

# What to think about if your organisation is considering taking on a lease or tenancy of a property

## 1. What do I need to think about?

- **Location** - You will want somewhere suitable for your organisation and those you are involved with. However, cost may be a deciding factor. You also need to think about car parking and access
- **Your plans for the future** - Do you have a business plan which shows that you may be expanding in the next 2-3 years. If so, you need to bear that in mind when considering the size of property.
- **Professional advice** - You are likely to need an experienced property solicitor and surveyor.
- **Who will be the tenant** - If your organisation is run by individuals and is not an incorporated body then it is likely that the tenant will be one or more of those individuals. In that case they will be **personally** liable to pay the rent and comply with the obligations in the lease or tenancy. In some cases it may be possible to limit those liabilities. Professional advice will be needed. A landlord may require a rent deposit to protect itself against non-payment of rent or failure to comply with other obligations of the lease, This is very likely for new organisations.
- **Cost** - You will need to allow for business rates, water rates, service charges, buildings insurance and rent and professional costs.

## 2. What to think about when you have found a property

- **Repair** - You will need to be clear who is responsible for repair of the inside and the outside including the main structures such as foundations, walls and roof; even if you are not directly responsible for those repairs you may be paying towards their cost through a service charge. You should consider having the property checked by an expert property surveyor in case there are any hidden problems that might become your responsibility.
- **Planning Permission** - Does the property have planning permission for what you want to do?
- **Do you need to make any alterations?** Alterations will need the property owner's consent. Some alterations may not be permitted.

For example, alterations to the structure. Alterations to electricity, gas and water may be expensive and impractical.

- **How long do I want my lease or tenancy to last?** This may depend on whether you are a new organisation or an established one. You may want to think about the following:
  - Whether the property will be big enough to allow for expansion;
  - If it is, then you do not have to move on which can lead to savings;
  - If you need to move on after a short time because your organisation is expanding more quickly than you thought then you need to have a right in your lease to be able to end it early (the break right). This right needs to be negotiated before you enter into the lease. Usually a landlord will expect a period of notice normally between 3 and 6 months. A lease with a break right should provide that any rent paid beyond the end of the lease is repaid. A break right should be free of any conditions which might make it impractical or impossible to exercise.

### 3. What will be in my lease or tenancy?

- **What are the main terms of the lease?** Before the lease is granted, the main terms are usually agreed by the landlord and tenant or by agents or surveyors who act for them. It is important to take professional advice at this stage so as to avoid agreeing terms which will not be suitable for you or your organisation.
- **Will I have to repair and redecorate?** As mentioned above, this will depend on the terms of the lease. You are most likely to be responsible at least for internal decoration and repair. The wording of the lease needs to be carefully considered by your solicitor or surveyor. Depending on how it is worded, can mean that you have very harsh obligations. It could mean that you have to put the property into repair when you start the lease. If it is a short lease, it will help you to agree with the landlord that you do not have to keep the property in any better state of repair than it is at the date the lease starts. This means a *Schedule of Condition* to evidence that state of repair will be necessary. The landlord can make you carry out repairs towards the end of the lease if they need to be done for you to comply with your repairing obligation.
- **Can I alter the building?** The lease is likely to say that you cannot carry out structural alterations or extend the building. Frequently, the lease will allow internal changes such as partitioning with the

landlord's consent. This needs to be checked carefully and as above you need to consider what you might want to do to the property before you take it on. Usually a lease will expect you to put the property back to the state it was in at the time that you took on the lease so that you will have to remove any partitioning or alterations and this could include changes that you might have made, for example, electricity cabling. This can be expensive.

