

Commercial Lease Glossary of Terms

Below is a list of terms that you might find useful. If you have any queries or would like to discuss your own specific requirements please get in touch and we will be pleased to assist you.

A

A1 shops

Retail sale or display of goods for sale other than hot food, including retail warehouses, hairdressers, undertakers, travel and ticket agencies, post offices (but not sorting offices), pet shops, sandwich bars and other cold food for consumption off the premises, showrooms, domestic hire shops, dry cleaners, funeral directors and internet cafes, in all cases where the sale, display or services is to visiting members of the public. The changes that are permitted to A1 plus a single flat above.

A2 financial and professional services

Financial services such as banks and building societies, professional services (other than health and medical services) including estate and employment agencies and betting offices. The changes that are permitted are to A1, to A1 plus a single flat above, and to A2 plus a single flat above.

A3 restaurants and cafes

For the sale of food and drink for consumption on the premises – restaurants, snack bars and cafes. The changes that are permitted are to A1 or A2.

A4 drinking establishments

Public houses, wine bars or other drinking establishments (but not night clubs). The changes that are permitted are to A1 or A2 or A3.

A5 hot food takeaways

For the sale of hot food for consumption off the premises, the changes that are permitted are to A1 or A2 or A3.

Absolute compliance

Absolute compliance requires that the party covenanting as such complies with the requirements of the covenant in full. Where found in a break clause absolute compliance of certain conditions is the prerequisite of successfully satisfying the break clause.

Adjudication

Adjudication provides a forum for disputes to be settled quickly; normally within 28 days. It is generally the statutory procedure for settling building disputes. It has proved particularly useful in allowing works to continue and avoiding unnecessary tensions. An adjudicator's decision is binding but the decision can be revisited in, for example, arbitration or a court of law.

Alienation

Alienation is the legal transfer of title of ownership to another party.

Alienation provision

Alienation provisions are those clause(s) in a lease which govern a tenant's ability to dispose of its leasehold interest.

Alterations

Alterations are works undertaken by the tenant which alter, cut, divide, relocate or modify the demise, which can include the building, partitions, mechanical and electrical services, or finishes.

Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) refers to a range of processes for resolving commercial disputes without seeking redress from the courts. In addition to Arbitration, this most commonly means Mediation, Adjudication and Conciliation. Some pre-litigation protocols require, or strongly encourage, the use of ADR – particularly Mediation – prior to commencing legal proceedings, with potential consequences in the Award of Costs against non-complying parties.

Antecedent Valuation Date (AVD)

This is the date by which market conditions are assumed to prevail. Physical factors are taken at or after a rating list is compiled. There is a two year gap between the Antecedent Valuation Date and the publication of a Rating List which enables the Valuation Officer and the appellant ratepayer to consider rental evidence without needing to project or speculate.

Arbitration

Arbitration is governed by statute. Agreements to refer disputes to a specialist arbitrator are often made in a lease or building contract. Arbitration is private; the arbitrator's award is final and binding and is based on evidence put forward. There are limited rights of appeal to the courts on procedural irregularities and points of law. This is a popular way of resolving property disputes where privacy and speed are important.

Asset valuation

An asset valuation is the formal "open market" or "existing use" valuation of land, offices and buildings or plant and machinery. Asset valuations are used in company accounts, or for establishing the value of an asset for loan security or in merger & acquisition activity.

Assignment

An assignment of a lease is where the tenant transfers/sells its entire interest in the property for the unexpired term of the lease to an assignee.

Auction

An auction is a sale which takes place, usually in public, when a property is sold to the highest bidder, provided the amount of money offered reaches the reserve price. The sale process by auction is immediate, with exchange of contracts being achieved on the "fall of the hammer".

Authorised Guarantee (AGA)

The concept of the Authorised Guarantee (AGA) was introduced by the Landlord & Tenant (Covenants) Act 1995 to implement changes to the law on Privity of Contract on Assignment of a commercial property lease. It is an agreement that an outgoing tenant enters into with the landlord when it assigns its lease to a new tenant. Under the AGA, the outgoing tenant guarantees the performance of the covenants by the new tenant. The outgoing tenant therefore becomes the guarantor for the new tenant.

B

B1 business

Offices (other than those that fall within A2), research and development of products and processes, light industry appropriate in a residential area. The changes permitted are to B8 (limited to change of use relating to not more than 235 sq m of floor space).

