

Making a break clause count: the art of not messing it up



SBM successfully served a complex break clause to release the client from 10 years' of rent liability and £4.65m in costs.

Our client's property scenario

Our client no longer required a first floor office space in the North East that had been a former HQ.

A strategic business decision was made to activate the break clause in the lease and SBM was instructed to determine an exit strategy and re-engage with the landlord.

“Lease conditions in a break clause must be entirely, not substantially, complied with. Vacant possession for example has three meanings: The landlord’s, the tenant’s and what the contract says.”

Property challenges

The current lease was based on the continuation of an old lease. The current lease ran until 2030 with a break clause in 2020 and the notice was served.

The lease contained obligations to repair, redecorate and reinstate.

Our client, the tenant, undertook substantial alterations to the office space including sub-division and mechanical and electrical works.

Whilst the repair and redecoration clauses were not considered to threaten the break clause, the obligation to reinstate did.

SBM concluded that the tenant’s works, unusually, belonged to the landlord.

Property solution

SBM had to convince the landlord that it had taken ownership of the tenant’s works under the terms of the new lease. Whilst this was a contractual fact it did not mean that it was welcomed by the landlord.

Another problem was that unless the landlord accepted the ownership of the tenant’s works, the tenant could not comply with the terms of the break – to provide vacant possession.

The condition of vacant possession in a conditional break clause has been used by landlords in past case law to frustrate the break.

SBM identified the issues and ultimately worked with Queen’s Counsel to ensure the break notice and break conditions were strictly complied with ‘to the letter’ and to the ‘reasonable interpretation’ of the ambiguous lease contract.

The successful breaking of the contract saved our client £4m and the successful arguing of the reinstatement provisions saved a further £650,000.

This £4.65m saving produced an effective return on investment of over 20:1. For every Pound spent, our service to the client provided at least £20 back.

Result

- ✓ **Failure to exercise the break provision would have resulted in the continuation of the lease until 2030.**
- ✓ **Pushed back dilapidation liabilities.**
- ✓ **By successfully serving the break, £4.65m savings were made.**

SBM expertise applied



Critical dissection of the relevant lease clauses



Effective negotiations of the dilapidations claim



Successful implementation of the break