- **Will it be a new lease just for me?** You may be dealing directly with the landlord and take a new lease from the landlord who is probably the building owner or a tenant who is able to sublet to you. However, it could be that there is an existing tenant of the building who wants to transfer his lease to a new tenant. This may be possible but there would be no negotiation on the terms of the lease that you would be taking as they will already be fixed. This means, for example, that the rent payable (and any review) and the length of the lease and whether there are any rights to terminate it early will not change (unless the landlord can be persuaded to agree a variation).
- **How long will the lease be?** Unless you are taking a transfer from the existing tenant of the property then this will be something that you agree with the landlord. As before, you need to bear in mind your organisation's financial position and future plans. If it is longer than 3 or 5 years, it is likely that the landlord will want to have a rent review which will provide for a rent increase after three or five years.
- **Rent reviews** - If your lease is longer than three or five years then your landlord is likely to want to increase the rent. This is done by a rent review which is written into the lease. It will provide for the rent to increase (or decrease though this is rare) at a certain point. This increase may be by reference to other rents prevailing in the area at the time of the rent review (an open market rent) or perhaps by reference to retail price index increases.
- **Service charges** - These charges are often found in leases and tenancies. They are paid in addition to rent. They cover the cost of any services which the landlord may provide. They are particularly usual where your lease or tenancy is of part only of the building owned by the landlord. It may include, for example, a share of decorating and repair costs. You should check carefully what is included and whether there is any limitation on what is included. You could ask for your lease to include a limit on the amount you have to pay in any year of the lease.

- **Insurance** - Your lease is likely to provide that the Landlord insures the building and you pay all or, if your lease is of part of a building, a proportion of that cost. You should check what will happen before you take the lease.

#### **4. What happens if I want to transfer my lease to a new tenant?**

If you outgrow the property you might want to look for a new property but you will still be held to the terms of your existing lease. You may find someone else willing to take on that lease but your landlord would have to agree to the new person and you will still be responsible if the new tenant does not pay the rent or comply with its obligations in the lease. You could be called upon to take that lease back. You need to allow for that possibility in your plans.

#### **5. What sort of protection do I have as a tenant?**

This will depend on the terms that are negotiated with the landlord. The landlord may be willing that you should become a business tenant which means you would be able to renew the lease on agreed terms or terms that will be decided by a court in the absence of agreement.

However, many landlords do not want to give tenants this security even though they may well be willing to grant subsequent leases to the same tenant. If this is the case, then a notice will be served and declaration has to be made by the tenant saying that the tenant understands that it will have no right to renew its lease when it ends.

If you do have a lease like this that does not have security of tenure, i.e., no renewal rights then if you do want to renew it you should contact your landlord early on to ensure that he is willing to negotiate a new lease with you. You need to allow time to find a new property if the landlord is not going to give a new lease.

#### **6. Manchester City Council Lettings Policy**

Manchester City Council acknowledges that the Voluntary and Community Sector ('VCS') has a contribution to make to achieving social aims in Manchester. The Council has a policy to provide property at a nominal rate (provided this is approved by the City Council's Head of Corporate Property) where the occupying organisation is operated on a not-for-profit basis and provides wider benefit to the community. However, even though the rent may be nominal, the points referred to above must still be considered.

The policy proposes that a suitable VCS group who can pass a fairly detailed assessment of their organisation will be considered for a lease on a Council owned property.

For groups who are not in receipt of a contract or delivering a service on behalf of the Council the lease will be one where the tenant will be

responsible for repair decoration and insurance and all running costs in return for a nominal or 'peppercorn' rent.

The Council has also said that where the occupying group concerned is one that provides commissioned activities for the Council or partners of the Council then those groups may continue to pay a rent although that may be lower to reflect ongoing community use. The intention is that the lease in that case will recognise the value of repairs to the building, and will offset these costs against the rental value, resulting in a lower rent.

The Council has a specific questionnaire which must be completed in order for any organisation wishing to occupy Council property to ensure compliance. The questionnaire is a rigorous examination of the organisation's governance, and systems.

These not-for-profit community occupations will be reviewed, probably annually, to ensure that they continue to be successful, whether the terms of any leases need to be amended and generally to inform the wider community occupation. There will be specific outcomes expected which will form part of the lease.

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