B2 general industry

Use for industrial purposes other than ones falling within class B1 (excluding incineration purposes, chemical treatment or landfill or hazardous waste). The changes that are permitted are to B1 and to B8 (limited to change of use relating to not more than 235 sq m of floor space).

B8 (storage & distribution)

Storage, including open air storage. The changes that are permitted are to B1 (limited to change of use relating to not more than 235 sq m of floor space).

Beneficial occupation

Beneficial occupation is one of the essential requirements in designating rateability. Together with exclusive occupation and sufficient permanence, beneficial use is required before any party can be subject to a business rate liability.

Biodiversity offsetting

Conservation activities designed to deliver biodiversity benefits in compensation for losses, in a measurable way. The government has announced plans to introduce biodiversity offsetting schemes to the UK. The first pilot schemes began in spring 2012, with the stated aim of testing a 'metric based approach' towards biodiversity conservation.

Break clause

A break clause (alternatively called a 'break option' or 'option to determine') is a clause in a lease which provides the landlord or tenant with a right to terminate the lease before its contractual expiry date, if certain criteria are met.

Break notice

A break notice is the formal notification that one party wishes to exercise its right to terminate the lease (a break clause, option to determine or break option). Break notices must be served correctly and require a degree of care to ensure the right is successfully exercised. For example, the notice must be served the correct number of months before the break date and may require compliance with pre-conditions.

Break option

A break option (alternatively called a 'break clause' or 'option to determine') is a clause in a lease which provides the landlord or tenant with a right to terminate the lease before its contractual expiry date, if certain criteria are met.

BREEAM

BREEAM (Building Research Establishment Environmental Assessment Method) is a recognised environmental assessment method and rating system for buildings, which was first launched in 1990. BREEAM is one of the most commonly used standards for best practice in sustainable building design, construction and

operation and is a widely recognised measure of a building's environmental performance. A BREEAM assessment evaluates a building's specification, design, construction and use, such as energy and water use, the internal environment (health and well-being), pollution, transport, materials, waste, ecology and management processes.

Building insurance

Building insurance covers the landlord against damage, destruction and loss of rent. The cost of the insurance premium is normally reimbursed by the tenant.

Building survey

A building survey is a report on a building by a building surveyor on the structural integrity of a building and its state of repair. This report would usually cover the condition of the structure, incidence of any defects to the fabric of the building and the state of repair of fixtures and fittings, services and plant installations. A building survey is often required by a lender prior to agreeing to a loan which is secured against the value of the property in question.

Business rates

Business rates, or non-domestic rates, are a tax on the occupation of commercial property and other non-domestic property. The Local Government Finance Act 1988 introduced business rates in England, Wales and Scotland. Properties are assessed in a rating list with a rateable value. Rating Lists are created and maintained by the Valuation Office Agency, with a revaluation generally occurring every five years.

C

C1 hotels

Hotels, boarding and guest houses where no significant element of care is provided (excludes hostels). There are no permitted changes.

C2 residential institutions

Residential care homes, hospitals, nursing homes, boarding schools, residential colleges and training centres. There are no permitted changes.

C2A secure residential institutions

Use for a provision of secure residential accommodation, including use as a prison, young offenders institution, detention centre, secure training centre, custody centre, short term holding centre, secure hospital, secure local authority accommodation or use as a military barracks. There are no permitted changes.

C3 dwellinghouses

This class is in three parts: C3a – Use by a single person or a family (a couple whether married or not, a person related to one another with members of the family of one of the couple to be treated as members of the family of the other), an employer and certain domestic employees (such as an au pair, nanny, nurse, governess, servant, chauffeur, gardener, secretary and personal assistant), a carer and the person receiving the care and a foster parent and foster child. There are no permitted changes. C3b – Up to six people living together as a single household and receiving care e.g. supported housing schemes such as those for people with learning disabilities or mental health problems. There

are no permitted changes. C3c – Up to six people living together as a single household. This allows for those groups that do not fall within the C4 HMO definition, e.g. a homeowner who is living with a lodger. There are no permitted changes.

C4 houses in multiple occupation

Small shared dwelling houses occupied by between three and six unrelated individuals, as their only or main residence, who share basic amenities such as a kitchen or bathroom. The changes permitted are to C3.

Calderbank offer

In commercial property, a Calderbank offer is a written offer to settle, frequently in relation to a rent review made “without prejudice” save as to costs. Either landlord or tenant can make a Calderbank offer. A Calderbank offer may only be referred to after the Arbitrator, tribunal or court has made their decision on the substantive matter. The intention of a Calderbank offer is to protect a party against costs.

