

Providing informed,  
impartial and independent  
advice on **relocation**



Matthews  
Goodman

A large, faint, stylized graphic of a person's head and shoulders, composed of various geometric shapes like circles and triangles, rendered in a lighter shade of blue against the dark blue background. The word "Welcome" is positioned to the right of the head area.

# Welcome

... to the latest issue of the Relocation guide.

This document is designed to be a brief directory of words and phrases, often used by professionals when discussing legal and contractual terms associated with moving organisations – or when counselling someone on whether a move is their best option.

Its intention is to help you scythe your way through the jargon in order to understand what the true implications are for you.

We hope you find it useful however, there will inevitably be terms and issues which did not survive the 'editor's cut', so please do feel free to contact us should you have any questions or concerns at all.

Thank you.

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# Access

Ensure you have 24/7 access to the new premises, 365 days per year (even if you think you will not need it) and that you know what the out-of-office hours arrangements are.

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What consents are needed if you need access for building works - for example is weekend working permitted.

# Assignment & Sub-Letting

Ensure you have as much flexibility to dispose of your lease in the future as possible.

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Beware of onerous conditions constraining disposal rights and ensure that the landlord's consent will not be unreasonably withheld, or delayed.

Does the lease allow you to sub-let the entire, or only a permitted part of the premises. Ensure the lease permits you to sublet at the market rent (which may be less than the passing rent). Can you share the space with a group or associated companies, without having to create a formal sub-tenancy agreement.

It is usual for landlords to insist that any sub-tenancy is excluded from the security of tenure provisions of the Landlord and Tenant Act 1954, Part II (as amended).

The landlord may require you to enter into an Authorised Guarantee Agreement (AGA) on assignment of the lease. This means that you have to be a guarantor for the new tenant, until they assign the lease. The conditions of an assignment are negotiable and the financial status of a proposed assignee can be critical.

Do seek expert advice if you are considering this arrangement.

# Alterations Works

Secure the landlord's consent for any structural and non-structural alterations/improvements before work commences.

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Ensure the landlord does not withhold their consent, or delay the work.

If necessary, agree a formal licence with the landlord detailing the scope of any tenant work. This should ensure the landlord does not withhold their consent, or delay the work. In addition, secure a guarantee that expensive improvements are not rentalised at rent review.

NOTE: before providing consent, the landlord will normally require:

- The full specifications of intended work
- Existing and proposed layout drawings
- Professional service drawings
- A Health & Safety risk assessment
- A method statement package.

# Break Options

A right to break the lease is critical if you are considering or intending to exit the property before the end of the lease.

Break clauses provide you with the flexibility to ensure that your business space does not constrain your strategic ambitions for the business - whether upsizing or downsizing.

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Ensure that any pre-conditions attached to a break clause do not restrict your ability to comply with the break clause - rendering it inoperable.

A right to break should be conditional only upon having paid rent due and giving up occupation of the premises by the break date. More onerous conditional break options (for example those conditional on complete compliance with all provisions within the lease) should be avoided as even a minor breach can result in failure to execute the break.

Ensure absolute compliance with the break notice provisions required to exercise the break option. Once served a break notice cannot be withdrawn unilaterally.

A 'personal' break option will fall away on an assignment limiting future disposal rights.

# Building Connectivity

Ensure your telecoms provider can access the riser from the street and that the internal infrastructure (eg floor ducting) will accommodate your anticipated and future cabling requirements

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Does the building meet your current and future telecoms requirements. Issues to consider include:

- Does the building have a Wired Certification - this benchmarks IT connectivity against competing buildings
- If not:
  - Which providers currently service the building
  - What does their network comprise - cable, fibre, satellite, etc.
  - What are the bandwidth capabilities
  - Is the existing supporting infrastructure secure and accessible
  - What is the time-frame for connecting to fibre optic broadband
  - Will a wayleave agreement be required
  - If a satellite dish is required is there space on the roof.

# Buildings Insurance

Which risks are covered and how much is the annual premium; does it include terrorism cover; can tenants be named directly on the policy.

