



New Business Premises – How to balance security of tenure with flexibility

If your business has grown and you are ready to take a lease of new premises, there are some things you should take into account when negotiating with your future landlord. Typically, you will want the certainty of knowing you will be able to stay there long enough to become established at the premises, but without taking on too many long term financial obligations. This could put a strain on your business, or hamper any expansion plans, if you find yourself growing more rapidly than planned.

“In the past, a business lease would usually be for at least 15 years. In today’s market, even 5 years can feel like a big commitment,” explains [Thomas Davies](#) a solicitor in the commercial property team at Ingram Winter Green. ‘You may be able to negotiate a lease with a statutory right to renew, or your landlord may insist on a fixed term with no statutory right for you to renew the lease. You may be offered a lower rent, if you are prepared to commit to a longer lease. However, your landlord might want a right to end the lease early if they want to redevelop the building.’”

Talking to an experienced commercial property lawyer early on will help you to understand all of your options and make the right decision for your business.

[Thomas](#) outlines the key considerations, as you aim to balance security of tenure with flexibility for your business.

Your rights and obligations

However long your lease is, you will have some fundamental rights under it. Your right to quiet enjoyment means that your landlord must allow you to occupy and use the premises for the purpose allowed by the lease and

must not interfere or stop you doing so. You will also be entitled to exclusive possession, which means you have the right to keep everyone else, including your landlord, out of the premises let to you.

These rights will be qualified by express terms in the lease, and your landlord will typically have rights to enter the premises in specific circumstances - for example, to inspect it or repossess it, if you are in breach of any of your obligations under the lease and you have not remedied the breach when asked to do so by the landlord.

When you take a new lease, it is vital to remember that your obligations extend for the whole term you have signed up for. Unless there are specific provisions in the lease, you cannot hand back the keys and walk away early if you change your mind, or your business does not thrive in the way you had hoped.

Building in flexibility

With this in mind, you should talk to your solicitor about ways to retain some flexibility. You may be able to agree a short lease, perhaps as a way to test whether a new location works for your business. An obvious advantage to a short lease is that you are free to move on at the end of the lease if you need to. However, there can be disadvantages. Landlords may offer short term leases in premises they hope to redevelop. This enables them to keep an income stream and avoid paying business rates, whilst they seek planning permission and negotiate vacant possession with other occupiers. That could make it difficult for you to extend your lease if you decide you want to. If your business requires a specific fit out for your premises, you may need a longer term to justify the outlay.

If you want a longer lease term, it is worth bearing in mind that as well as the rent you agree to pay when the lease is granted, you are also committing to paying service charges and insurance costs. There will also likely be a rent review during the term, which could also increase the rent you pay. Your solicitor may be able to negotiate a right for you to break (i.e. end) the lease early after the first few years. In return for a break clause, your landlord may charge a higher rent, so it is a question of balancing your costs against your flexibility.

Security of tenure

The other big question is whether you get a lease with security of tenure under the Landlord and Tenant Act 1954, or one which is 'contracted out'. If you have security of tenure, your lease will automatically continue if you are still in business occupation at the end of the contractual term and you will have the right to apply for a new lease on broadly the same terms. Your landlord does have rights to object to your request for a new lease, but only on specific grounds - typically on the basis that the landlord intends to redevelop the building and they need vacant possession. When your lease with security of tenure expires, you do not have to request a new lease. Therefore, as tenant, you have more flexibility with a 1954 Act protected tenancy, than with a 'contracted out' tenancy.

Lease renewal negotiations can be long and expensive and many landlords want to keep their options open, by only offering contracted out leases. This means that before granting the lease, the landlord serves a notice on you as prospective tenant, and you as prospective tenant make a formal declaration, agreeing that the lease will not have 1954 Act protection and so will be a 'contracted out' tenancy. The Law Commission has consulted on changes to this process, however it seems that the current system is likely to stay. If your lease is contracted out, you have no right to remain in the premises when the contractual term ends. In practice, even with a 'contracted out' tenancy, you may still be able to negotiate a new lease with your landlord to commence after your initial lease expires, however your landlord may have a stronger bargaining position than if you had 1954 Act protection and security of tenure.

The landlord's perspective

In deciding whether to offer you a longer lease term, or a lease with 1954 Act protection, any potential landlord will look at the financial track record of your business. If you are taking on more onerous financial obligations, you should be prepared to offer a guarantor. This will reassure the landlord that if your business is not able to pay the rent and other expenses, there is someone else they can look to, to fulfil your obligations under the lease..

The landlord's own plans for the building are also significant. If you have to accept a shorter term, because the landlord plans to redevelop or carry out significant refurbishment works, you may find that there is still some flexibility as you approach the end of your tenancy. If the landlord is not yet ready to proceed with their plans, or their plans have changed, you may be able to take a further lease of the same premises. If your existing lease of the premises has not yet expired, such further lease may be entered into as a reversionary lease, which you sign and complete before your existing lease ends, which guarantees you a seamless transition into your further lease as soon as the current lease ends.

How we can help

Flexibility often appeals to landlords as well as tenants, so it is always worth exploring all the options that may be open to you. Our experienced commercial property team can guide you and your business through this process, from your initial discussions through to completing on your new lease.

For further information, please contact [Thomas Davies](#) in the commercial property team on 020 7845 7400 or email thomasdavies@iwg.co.uk. IWG is based in Holborn, London.

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