Capex

Capital expenditure (capex) are funds used by an organisation to acquire or upgrade physical assets, such as property or equipment.

Cashflow

The cash receipts minus cash payments over a defined period.

Change of use

Change of use is the ability to change the way in which land or buildings are used, either by a simple alteration in the nature of the use, or through alterations and additions which modify the use. A change of use may also arise through a material intensification in the present use, or by subtly altering the present use to a point where the changes amount to development. There are certain types of change of use which do not require planning permission. For example, a change of use from one type of shop to another. Certain changes are permissible between and within the use classes without the need for planning permission, subject to satisfying the appropriate criteria. Other uses are considered Sui Generis; that is, they are uses on their own unrelated to other uses. A change of use from, say, a field to a caravan park would require planning permission, so too a domestic garage to a business workshop, or house to an hotel etc. You should first consider the permitted development rights then the Use Classes Order to determine whether an intended change of use requires planning permission or not.

Clawback

Clawback is also known as overage. It is a right to receive future payments which are triggered by future events – for example achieving planning permission for change of use or development, practical completion of a development, or the sale or lease of the completed development.

Completion notice

The rules governing when a property is ready for occupation and assessment for rating need proper understanding. The Completion Notice procedure is operated by the local authority responsible for rate collection and provides the opportunity to challenge a notice. Time is of the essence and delay could prove costly. We have successfully opposed the content of Completion

Notices and thereby delayed liability on behalf of developers, saving substantial amounts for clients.

Compulsory purchase

Compulsory Purchase is an acquisition of interests in land or rights, generally by a public body such as a government department or local authority, which is authorised by an appropriate Compulsory Purchase Order. This process entitles the purchaser to acquire from an unwilling owner or occupier. This is most commonly related to proposals for future public works such as transport developments and can come from local authorities, Highways or Government agencies. Anyone who has land acquired as part of a CPO is generally entitled to compensation. There are a number of rules and regulations governing the assessment of compensation, which not only relate to the value of the land and buildings, but also losses arising from disturbance, severance and injurious affection and in circumstances where no land is taken.

Condition precedent

A condition precedent is a lease covenant including conditions which must be strictly fulfilled to satisfy the requirements of the lease.

Contaminated land

Land that is contaminated contains substances in or under the land that are actually or potentially hazardous to health or the environment. Britain has a long history of industrial production and throughout the UK there are numerous sites where land has become contaminated by human activities such as mining, industry, chemical and oil spills and waste disposal. Contamination can also occur naturally as result of the geology of the area, or through agricultural use.

Contracting out

Commercial property leases generally automatically qualify for the protection afforded to tenants at lease expiry by the Landlord & Tenant Act 1954. The parties to a lease may, by agreement, contract out of the Act. The main consequence of so doing is to remove the tenant's rights of renewal, and eligibility for compensation in certain circumstances (eg landlord's redevelopment). See also Security of Tenure.

Contractors test

The Contractor's Test is the method of valuation used for property where there is no open market, for example a public building. It is also the method of valuation adopted 'as a last resort' for rating.

Covenant

A covenant, in its most general sense, is a solemn promise to engage in or refrain from a specified action. In property, covenants in a lease refer to the obligations imposed on each party by the various clauses. A tenant's covenant strength refers to the quality of a tenant's financial status, and its ability to perform the covenants in the lease.

CPI (Consumer Price Index)

The Consumer Price Index (CPI) is a measure that examines the weighted average of prices of a basket of consumer goods and services. The CPI Index is used to track price changes associated with the cost of living. In the commercial property market leases are often granted with rent reviews occurring by

reference to either the Consumer Prices Index, or more commonly, the Retail Prices Index (normally on an upwards only basis). There are a number of differences between the CPI and RPI indices – the most well-known of which is in the area of mortgage payments, which are excluded from the CPI but included in the RPI. The CPI was first introduced in 1996 and in 2003 the Government announced that the UK inflation target would be based on the CPI, replacing the Retail Price Index for this purpose.

D

D1 non-residential institutions

Clinics, health centres, crèches, day nurseries, day centres, schools, art galleries (other than for sale or hire), museums, libraries, halls, places of worship, church halls, law court. Non residential education and training centres. There are no permitted changes.

