



Your property footprint in a Covid-impacted world

Work and leisure trends are changing and many occupiers of commercial space are considering their real estate requirements. Those thinking of a change may want to stay at the same address but in a reduced or altered space, or they may want a move to alternative premises.

There are a variety of points to consider, and not all of the options will be open to all occupiers, but understanding them is key to helping occupiers formulate their next steps.

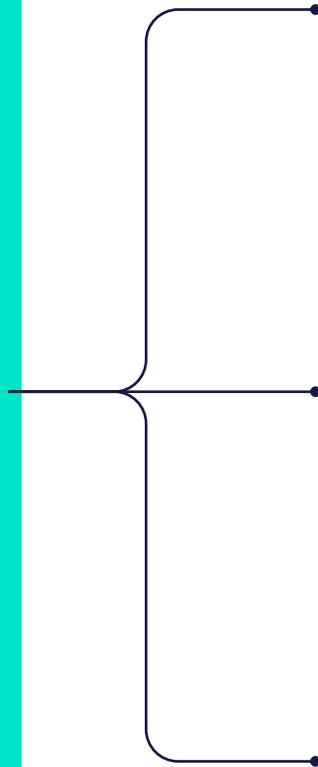
[Click below to view our interactive property footprint mind map which takes you through the key issues.](#)



Interactive diagram

Click on the navy sections to find out more

Your property footprint in a Covid-impacted world



- Exercise a break right
- Pay or negotiate a surrender with your landlord
- Let your lease expire
- Assign your lease
- Underletting the whole of your premises
- People impact

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Moving to alternative premises

Whilst a costly exercise in terms of closing down premises, dealing with dilapidations and fitting out new premises, the long term gains of moving can be substantial. Knowing how to exit your lease is a fundamental element of moving on. Remember however that any move that alters your employees' place of work will have an impact on them. You will need to consult effectively to provide information and clarity to employees on the changes.

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Exercise a break right

- If you are fortunate to have a break right in the near future, check your lease carefully to see how much notice needs to be given to your landlord, usually it is at least six months but can be longer.
- Be very wary of any conditions attached to a break right – these are very strictly construed.
- We always recommend taking legal advice – having a solicitor draft and serve the break notice removes the risk that your lease doesn't end on the break date.

Matters to address following the exercise of a break notice

- Seeking early advice in relation to repairing and reinstatement obligations.
- Instructing a specialist dilapidations surveyor to advise accordingly.
- Allowing sufficient time to agree a financial settlement with the Landlord in lieu of carrying out remedial works, or, subject to advice, ensuring such works are completed prior to expiry of the term.

Allowing sufficient time to agree a financial settlement with the Landlord

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Pay or negotiate a surrender with your landlord

- Many landlords may not be willing to accept a surrender, particularly in the current climate – it would leave them with an empty unit and they will be liable for business rates.
- Some landlords may however be willing to engage, as they might have development plans or perhaps another tenant lined up.
- Depending on your relative bargaining powers, you as the tenant may have to pay a premium to your landlord to ‘encourage’ them to accept a surrender of your lease.
- A surrender will normally give you a clean break from the premises.

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Let your lease expire

- If you are near the end of your term you will need to review your obligations in the lease around repairing and decorating the premises and removing any alterations you have carried out.
- As a general rule of thumb, carrying out necessary works to the premises before the end of the term is the cheapest way of getting the premises into their required condition. This isn't always possible, you may need to use the premises right until the last day of the term. If that is the case, negotiating a settlement with the landlord may be significantly cheaper than simply walking away and the Landlord subsequently pursuing a damages claim for disrepair. Dilapidations liabilities can run into hundreds of thousands of pounds, with disproportionate costs being incurred defending such claims.
- If you have granted an underlease you will almost certainly need to take steps to ensure that your undertenant vacates. You will most likely be under an obligation to deliver the premises to the landlord with vacant possession – this means free of your own furniture and other belongings, and also free of any third party rights to occupy the premises.
- You should always assume that you have to be out of the premises by the lease expiry date. We can advise on the implications if you stay beyond the end of the term, in part this will turn on whether your lease is 'inside' or 'outside' the security of tenure provisions of the Landlord and Tenant Act 1954.

Negotiating a settlement with the landlord may be significantly cheaper than failing to carry out the works

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Assign your lease

- If you can find someone to take on your lease then you will almost certainly need your landlord's prior written consent to the assignment. The lease will normally say that the landlord cannot unreasonably withhold or delay giving its consent. The landlord will however want to know that the new tenant will be able to comply with the lease covenants and will probably ask for three years' accounts.
- Depending on what your lease says you may need to guarantee to the landlord that the new tenant will comply with the lease and indemnify the landlord for any losses they may suffer. If the new tenant becomes insolvent in the future then you may be asked by the landlord to take a new lease or pay a sum of money to the landlord, often six months' rent.
- You will need to agree a Licence to Assign with the landlord (the landlord's consent to the assignment) and a deed assigning the lease to the new tenant. The new tenant's solicitor will most likely need to raise a number of searches and enquiries.
- If the premises are dilapidated you may need to pay a premium to the new tenant to cover the cost of the remedial works; whether a sum is payable will depend on the prevailing market conditions and the state of the premises. If the premises are particularly appealing for the new tenant they may pay you a premium for the lease; for most office premises however this is rare.