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You may have to reimburse the landlord for a proportion of the costs associated with insuring the building. This could cover repair or rebuilding the property if damaged by an insured risk.

Review the insurance policy documents and agree the contractual obligations on each party if the property is damaged by an “uninsured risk” and you have to vacate the premises. What impact will this have on your rental obligations whilst the landlord reinstates the property. Will you be able to terminate the lease should the landlord choose not to reinstate the premises.

Do check that all activities associated with your business, as well as any proposed operations (especially if it requires alterations and additions) do not invalidate the landlord’s insurance policy.

You are responsible for insuring the contents of your workplace separately, under your own policy.

# Business Rates

Rateable value assessment(s) need to be checked.  
Consider an appeal if the business rates look high.

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The most recent revaluation came into effect in England and Wales on 1 April 2017, based on rateable values from 1 April 2015.

Small business rate relief applies on a sliding scale for properties with a rateable value of £12,001 to £15,000.

You do not have to pay business rates on empty offices for three months - for example during a fitting out period or in certain circumstances while marketing a vacant office.

This period extends to six months for empty industrial units.

## Conditions & Surveys

Given the fact that any offer should only be made subject to contract and a survey, it is wise to commission a full pre-acquisition survey (by a qualified building surveyor and services expert), before the contract is signed.

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This should include (where appropriate) advice on the building structure and fabric and building services system, as well as environmental and energy performance credentials.

It will allow you to assess:

- The suitability of the building for your requirements
- Potential issues - before you make a legally binding commitment
- Potential dilapidations liabilities (see No.11) - these can be limited at the outset to safeguard you against any onerous obligations or costs, either during or at the end of the lease.

# Cooling Systems

Given the growing demands of IT and telecoms systems, as well as those of today's workforce, it is critical to validate the design parameters, operating conditions and flexibility of the air conditioning/comfort cooling installations.

If necessary, consider a dedicated space for a 'server' room with supplemental cooling - if you are considering increasing your IT capacity

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Review the cooling system against your current occupational requirements, as well as the anticipated needs of your future business.

In addition, consider the age of the cooling system, its anticipated lifespan, who is responsible for maintenance and running costs and if there are any warranties available.

# Deposits & Guarantees

A (rental) deposit and/or other form of surety might be required if your accounts do not meet the landlord's financial criteria.

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Most landlords will request a security deposit if the net profits (after tax) in your annual accounts fall short of three times the annual exclusive rent proposed under a new lease agreement.

The level of deposit will depend on a number of factors, such as the landlord's attitude to risk, the terms of the proposed lease, etc.

Ensure that the deposit is held in a protected account (ESCROW) and that the terms of release are clearly defined in a Rent Deposit Deed - to protect your money against landlord default or insolvency.

A company or bank guarantee may be required, instead of or in addition to providing a security deposit. This can act as a precursor to any further negotiations on the lease. Avoid offering personal guarantees where possible.

# Dilapidations

Dilapidations refers to breaches of lease covenants which relate to the condition of a property during the term of the tenancy, or when the lease ends.

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Familiarise yourself with the terms of the lease and the implications of dilapidations and reinstatement liabilities - it is likely that you will be required to reinstate any alterations carried out before the lease ends.

The landlord may serve a Schedule of Dilapidations with a notice to reinstate tenant's alterations and /or improvements as the end of the term approaches. This will probably highlight what reinstatement will be required, if the tenant is to meet their repairing and reinstatement obligations.

If dilapidations works are not carried out before the end of the lease then the landlord can claim damages as compensation for any diminution in their reversionary interest in the property. Landlords should not profit from this circumstance and any claim should be set out in a Quantified Demand.

The dilapidations process is complex and professional advice should always be sought from a building surveyor.

The Dilapidations Protocol (a document published by The Ministry of Justice) sets out the courts' expectations about lease-end dilapidations. Ultimately parties at odds over dilapidations claims may have to consider using alternative disputes resolution, or go to court to settle a claim.

## Exclusivity/Lock Out Agreement

You have a short window to agree the terms of the lease without being gazumped by other interested parties: make sure you know exactly what the contractual agreement is.

