

## How to Make Your Lease Work for You in Today's Market

m u n d a y s

In today's financial climate the majority of businesses are suffering. Receipts are falling and expenses are rising, business rates, energy costs and finance being some of the areas directly affecting the healthcare sector. In this climate, it is essential to try to save costs and maximise opportunities as best you can. Cashflow is paramount.

Many of you will be tenants rather than landlords. You may think that since you are contractually committed to a fixed term lease with quarterly rental payments there is little you can do to improve the situation. In some cases this may be true. However, in today's market landlords are understandably nervous of empty spaces and there are possibilities some of which will benefit tenants and others that could produce mutual benefits for landlord and tenant, which may be worth exploring:

1. Your lease will probably require quarterly payments of rent. Irrespective of this, it is worth approaching your landlord to see if your landlord will permit monthly payments going forward. If cashflow is an immediate problem it may also be worth asking for some form of rental holiday to tide you over a particularly bad period.
2. If you have been sensible enough to negotiate a break clause in your current lease this may provide a bargaining tool. Even though the right to break may be some way off, landlords will generally be keen to retain tenants on a long term commitment if possible. Therefore if you consider that you are paying too high a rent currently but you have a break clause some time in the future, consider trading this against a longer lease and an immediate reduction in the rent or possibly even just the latter. If you are looking to extend the lease, this could be done by surrender and re-grant at a lower rental figure or if it is simply a question of removal of the break clause in exchange for an immediate reduction in rent, this could be done by way of a Deed of Variation.

Similarly if you are in the middle of a short term lease even without breaks you could try to negotiate an immediate reduction in rent with your landlord in return for you taking a reversionary lease (i.e. a lease that starts when your current lease ends), so that the landlord has a bit more certainty going forward.

3. If you do have the right to break some time in the future and wish to exercise it, you must ensure that you know exactly how and when it is to be exercised. You should check the wording of the clause so as to identify the exact date on which Notice to Break must be served e.g. the right to break may be exercised on the third anniversary of the term by serving not less than 6 months notice.

If you serve one day less than 6 months notice it will not be valid. The right to break may also be conditional on a number of factors, for example vacant possession being given at the expiry of the notice, so at that time any occupiers in the premises must have vacated. Sometimes, the break clause will require that all rents including service charge must be paid up to date and, more controversially, there may be a condition that at the expiry of the notice there must be no material breach of any other covenant in the lease including repairs. Be aware that where a break right is conditional it is very easy to fall foul of the conditions.

Landlords will look, particularly in today's market, to attack notices to break by any means available so you must ensure that they are given no possible grounds in which to oppose the notice. If you are wanting to exercise a break make sure that you notify the landlords within the correct time and push them to work with you to deal with any dilapidations so that you are not left with an unremedied breach of the repairing obligation at the expiry of the notice.

operate

meeting legal  
challenges  
with solutions

mundays  
solicitors

4. If your business is really struggling, you can try to surrender your lease to your landlord. Your landlord is of course not obliged to accept but it may be prepared to negotiate a surrender if it has another prospective tenant who is able and willing to take up a lease and whose business is in better shape.
5. The new empty rates regime, removing the right of commercial tenants to claim empty rates indefinitely on unused space, is affecting tenants as well as landlords. If you are only using part of your premises, even if your lease does not permit subletting of part, it may be worth approaching your landlord to see if it will permit such a sublet. This will at least give you the opportunity to share the rates burden if you can find someone willing to occupy the space.
6. There is a lot of empty space on the market at the moment. As a result, landlords are much more willing to sit down and negotiate a deal whatever the advertised heads of terms may be. When carrying out such a negotiation as a tenant you should note particularly the following:-

6.1 Think in terms of a substantial rent free period or contribution to fit out costs;

6.2 It would be wise to try to negotiate a rolling break i.e. a right to break at any time after a certain date (not just on a particular one);

6.3 Depending on the level of rent, a short lease with an option to renew may be sensible as it spreads the Stamp Duty Land Tax burden. Stamp Duty Land Tax is currently assessed on the number of years of the lease and the amount of rent so if the lease is 5 years with an option to renew at 5 years the Stamp Duty Land Tax is likely to be approximately 50% of what it would be for a 10 year term, although you will obviously need to pay a further amount if you exercise the option to renew.

Conversely you should be aware that if you have an existing lease with a break clause or you enter into a new lease with a break clause, if that break is exercised and the lease terminated early there will be no refund of Stamp Duty Land Tax;

6.4 You should try to negotiate monthly rental payments from the start.

6.5 Beware of repairing obligations particularly on a short lease. You should always try to limit these by reference to a schedule of condition which would be drawn up before completion of the lease.

6.6 It may be worth trying to negotiate a rent review which could go up or down.

If you are a tenant, be aware that we are currently in the strongest tenant's market for many years. Whether you are a landlord or a tenant, ultimately it is in both parties' interests in this market to help a tenant through this economic downturn rather than insisting on strict performance of lease terms and pushing a tenant into difficulty.

### For more information please contact

Ingrid Saffin  
 DDI 01932 590 535  
[ingrid.saffin@mundays.co.uk](mailto:ingrid.saffin@mundays.co.uk)

This document is for general information only, it does not intend to provide legal advice. Mundays accepts no responsibility for loss which may occur from reliance on information contained in this document.

# empty rates

Mundays LLP  
 Cedar House  
 78 Portsmouth Road  
 Cobham  
 Surrey KT11 1AN

DX 36300 Esher  
 tel +44 (0) 1932 590500  
 fax +44 (0) 1932 590220  
 email [enq@mundays.co.uk](mailto:enq@mundays.co.uk)  
 web [www.mundays.co.uk](http://www.mundays.co.uk)