You will need to agree a Licence to Assign with the landlord

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Underletting the whole of your premises

- You will almost certainly require your landlord's prior consent before granting an underlease. The lease will normally say that the landlord cannot unreasonably withhold or delay giving its consent.
- You will need to grant your undertenant an underlease and there will be costs incurred in drafting and negotiating the document.
- You won't be released from your obligations in your own lease; you will however back them off against the obligations the undertenant owes you in the underlease (quite often an underlease will simply repeat the terms of the 'head' lease).

You won't be released from your obligations in your own lease

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Section: Moving to alternative premises

People Impact

- The employment contract will state the employee's place of work and a change to this needs to be agreed with the employee in most circumstances.
- If there are 20 or more employees impacted by the move this will require collective consultation procedures with a minimum 30 day period involved before a move can take place.
- Employees may refuse due to personal circumstances for example extra time and cost of travel, not liking the new location, childcare facilities not convenient to new location.
- Consider incentivising employees to agree to move for example relocation packages, flexible hours, financial support with travel costs.

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Sharing your space

Sharing or subletting part is not always permitted by commercial leases. It is worth investigating however if you want to remain in the same location but with a reduced footprint and reduced costs. Sharing premises can come with risks – for example you will need to set boundaries to protect your business from inadvertently sharing confidential information with new workspace neighbours. If there is a physical sharing of space you should also recognise that the initial novelty may soon wear off if there are cultural differences between the employers.

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Underlet part of your premises

- Not all leases permit underletting of part – landlords can be reluctant to see floors of a building sub-divided into too many units.
- If underletting of part is permitted you will almost certainly need landlord's prior consent (generally this is not to be unreasonably withheld or delayed).
- It is likely that underletting of part will require works to your premises to create the new unit, you will therefore need your landlord's consent to those works (also normally not to be unreasonably withheld or delayed).
- You may find you have management responsibilities if there are parts of your premises that you share with your new undertenant.
- If your lease permits it, underletting part can be a good solution to having too much space, but without the aggravation of having to move your operations to a new building.

Landlords can be reluctant to see floors of a building sub-divided into too many units

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Sharing occupation

How does this affect your employees

Section: Sharing your space

Sharing occupation

- In almost all leases which permit sharing of occupation of the premises, sharing is only permitted with group companies and so long as no relationship of landlord and tenant is created.
- Some retail leases may permit sharing occupation with concession holders.
- Landlords will be concerned that the new occupant will acquire a statutory right to remain in the premises, this is why sharing is usually limited to group companies with no formal lease in place.

Sharing is often only permitted with group companies and so long as no relationship of landlord and tenant is created

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Sharing occupation

How does this affect your employees

Section: Sharing your space

How does this affect your employees

- Clash of culture with new neighbours is possible if the businesses are not similar.
- Confidentiality and data protection needs to be reviewed and information security policies put in place to ensure there is no inadvertent sharing of information.
- Some employees may have concerns about Covid related health and safety, for example if one employer has mandatory vaccination policies and the other does not, that may create a concern to employees about mixing with other employees.

**Confidentiality
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How does this affect your employees



Reconfiguring your space

The pandemic has changed how many of us work and interact. It has also given some businesses the opportunity to consider modernising their premises. You may need to change your space to reflect the new world and your lease will dictate what you can and can't do. Your employees are critical in this process, particularly if you are changing longstanding work practices, and although it is unlikely employees have "rights" to sit in certain areas of the office, you should consider the impact of changing someone's workspace if they have a disability.

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Consider your employees

Extent of your demise

- You can only make alterations to the premises 'demised' to you in the lease – you cannot change anything that is not part of your premises. You cannot therefore change common parts of the building.
- Structural and external alterations are usually prohibited if your lease is of part of a building.
- Internal non-structural alterations will normally need landlord's prior written consent; normally this consent is not to be unreasonably withheld or delayed. The landlord will be particularly keen to know that alterations will not adversely affect the building's structure, as well as its heating, cooling and fire detection systems, and will not unduly disturb other tenants in the building.
- Some leases will permit installation of partitions without needing to get landlord's prior consent.

You cannot change anything that is not part of your premises

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Consider your employees

Section: Reconfiguring your space

Consider your employees

- Employees may consider they have an entitlement to a certain style of working environment. Whilst this is unlikely, from an employee relations angle there should be consultation about changes to working environments.
- If employees do require a certain environment due to a disability, for example a hearing disability requires a quieter office space, the employer needs to consider what reasonable adjustments can be put in place to facilitate this.
- Covid safe workplace considerations may continue and require distancing of desk spaces as well as sharing of desk spaces.

There should be consultation about changes to working environments

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Extent of your demise

Consider your employees

Contact

Many occupiers of commercial property have had to reconsider their real estate requirements. It's important that you fully understand your options in order to decide the most suitable approach to your premises and your people going forward. We would be happy to discuss the impact of the key issues highlighted within this document, and we can support you with formulating next steps and implementing measures to optimise your business premises for you and your workforce and minimise the risks involved.

For more information or to make an enquiry, please contact Tom Watkins, Partner, by clicking the link below.

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