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Try to secure agreement for a lock-out period – this will enable you to enjoy a defined period when the property is withdrawn from the market.

In addition, the landlord (and agent) will not be tempted to negotiate with third parties.

## Existing Liability

Beware the pitfalls of double overheads – committing to new space before you exit your old space.

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If required, we can advise you on the options available to you if you are considering disposing of your existing lease prior to the expiry date - as well as any associated costs.

# Floor Area

Check the measurements of the net lettable floor area to verify the landlord's quoted floor areas.

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A reduction in floor areas could result in significant savings over the term of a lease.

All measurements should comply with the latest accepted RICS Measurement Standards.

## Landlord's & Tenant's Works

Notify the landlord of specific works prior to their commencement. Document this, where required, by way of a formal licence to ensure that expensive improvements are not double-counted during a rent review.

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Any landlord's works also need to be carefully specified.

# Parties to the Lease

Establish who the legal parties to the lease agreement are at the outset.

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**Negotiating a new lease directly with the landlord:** ensure that they can perform their obligations under the terms of the lease.

**Negotiating an assignment of an existing lease from an occupier:** you will have to enter into direct obligations with the landlord.

**NOTE:** the covenant strength (financial status) of the party signing the lease agreement will dictate their negotiating strength.

# Lease Term

Does the length and terms of the lease provide you with the flexibility and security you need to run your business – today and tomorrow.

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Where possible the lease should be protected by the Landlord and Tenant Act 1954 Part II (as amended). This ensures you have a statutory right to negotiate a new lease on expiry, or to receive compensation if a renewal proves unsuccessful.

This may not be appropriate if you opt for a short term lease agreement, or require future flexibility/break options.

## Permitted Planning Use

Check the planning use of the building to ensure that the space can be used for the purpose you intend to use it - today and tomorrow.

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As it is your responsibility to ensure that your proposed use of the premises does not breach the permitted user clause, or breach any planning regulations, do read the relevant clauses in the lease very closely. Failure to do so could result in enforcement action, forfeiture of the lease, or an inability to occupy the premises while still being contractually bound to the space.

# Renewal Rights

You will have a statutory right to renew your lease at the end of the fixed term, if the lease is 'protected' by Sections 24-28 of Part II of the Landlord and Tenant Act 1954.

In certain circumstances you might be entitled to receive compensation from the landlord if a renewal proves unsuccessful.

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Most modern leases have no statutory right to renew at the end of the term and are contracted 'outside' the security of tenure and compensation provisions described above. This requires a Statutory Declaration between the landlord and the tenant and should be included within the lease.

In these circumstances do seek advice on the implications of this exclusion clause.

## References & Accounts

You will probably have to provide full details of your company - subject to a confidentiality agreement.

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This will enable the landlord to assess your 'covenant status' i.e. how likely you are to default on the contractual obligations of the lease. A deposit (rental bond) may be requested.

# Rent & Incentives

Understand what your annual rental costs will be over the duration of the lease term. Are they:

- Fixed or subject to review
- Will VAT be charged on the rent demand and if so, is this recoverable
- Will payments commence on completion of legal formalities, or occupation of the premises.

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We have access to recent market transaction data - critical when negotiating the headline rent (i.e. rent before any deductions are made for incentives, rental concessions, or cash contributions).

The landlord may agree to a rent-free period to cover a proportion of your fit-out costs and as an incentive to sign the lease. However, the length of term, break clauses, structure and frequency of payments are an important part of the negotiations.

# Rent Review

Ensure you understand how the valuation of the new rent (at review) will be calculated and what the procedures are in the event of any disagreement.

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Rent review clauses are normally upwards only (to the market rent) and adopt a range of assumptions and disregards specified within the rent review clause. Alternative basis for review include indexation (often to RPI and possibly with caps and collars).

The rent review clause within your lease will provide the basis of how the new rent will be reached. Understand how rent concessions and/or incentives will be accounted at review. They should reflect (or better) market trends.

Any improvements you have carried out should not be rentalised at rent review.

Avoid strict time limits for compliance. Make sure you can trigger the rent review in a rising market and that there are provisions to refer the matter to an independent expert/arbitrator - in the event of a dispute.

