represents extremely good value when offset against the potential liabilities tenants can face.