



## **TAKING A LEASE OF COMMERCIAL PREMISES**

At Stone Rowe Brewer we recognise the importance of providing a complete, professional service to our clients. We offer specialist advice on all aspects of commercial property law including Landlord and Tenant Act work and licensing. We will be pleased to assist you with your purchase or lease of commercial premises and have identified here some initial points to note which you may like to consider.

### **1 LEGAL COSTS**

It is not unusual for a proposed Lessee or Assignee to find he/she is to be responsible for all the legal costs: his own, his Seller's and possibly also the Lessors. This can amount to a great deal of money. We would therefore recommend that, when negotiating for commercial premises, no agreement is reached concerning the other person's costs until you are clear exactly how much they will be. Be careful to check Agents' particulars or Heads of Terms to see whether they have put this in as an "agreed term".

### **2 LESSEE'S LIABILITY**

A Lessee is responsible for the rent and other covenants in the Lease while he is the Tenant or Lessee. Also the Lessee will continue to be responsible after he has sold or transferred the lease provided he is notified within six months of the current Lessee's breach of covenant. It is always advisable:

- to take only the length of Lease which you envisage you need initially and, if you want to continue at the premises, to rely on the Landlord and Tenant Act 1954 for renewal at the end of the term
- to try to avoid being personally liable, i.e. giving personal guarantees
- on a subsequent sale to obtain indemnities from the Purchaser and to satisfy yourself so far as possible that the Purchaser is financially sound.

### **3 SURVEY**

Commercial Leases are usually "full repairing and insuring leases". This means that once you have taken on the Lease you are responsible for the repair and maintenance. It is therefore essential that you have a full survey carried out before you commit yourself to the Lease. If the survey reveals any defects, then it is not too late to negotiate a reduction in price, or, if appropriate, a commitment from the Landlord that he will not require the premises to be put in a better condition than they are at the present time.

### **4 INSURANCE**

Although it is normal for the Landlord to insure the building and for the Lessee to pay the premium, it is often necessary for a Lessee to insure plate glass and shop fronts, Justices Licences etc. You will be advised of any such obligation when we report to you on the Lease. However, it is also necessary to arrange further insurance for the protection of your business and this should not be overlooked. You may need contents insurance, traders third party insurance, permanent health insurance (particularly if your business relies on your personal involvement in order to operate), life insurance (if you have any business borrowing) etc.

## **5 CHANGE OF USE**

You may find premises where the authorised use in the Lease and/or the authorised use for planning purposes needs to be changed. If so, this should be looked into as soon as possible with both the Landlord and the Local Authority to avoid delay.

## **6 ALTERATIONS**

Alterations will not be allowed to the premises unless the Landlord's consent is obtained. Generally Landlords require a drawing and specification, giving full details of the proposed changes. This usually applies to shop fittings, as well as structural alterations so, to avoid delays, an application should be made to the Landlord as soon as possible.

## **7 STATUTORY COMPLIANCE**

A commercial lease will require the Lessee to comply with the law relating to the occupation of the premises. These include complying with such things as:

- fire regulations
- asbestos regulations
- energy performance and building regulations
- disability discrimination

It is advisable to check with the agents that the premises already comply with these regulations as the cost of complying can be considerable.

## **8 CONTRACTED-OUT LEASES**

Some leases are outside the security provisions of the Landlord and Tenant Act 1954. This means that when the Lease expires, the Landlord does not have to agree to a renewal of it. If the Lease is outside the Act then it is advisable to limit the repairing obligations as a full repairing lease covenant is often unreasonable in these circumstances.

## **9 REPAIRING COVENANT/SERVICE CHARGE**

It is very important to restrict or limit the repairing obligation or to cap or limit the service charge. If the Lease is a full repairing lease then the Landlord will require the Lessee to put the premises in good repair when the lease comes to an end, even if that means putting it in better condition than it was when the Lessee took over.

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