

Things to consider before taking on a new lease in Guernsey

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Anyone taking on a commercial lease needs to carefully consider the document not just from the perspective of what they need now, but also the full range of things that they might need in the future.

Ideally, legal advice should be taken from a Guernsey Advocate.

Here are some of the issues that you might want to consider before you sign on the dotted line...

There's always room for negotiation...

A landlord might accept a lower rent, on the proviso that they can look at it again after a period of time to make sure it is still fair to both parties. Almost all leases will provide for periodic rent increases, but the way in which the rent is reviewed will vary. It may be suggested that the rent will be increased to 'market rent', or by any increase in the Retail Price Index. An increase to 'market rent', which may be suggested in a case where a lower rent is accepted at the outset, will often be agreed by the parties as being the rent that is appropriate for those premises after taking into account recent lettings or rent reviews for similar properties in the same area. Lower rent is not the only option though. If the rent is to remain the same then you may suggest a rent-free period at the commencement of lease, say three months rent free on a shorter lease. A rent free period effectively reduces the rent - and it also helps a tenant during the early stages of setting up a business or moving premises.

There are more outgoings than just rent...

In addition to the rent, you will probably have to pay your own utilities, refuse collection and refund the landlord the cost (or a proportion of the cost) of insuring the building, Tax on Real Property (TRP) and Parish Rates. These are costs that arise from the first day of the lease. If the shop is part of a larger building, you may be required to pay a service charge by which landlords recover the costs associated with the upkeep and running of the building. In principle, the more

services the landlord provides to the building, the higher the service charge will be.

You should start thinking about the end of the lease before the start...

The landlord may agree to give you a right to break the lease at a particular time, or if sufficient notice is given - called a 'break clause'. You would have to give some thought to what would be a suitable break date or notice period - for example, 2 years after term commencement or on giving, say, 12 months' notice. Your landlord may require that the break is conditional upon you satisfying certain conditions, and if you don't comply with those conditions you would lose the right to terminate the lease. An example would be that you are not in breach of any of the terms of the lease. From your perspective that could be quite an onerous condition because even a minor breach could jeopardise the right to break.

Keep track of service charges...

On occasion, particularly in short term leases, landlords may be willing to agree that the service charge is capped or fixed for the period of the lease (or a shorter period), subject to any yearly increases (usually linked to any increase in the retail price index in Guernsey). A capped service charge means that you will not pay more than a certain amount on a yearly basis but the actual charge could be less. However, if it is fixed, the service charge will always be the same (subject of course to any index linked increases). Sometimes landlords will estimate the annual service charge and then require tenants to pay this in equal quarterly payments in advance. At the end of each service charge period (typically a year) a reconciliation is carried out to determine whether you have over or underpaid the service charge. Any such underpayment would have to be covered by the tenant, but this would be subject to any agreed cap and would not apply in the case of a fixed service charge. Any overpayment is often carried forward to the next period.

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