## Repairs

Your (repair) obligations should be appropriate to the length of your lease term and the condition of the premises when you sign the lease.

On a long-term lease, contracted on institutional terms, a full repairing and insuring lease would be market standard. However, if acquiring a short 'fag end' lease of fitted office space, a tenant may use a Schedule of Condition to limit their repairing liability.

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Beware of any inherent or latent defects and your ultimate liability for their rectification under your repairing covenant. Ensure you check collated warranties for the building design and construction.

Try to avoid signing a lease which commits you to restoring the property to its original condition by making you liable for repairing, redecorating and reinstating the premises at the end of the lease. A full repairing and insuring lease will also make the tenant responsible for their share of the cost of any external repairs and redecoration to the building. This would be avoided under an internal (only) repairing lease.

Your liability can be limited by ensuring that you have photographic evidence and a written schedule of condition, prepared by a qualified building surveyor. Attach and refer to it in the lease.

# Service Charge

These apply to occupiers of multi-tenanted properties or estates. They correlate directly to costs incurred by a landlord to maintain and manage the running of the premises and are recharged to the tenant.

A service charge budget should be set by the landlord [typically via their managing agent] at the start of the service charge year and every tenant will be apportioned their share of the costs. At the end of the service charge year a reconciliation is undertaken with any additional expenditure reclaimed from the tenants.

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Review copies of the last three years' audited service charge accounts, as well as the current year's budget during lease negotiations. A service charge cap will help protect you against rising charges and exceptional expenditure.

Is there a sinking fund in place for the purpose of replacing capital equipment as it becomes obsolete.

Be clear which services the landlord is obligated to provide, how these costs are apportioned and what your ongoing exposure will be concerning:

- Capital improvements
- Long term repairs
- Maintenance or replacement of the structure, fabric, machinery or equipment.

## Signage

Confirm the position and size of your organisation's details - both internally and externally.

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# SDLT

Stamp Duty Land Tax (SDLT) is payable if you buy a property or land over a certain price in England, Wales and Northern Ireland.

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It is payable when you:

- Buy a freehold
- Buy a new or existing leasehold
- Buy a property through a shared ownership scheme
- Are transferred land or property in exchange for payment

How much you pay varies so do obtain professional advice before committing to a property transaction. SDLT receipts are payable to HMRC within 30 days of completion.

# Statutory Compliance & Environmental issues

Given the minefield of legislation which regulates the leasing of commercial property, it would be judicious to consult relevant experts before signing a lease.

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Some of the issues you need to consider include:

- Asbestos Regulations
- Building Regulations
- Construction Design and Management Regulations
- Environmental Protection Acts
- Equality Act
- Fire Safety
- Health and Safety Compliance
- Minimum Energy Efficiency Standards (MEES)
- Planning Regulations.

NOTE: always check the Energy Performance Certificate (EPC) for a building or office floor before taking a new lease. An EPC gives a property an energy efficiency rating ranging from A (most efficient) to G (least efficient) and is valid for 10 years.

With effect from 1 April 2018 the minimum EPC rating of Level E will apply to all new leases and to all existing leases from 2023. If the property has a rating of F or G, the landlord\* may incur a penalty for non-compliance - between £500 and £5,000 based on the rateable value of the building if you don't make an EPC available to any prospective buyer or tenant. It will also be unlawful to dispose of a non-compliant lease after 2018.

\*In certain circumstances, it is the responsibility of the occupier - please contact us for more details.

# Title

Understand what the extent of your obligations are in relation to the premises.

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Be clear what the “definition of the demised premises” is (from its boundaries, to shared areas, rights and reservations, and legal obligations).

Beware of onerous obligations.

# VAT

A landlord can choose to 'opt to tax' on their property to enable them to recover VAT on costs they incur. When this happens the landlord must charge VAT on rent and service charges.

It is now common for tenants to be charged VAT on rent and service charge on most properties.

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This has implications for occupiers who cannot be VAT registered and specialist advice should always be taken.

If buying a property, always check that VAT is included in the negotiated price.

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it is not intended to be a substitute for professional advice.

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