

Renting premises

Compared with purchasing premises, renting is flexible and ties up a minimal amount of capital. Most businesses rent their premises, either through a lease or a licence.

However, be on your guard. Property law can be complex and verbal agreements do not count. The golden rules are not to assume anything, and to get everything in writing.

This briefing focuses on the terms under which you occupy rented premises. It covers:

- Basic points to check.
- The main features of a licence.
- The key terms in a lease.
- How to negotiate a deal.

1 The basics

Check what it is that you are renting.

1.1 When comparing premises use **fixed cost** — rent, rates and service charges — per square metre as your yardstick.

- In particular, service charges and rates can be high (see box, page 3).
 - Check that you do not have to pay the landlord's legal costs.
 - On a lease, the tenant normally pays stamp duty and registration fees.
 - In some circumstances, VAT may be charged on the rent. Depending on your own VAT status this may be reclaimable.
 - Check the energy efficiency rating of the building. This can be a good indicator of likely energy costs.
- All landlords must provide potential tenants with an Energy Performance Certificate when they rent out a building.

Establish what your first invoice would be, including a full breakdown. Then confirm which additional items could be added by the landlord to future invoices.

1.2 Is the building **owned** by the person who is renting it to you?

- Does this person have the legal right to enter into an agreement with you?

1.3 Is the premises **unoccupied**? Is anything preventing you moving in?

- If there are items left by a previous tenant, who will remove them, and when?

1.4 Are the **measurements** of the premises accurate (as listed in the selling documents)?

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- Check them. Finding a discrepancy may enable you to negotiate a lower rent.

1.5 Are all the agreement **details**, including the rent and the start and end dates, correct?

1.6 Are your basic **rights** explicitly mentioned in the agreement? For example:

- Access to the premises 24 hours a day, 365 days a year.
- The benefit of any services, such as lighting, heating and cleaning.
- Use of shared facilities, such as washrooms and specific parking places.
- The right to hang signs on the premises (eg your name plaque).

The landlord has similar rights but should be prohibited from unreasonably interfering with the tenant's work.

Noisy or dirty building work carried out in communal areas or adjoining premises can be a problem.

1.7 Are there any **restrictions** on how you use the property?

- Can the landlord restrain your activities in any way?
- Do you need planning permission to use the premises for the purpose you have in mind?

2 Taking a licence

An 'easy-in, easy-out' licence, normally covering a period of up to two years, provides your business with maximum flexibility.

2.1 You can usually end your licence at **one month's notice**.

- Your landlord may have the right to give you one month's notice also. Check whether the landlord has any reason to terminate your licence in the short term. For example, are there any plans to develop the premises?
- Your landlord may have the right to raise the rent with one month's notice, after a fixed period.

2.2 Many licensed business premises provide **support services**, such as a staffed reception and building security.

Fully serviced offices may offer secretarial services and meeting rooms for hire.

- Check the costs for these services.
- Ask existing or previous tenants how

reliable these services are.

2.3 The licence agreement should be short, **simple** and in plain English.

- Your liabilities should be limited to paying an agreed amount for the rent ('licence fee'), rates, and any extra services. Check there are no other costs involved.
- You may not be allowed to alter the premises at all (eg putting up shelves). Consult a solicitor before signing any agreement.

Beware of licences with complex terms or a long fixed-licence period with no right to break off the agreement. These are more like leases.

3 Taking a lease

A lease is a more complex and long-term commitment than a licence.

3.1 How long is the **period** of the lease?

- Leases can last for any period from one to 25 years or more.
- Some businesses prefer the flexibility of a short lease (eg three years). But these can be more difficult to obtain.

3.2 Is there a **break clause**?

This is an option for you (or the landlord) to terminate the lease early.

- How much notice do you have to give?
- Do you have to comply with any conditions to operate the break?
The landlord may be legally entitled to refuse to accept the break if you breach any terms of the lease, however minor.

3.3 Do you have the right to sub-let the premises, or to **assign** the lease? (See **4** and **5**.)

- This offers another exit route although complex VAT rules should be explored.

3.4 When are the **rent review** dates?

- Is the review based on an open market rent, changes in the Retail Price Index, or any other method?
- What happens if you cannot agree? Can an independent expert or arbitrator be brought in to determine the new rent?
- Can the rent go down, as well as up?
- If the next rent review date is soon, can you negotiate the future rent now?

► This briefing uses the terms landlord, tenant and rent for both leases and licences. In practice, a licence may refer to licensor, licensee and licence fee.

► The property industry has produced a code of practice for tenants and landlords in England and Wales to follow when negotiating commercial leases. To obtain a copy, visit www.bpf.org.uk/publications/downloads/cop_for_commercial_leases.pdf.

3.5 Are you required to provide a **personal guarantee**?

- Avoid these. Otherwise, if your business fails, you will be liable for the rent — and for other payments due under the lease — for the remainder of the lease period.

3.6 Are you required to pay a **deposit**?

- When will it be repaid, and will you receive interest on it?
- Under what circumstances could the landlord keep all or part of it?

3.7 What will happen when the lease **expires**?

- Check whether the lease is covered by the Landlord and Tenant Act 1954, as this helps protect your rights when renewing your lease at the end of the term.

Service charges

Normally, and particularly in shared premises, there is a service charge. It covers things like maintenance, cleaning, security, car parking and building reception. Establish if there is any scope for overcharging by the landlord.

