

# Charities Facilities Management Conference 2009

## Saving Money on Property

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# Introduction:

- Negotiating your lease
- Rent reviews
- Underleases – points to be aware of
- Exit strategies
- Issues in shared buildings

# Negotiating your lease – points to watch

- Lease of new premises or lease renewal
- Open market or “rack rent” lease
- Landlord’s and Tenant’s traditional bargaining positions
- 2009 – Tenants ascendant, Landlords in eclipse?
- Heads of Terms
  - Landlord’s costs
  - Abortive legal costs deposits
  - Silly timescales for completion
- Remember charity trustees’ general duties of prudence!

# Rent

- Low
- No VAT
  - Landlord's covenant not to elect
  - Disapplication of Landlord's election
- Rent free periods
- Capital contributions
- Payable monthly not quarterly
- Rent review [Nick]
- SDLT implications

# Duration and flexibility

- Getting shorter (10 years in 1997, 8 years in 2003)
- Sections 24 to 28 (inclusive) of the Landlord and Tenant Act 1954
- Break options – notice and pre-conditions
- Assignment and underletting
  - Landlord's consent
  - Conditions
  - Whole or part
- Sharing
  - group companies
  - charities with similar objects

# Liability – repair and service charge

- Repair obligations
  - Internal or external?
  - Good repair and condition?
  - Schedule of condition?
  - Landlord's works
  - Inherent defects
- Service charge
  - Fixed, RPI linked or capped?
  - Exclude major items (lifts, boilers, the roof)?
  - Exclude pure management or investment items
  - Maintaining not upgrading

# Rent review

- Still upwards only – for how long?
- Business Lease Code
- Fixed rent increases
- RPI linked (with a floor?)

# Assignment

- Landlord's consent
- Conditions - Authorised guarantee agreement
  - Third party guarantors
  - Rent deposit
- Tenant's continuing liability?
- Section 36 of the Charities Act 1993

# Underleases

- Landlord's consent
- Whole or permitted part
- Conditions
  - No fine or premium
  - Passing rent or open market rent?
  - Equivalent rent review provisions
  - Limitations on alienation
  - Undertenant to covenant directly with Landlord to perform covenants in Lease
- Tenant's continuing liability
- Section 36 of the Charities Act 1993
- Energy Performance Certificates

# Exercising a Break Option

- Notice - form and timescale
- Pre-conditions to effectiveness
- Material compliance with covenants
- Strict compliance
- Payment of rents
- Vacant possession

# Surrender

- Landlord must agree to the surrender
- Landlord may require a premium
- Dilapidations - 'wrap up' in deal
- Can be of part only
- Compliance with Section 36 of the Charities Act 1993

# Dilapidations

- What are dilapidations?
- Unless (or even if) assigning/underletting an issue to be addressed
- Need to address well before end of lease
- Proactive approach likely to reduce liability i.e. do works at own cost or negotiate payment in lieu to landlord
- Escape liability if landlord redeveloping

# Dilapidations continued

- Landlord's fees in preparing schedule of dilapidations (surveyors' and legal fees)
- Additional costs - rents and rates 'lost' by landlord
- Dilapidations Protocol

# Issues in shared buildings

- Common parts
- Service charge
- Disputes with neighbours

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