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# Relocating?

Tips and traps for the office occupier on the move

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Whether downsizing or upsizing, an office move can be fraught with difficulties. Your lease costs are likely to be one of the largest overheads of your business. However, there may be opportunities available to enable you to minimise your financial exposure. Consider the following;

### **Break Clauses**

This may be your 'get out of jail' card - but not necessarily for free! A break clause will need to be carefully reviewed to check whether it can still be exercised. Usually a period of notice needs to be given to a landlord – often 6 or even 12 months prior to the actual break date. Time is usually of the essence so that if you are late in serving the notice then you will lose the right to break the lease. Break clauses often require conditions to be satisfied to enable the break to be effective. These may include the payment of a sum of money or giving up vacant possession at the break date. Given current market conditions, landlords may be reluctant to allow a tenant to walk – so vigilance will be required in ensuring that the opportunity to break is not missed.

### **Disposals**

You may be able to dispose of your lease either by assigning it or by subletting to another occupier. If you assign the lease you are likely to be required to give a guarantee to the landlord for the obligations of the incoming tenant (an AGA). That guarantee will fall away when the lease comes to an end, or earlier upon the assignment by the tenant. If the lease is shortly to come to an end then assigning or subletting may be difficult. It is possible that your landlord may be prepared to accept a surrender of your lease and grant a new lease to another tenant.

If your current rent is higher than the market rent, then granting a sub-lease may be a viable alternative to an assignment where your prospective buyer wants to occupy your premises but does not want to

pay more than the market rent – assuming your lease permits such an arrangement.

### **Lease expiry**

It is worth checking whether you have 'security of tenure'. If you do, then you will be able to remain in occupation after the contractual term of the lease has come to an end. This may be helpful if you need more time to sort out your new premises. If you do remain in occupation, you will need to give your landlord not less than 3 months' notice of your intention to leave the premises. If you do not serve such a notice you could end up owing more rent to your landlord. The legislation dealing with this is complex and advice should be sought if you think this might apply to you.

### **Dilapidations**

Be aware that you may have a dilapidations liability at the end of the term, which could be substantial. The lease will set out your obligations concerning repair, alterations redecoration and reinstatement. Landlords will often press a claim for dilapidations after the term has expired and when the tenant has ceased to occupy. This will leave a tenant with no opportunity to carry out the remedial work. It is important to seek advice on these matters well in advance of the end of the term. There are various strategies and protocols which should be observed in dealing with this complex area of law.

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# TAKING NEW OFFICE SPACE?

Do ensure that you appoint a reputable surveyor to negotiate the new lease terms. These should be set out in 'Heads of Terms'. It is recommended using as a basis for these **'the Code for Leasing Business Premises in England and Wales 2007'**. The code is the result of collaboration between various industry bodies representing landlords and occupiers and aims to promote fairness between a landlord and a tenant.

Your lease should seek to strike a fair balance and not be slanted so as to give your landlord an unfair advantage. There are many traps for the unwary here, for example;

## Rent/Rent Reviews

- It is common for rents to be payable on a quarterly basis but consider whether the flexibility to pay on a monthly basis would improve your cash flow.
- Rent review clauses usually provide for the rent to be reviewed to the open market rent at the time of review, but not to be lower than the rent payable before the review. There are several other possibilities – upward/downward reviews; fixed increases; minimum/maximum increases or 'cap and collar' reviews.
- The basis on which the review is to take place should be fair and reflect reality. It is common for landlords to seek a 'headline' rent. A provision that, for example, did not take into account a rent free period at the commencement of the lease could give rise to a headline rent on a review, which would be onerous, as you would then pay more in rent than if the rent free period had been taken into account.

## Repairs

A tenant's repairing obligation should be appropriate to the length of the term and the condition of the premises. Unless expressly stated in the heads of terms, tenants should only be obliged to give the premises back at the end of the lease in the same state as they were in at the beginning. You should consider limiting the repairing obligation by reference to a schedule of condition. This could take the form of a photographic schedule which would provide a benchmark as to the condition of the premises at the beginning of the lease. The lease should make it clear that the

tenant is to deliver the premises up to the landlord at the end of the term, in a no worse state than as evidenced by the schedule.

## Assignment/Subletting

The Landlord's requirements for permitting an assignment or a sub-letting should be limited where possible. In particular;

- Prohibitions on assignments to group companies or overseas companies are usual but make sure you can share possession with other companies in your group without the need to obtain consent.
- You should try to avoid giving an AGA unless it can be demonstrated that the incoming tenant is unlikely to be able to meet the lease obligations.
- Sub lettings should be permissible at the open market rent and not linked to the rent you are paying.

## Service Charges

- Service charge provisions should be clear and transparent.
- Try to negotiate a service charge 'cap'.
- Be wary of reserve fund or sinking fund provisions which you may contribute to but never derive any benefit.
- If you are taking a lease of ground floor premises it should be possible to carve out of the lease all contributions to lifts and lift maintenance.
- Make sure the landlord agrees in the lease to abide by the principles set out in the 'Service Charge Code for Commercial Property' which promotes best practice in core service charge areas.

## For more information from our team of real estate solicitors, please contact:



### PAUL HARBOUR

Partner, Real Estate

**E** [pharbour@kingsleynapley.co.uk](mailto:pharbour@kingsleynapley.co.uk)

**T** +44 (0)20 7814 1203



### NEIL McALISTER

Senior Associate, Real Estate

**E** [nmcalister@kingsleynapley.co.uk](mailto:nmcalister@kingsleynapley.co.uk)

**T** +44 (0)20 7369 3784

### Kingsley Napley LLP

Knights Quarter  
14 St John's Lane  
London  
EC1M 4AJ

**T** +44 (0)20 7814 1200

**F** +44 (0)20 7490 2288

**DX** 22 Chancery Lane

**W** [www.kingsleynapley.co.uk](http://www.kingsleynapley.co.uk)

**E** [info@kingsleynapley.co.uk](mailto:info@kingsleynapley.co.uk)

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