



TOP 10 TIPS WHEN AGREEING A SURGERY LEASE



When the time comes to agree a new lease for your GP practice, it's important to remember that you have rights and negotiating power. Whether the lease is up for renewal or you're due to sign your first ever agreement, it's imperative you understand the major factors affecting your room for manoeuvre, so you can secure the most favourable terms and provide stability for your practice moving forward.

1 Understand the nature of your existing lease

Many practices occupying their surgery on an expired lease or with no written lease at all believe this constitutes a 'tenancy at will', with all the problems associated with GP 'Partnerships at Will'. Usually, however, this is not the correct interpretation, as normally a tenancy of some description will exist. Many practices have a protected lease whether this is written or not, and they often have rights to renew their lease on either the same or better terms. If this is the case for your practice, you do not need to agree to a new lease with more onerous terms, but bear in mind that you might 'accidentally' agree to changes simply through a course of conduct.

2 Be mindful of the Landlord and Tenant Act 1954

If the surgery lease is protected by the Landlord and Tenant Act 1954, as many surgery leases are, landlords cannot simply evict the practice by giving notice to quit or by ending a fixed term of the tenancy. Landlords must follow a strict statutory procedure which starts by issuing a section 25 notice. If you receive such a notice, you should seek legal advice urgently in order to protect your occupation of the surgery.

3 Link the terms of your lease to the term of your contract

The lease length should reflect the length of your primary medical services contract. If you are delivering a five-year APMS contract, you won't want a 25 year lease with no break clauses. Make sure the two coincide to avoid any problems with terminating your lease later. If you're presented with a lease that is longer than the term of your contract, you need to negotiate an appropriate lease length, or make sure there is a way of ending your lease prematurely if necessary.

4 Obtain the District Valuer's approval

Before you sign or renew a lease on an NHS surgery, it must be agreed by the District Valuer (DV). Failure to secure sign off from the District Valuer Service (DVS) before you finalise a lease can mean that the NHS will refuse to reimburse the rent, leaving the practice very out of pocket.

5 Know the rental value of your building

The NHS will only reimburse the actual rent or the market rent, whichever is lowest. The DV will decide what they deem to be the current 'market rent'. There is nothing to prevent you paying more than the market rent, but this is the maximum that can be reimbursed by the NHS. If your landlord demands more, it may be time to consider moving or appealing the DV's valuation.



6

Don't pay repairs money to your landlord

Remember that the 'rent' money you receive from the NHS comprises two elements: an amount for the rent and an amount for repairs and renewals. Usually, the GPs — as tenants — are responsible for any repairs to a surgery and for dilapidations (reinstatement costs) at the end of the lease. Make sure you keep the repairs and renewals element of the 'rent' from the NHS, and do not pass it onto the landlord unless they are responsible for repairs.

7

Secure a schedule of condition

As the tenant, the practice will be normally responsible for reinstating the building at the end of the term. Therefore, you will need to be able to demonstrate — with necessary proof — what the condition was at the start of the term. Before agreeing to a lease, obtain a full schedule of condition (SOC) from a medical specialist surveyor. DR Solicitors can make the appropriate introductions should you require them.

8

Remember that 'life happens'

While you may think that you'll stay where you are for the next 25 years delivering excellent care to your patients, there is always the chance that you'll decide to move, merge, emigrate or retire early. If you decide to take any of these steps, do you have a plan in place for getting out of the lease liability? It's important to figure out before signing a lease whether you can simply transfer it to others, and whether it's likely that there will be other GPs who will want to take it on.

9

Beware the 'last man standing' problem

It's common for there to be a minimum number of GPs required on the lease; often at least three, and sometimes as many as eight. The landlord requires this in order to finance the building, but it can make it difficult when partners wish to retire. This should be dealt with in the Practice Partnership Agreement, otherwise it can be very destabilising for the practice; when a GP leaves, others might head for the exit so as not to be the 'last man standing', leaving the others on the hook for the lease liabilities.

10

If you leave, remember your lease responsibilities

It is advisable to make sure, when you leave a practice, that you have come off the lease and have no further liabilities under it. If necessary, partners will typically give each other an indemnity for this, but indemnities must be very carefully worded to ensure they are enforceable and that the implications are fully understood by all parties.

Concluding remarks

The old days of practices being bailed out when lease problems arise are long gone, and as a result more and more practices are running into problems with leases which become unaffordable. Remember that even though you may be presented with a 'non-negotiable' lease, this is rarely, if ever, the true position; there is much more to a lease than just agreeing the rent and the term. A lease is normally the biggest liability any practice has, so make sure you always take independent, specialist legal advice at an early stage in your lease negotiations.

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Dr B & Partners, Surbiton

"Thank you for being so understanding of us and empathetic. It's difficult to convey feeling, emotion & a sense of value remotely, but you quickly tuned in to us & guided us through difficult waters, being patient with all our prevarications! Your help has been so reassuring and I am immensely grateful to you."

Dr G, Wales

"Your handling of our case was excellent, and you demonstrated extreme knowledge and professionalism on every stage of this, now concluded, very stressful situation for us."

Dr D & Partners, Hampshire

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