

## ENGLAND AND WALES

# Break clauses

Since the onset of the COVID pandemic, many businesses have been considering their space requirements. In some cases, tenants will have leases that include break clauses which will let them terminate their leases before the contractual expiry date.

We expect to see a lot of parties exercising their break rights with a view to either leaving or seeking to negotiate more favourable terms for the same space.

Despite the fact that break clauses have existed for many years, they still give rise to widespread confusion and costly disputes between landlords and tenants.

Problems arise because break clauses are treated by the Courts as options, which means strict rules apply.

Most break clauses contain pre-conditions which must be met. If they are not met, the lease will continue unless the landlord (or tenant) waives compliance with the unfulfilled pre-conditions.

Typical pre-conditions include:

## SERVICE OF A BREAK NOTICE

Service of a notice in the form required by the lease:

- In the right manner.
- To the right person.
- At the right time.
- At the right place.

**Classic mistakes** – delivering the notice to the landlord's managing agents; sending it to the landlord but at the wrong address; miscalculating the break date; sending it by email to the wrong party.



## MAKING PAYMENTS

Paying all sums falling due before the break date including:

- Annual rent.
- Service charges.
- Insurance.
- Interest.
- Other sums .

**Classic mistakes** – apportioning rent up to the break date; failing to pay interest which has become due on historic late payments of rent even if not demanded.



## COMPLYING WITH COVENANTS

Complying with the tenant's covenants such as:

- Repair.
- Redecoration.
- Reinstatement.
- Other covenants.

**Classic mistakes** – misunderstanding pre-conditions requiring "material" or "substantial" or "reasonable" compliance, failing to follow the absolute requirements for external decoration; leaving it too late to reinstate alterations.

## VACANT POSSESSION

Delivering vacant possession on the break date involving:

- Vacating other occupier including sub-tenants.
- Handing back the keys and secure entry equipment.

**Classic mistakes** – sub-contractors completing last minute works beyond the break date; leaving office furniture behind.

## BREAK CLAUSES



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