

ARE YOUR CLIENTS MISSING AN OPPORTUNITY?

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Senior Director



Our comments are directed particularly to the office market but the same principles also apply to a greater or lesser extent to the retail and industrial markets.

Many occupiers do not see that, from a tenant's perspective, break clauses and lease expiries are an opportunity in this market. Landlords are currently faced with diminishing prospects for re-letting and potential breaches of bank covenants in respect of asset value vis à vis loan value. Therefore, in many cases, it is in landlords' interests to grant inducements to persuade tenants not to exercise break clauses and/or to extend their contractual commitment.

Let me take two hypothetical examples to illustrate potentially what can be achieved.

Example 1

An office tenant has a break clause in a year's time. If that break clause is not implemented there is a further 3-year contractual commitment. The office tenant is perfectly happy to remain in the building, but is wondering whether to waive the break clause. The landlord and their professional advisers are uncertain as to the tenant's intentions and are concerned about the prospects for re-letting should the tenant relocate. Fairweathers, acting for the tenant would approach the landlord and indicate that we are advising our client on property options, including whether to exercise the break clause and relocate the business. On investigation, the landlord would establish that Fairweathers have looked at alternative premises and would assume that implementation of the break clause is likely. We then receive a proposal for a rent free period, in return for which our client agrees not to implement the break clause. This is clearly of major benefit to our hypothetical client at a time when trading conditions are difficult.

Example 2: Lease Extension

Taking the same hypothetical office occupier with 3 years left on their lease. We have a discussion with our client about their property requirements. They are happy to remain in their current building and we obtain client's instructions to open negotiations with the landlord's professional advisers with a view to seeing whether the landlord would be prepared to induce our client to take a 5-year lease extension. This would add dramatically to the landlord's security and improve the value of their investment, In such circumstances, the landlord can afford to offer a considerable inducement, thus reducing our client's occupational costs.

We have undertaken a number of similar transactions over the last six months on behalf of occupiers. For a 5-year extension, an inducement of 6 months rent free or more is common.

In order to undertake this type of exercise, we need to be appointed at a relatively early stage and it requires close co-operation between Fairweathers and the client's legal advisers. Tactics and presentation of the approach to the landlord is crucial. There are a number of variations to the concessions that can be obtained; for example, capping of service charge/occupational costs.

If you have a client with a forthcoming break clause or lease expiry and/or a client willing to consider a lease extension option please contact either Peter Memmott or Jeremy Toole at the Reading Office or Robert Baker at the London office, contact details below.

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