A How is each service charge **calculated**?

- Ask existing and previous tenants if the charges are fair.
- Must you pay for services you never use?
- Your agreement should state that you only have to pay a reasonable proportion of the cost of shared services.

B How are you charged for **heating**, light, power and water?

C Try to negotiate a **cap** on your service charge liability.

D There may be a '**sinking fund**' to cover the cost of repair and replacement of major items, such as the boiler.

- Avoid paying into such a fund if you are only renting for a short period.

E The landlord usually pays for **insurance** and passes on a proportion of these costs in the service charge.

- You can ask to see the details of the insurance cover. Has it lapsed? Is cover adequate and in line with what you are being charged?

- The Act gives you a general legal right to renew the lease, unless you have breached the existing contract. The main exceptions are if the landlord wants to sell, redevelop or move in.

4 Option to sub-let

Negotiate the widest possible freedom to sub-let all or part of the premises you lease.

4.1 Negotiate flexibility in the **timing** of any sub-letting.

- You could sub-let part of your space at the beginning of your lease, and then take over the rest as your business grows.
- You could sub-let some (or all) of your space if you establish a second premises.

4.2 Negotiate flexibility in the **rent** you can receive from sub-letting tenants.

- If market rents have risen since you took on the lease, you may be able to get a higher rent than you are paying.
- Avoid any clause that prevents you sub-letting at a lower rent.
- To protect your reclaims of any VAT you pay to the landlord you should carefully consider your own VAT arrangements.

You should be free to conduct negotiations with sub-letting tenants on your own terms, as long as you do not compromise the security of the landlord.

4.3 Negotiate flexibility in the potential **uses** of the premises you occupy.

- This gives you the option of sub-letting space to a business in a different industry.

5 Option to assign

Assigning a lease (passing it on to another business) is like sub-letting, but a more final step which ends your occupation of the premises.

5.1 The terms of your lease could range from an absolute **covenant** against assignment, at one extreme, to no restriction at all.

- The terms may be open to interpretation, which can lead to legal disputes.

5.2 You may be required to **guarantee** the next tenant's payments.

- The landlord can only claim under such

a guarantee within six months of the payments by the new tenant ('assignee') becoming due.

6 Repairs and alterations

Who pays for maintaining and repairing the building? Under a lease agreement some or all of the responsibility can fall on the tenant.

6.1 In shared premises, tenants are usually directly responsible only for **internal** repairs.

- If you take the whole premises, one type of lease is a 'Fully Repairing and Insuring' lease. This means you are liable for all maintenance and insurance costs.

6.2 Establish whether the landlord has a planned **maintenance programme**.

- What has been completed and what work is planned?
- Will you be disturbed by this work?
- Will you be liable to pay for any of it? You may find that, after years of neglect, the property is to be overhauled — and you are the one who is going to pay for it.

6.3 Consider having a **survey** done and insisting on any alterations, repairs and redecoration being completed (and paid for by the landlord) before you sign the lease.

- Check that everything works, such as the heating and plumbing.

6.4 Ensure that you can carry out internal non-structural **alterations**, such as putting up shelves and partitions.

- Discuss any immediate alterations and get the landlord's approval in writing.

6.5 Establish what '**repairs**' ('dilapidations') you will have to pay for at the end of the lease.

Discuss this thoroughly, as it is often a problem area.

- You may be responsible for reinstating the premises to its 'original condition'. Consider investing in a photographic condition survey at the outset and include this evidence in the terms of the lease. This will rule out any unjustified demands from the landlord when you leave.
- Removing your alterations may involve extensive reinstatement.

7 Negotiating

In the case of a licence, the landlord may be offering standard terms on a take-it-or-leave-it basis. You may have little scope to improve the terms, unless the landlord is desperate.

7.1 Hire a good **solicitor** to negotiate your legal agreement. This is the key to safety.

- Choose carefully. Establish how many similar leases the solicitor has handled in the last six months.
- Make the solicitor explain each clause in the agreement to you.
- Discuss worst-case scenarios.
- For information and a contacts list, call Lawyers for your Business (020 7316 5521).

7.2 A **chartered surveyor** (or an incorporated valuer) can advise you on the commercial aspects of the agreement.

- For information and a contacts list, contact the Royal Institution of Chartered Surveyors (0870 333 1600 or visit www.rics.org/business).

7.3 The longer a lease is, the more important it is to negotiate an **exit** route.

- For example, a break clause, the right to sub-let and the right to assign the lease.

7.4 **Sell** yourself as an ideal tenant.

You should be offered better terms if:

- You can prove your business' ability to pay the rent over the period of the lease.
- The landlord believes you are trustworthy and easy to deal with.

7.5 Get a detailed **breakdown** of costs, so you can identify items to negotiate on.

- If you cannot avoid certain costs, ask the landlord to cap them at an agreed level.

7.6 Although you should be wary of the VAT implications of any arrangements involving barter or inducements, be prepared to **trade concessions**.

For example:

- You could pay for a repair job in return for a rent-free period.
- You could avoid a personal guarantee by providing a larger deposit.

In a property slump, landlords may offer incentives, such as a rent-free period, before you even start negotiating.

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Thanks to **Melanie Lord** (AVS VAT, 08700 770044).

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