D2 assembly and leisure

Cinemas, music and concert halls, bingo and dance halls (but not night clubs), swimming baths, skating rinks, gymnasiums or area for indoor or outdoor sports and recreations (except for motor sports, or where firearms are used). There are no permitted changes.

Decoration covenant

Where there is an obligation to decorate, the decoration covenants within the lease will state when internal or external decoration is required. It may go on to define specific details, such as how many coats of paint are to be applied and when the decorations are to be applied.

Demise

Demised premises are the extent of the premises included within a lease and may include land or other facilities. For example, when an office block is let under a written lease, in the lease the office block might be referred to as the demised premises.

Depreciation

Depreciation is a method of allocating the cost of a tangible asset over its useful life. Businesses depreciate long-term assets for both tax and accounting purposes. Consumption includes the wearing out, using up or other reduction in the useful economic life of a tangible fixed asset whether from use, passing of time or obsolescence through either changes in technology or demand for goods and services produced by the asset.

Determination

The generic term for the decision of a Third Party surveyor appointed under a Dispute Resolution clause to make a binding decision to resolve a dispute between the parties to a lease. Most commonly Independent Expert Determination of a rent review (similar to an Arbitration Award), but can include service charge, insurance and adjoining owner/occupier clauses.

Dilapidations

The term 'dilapidations' refers to the breaches of a tenant's lease covenants in respect of repair, reinstatement of alterations, and redecoration. Can be raised by a landlord during the term of the Lease (interim dilapidations) or, more commonly, at lease expiry (terminal dilapidations). Any resultant claim for damages is

capped at the Diminution in Value of the landlord's interest under s18 of the Landlord and Tenant Act 1927 in respect of repair, and similar principles at common law in respect of reinstatement and redecoration.

Dilapidations protocol

There is a formal pre-action protocol for claims for damages in relation to the physical state of a commercial property generally called the 'dilapidations protocol'. This was formally adopted under the Civil Procedure Rules in January 2012.

Diminution Valuation

A Diminution Valuation is a specialist's report prepared by an experienced Valuer which takes into account Section 18 of the Landlord and Tenant Act 1927. Section 18(1) provides that the damages for breach of the repairing covenant may not exceed the diminution in value of the landlord's reversion caused by breaches of repair. The common law practice is now to produce a single diminution valuation reflecting all breaches of covenant (i.e. including reinstatement etc).

Discounted cashflow

An analysis technique used to appraise, for example, investment and development projects, whereby future income streams are discounted, accounting for the time cost of money, to arrive at a present value in order to gauge performance and project viability.

Disrepair

The assessment of the condition of property, which highlights areas where repair is required. Many tenants will have obligations to repair their premises. Failure to do so is commonly referred to as disrepair. The state of repair is usually disregarded in making an assessment for rating, although significant dilapidation can lead to a removal from liability.

E

Empty rates

Following the introduction of new legislation in 2008, rates have been applied in full to empty properties (with some minor exceptions). We have campaigned consistently against the application of rates to empty commercial and industrial buildings as a disincentive to urban renewal and business growth. We have undertaken surveys in conjunction with the Royal Institution of Chartered Surveyors, and we have continued to provide strategic and particular advice as to legal empty rate avoidance.

Endorsement

This is the parties' signature of their documents being Landlord's Schedule of Dilapidations and the Tenant's Response.

Energy Act (The)

The Energy Act (2011) is the central pillar of the Coalition's programme relating to energy and climate change. It focuses on improving the energy efficiency of buildings and includes three major elements in the Green Deal, Energy Company Obligation and Private Rented Sector regulation. The Act makes it unlawful to let premises that do not meet minimum energy efficiency standards from April 2018 (set as a minimum EPC rating of E), thereby making it unlawful for landlords to rent buildings with an F or G EPC rating until certain energy efficiency improvements are made. While the energy efficiency improvements required by the

Act, exceptions to the rule and links to the Green Deal are yet to be confirmed, the direction of travel has been clearly defined.

Energy Performance Certificates (EPC)

Energy Performance Certificates (EPCs) are required for buildings when they are sold, built or let. The certificate identifies how energy efficient a building is by providing a rating from G (least efficient) to A (most efficient). It is accompanied by a report providing recommendations for potential improvements to the building and indicative costs, pay back periods and carbon impacts.

Estate charge

An estate charge is that part of the tenant's service charge liability relating to the maintenance of the estate on which a commercial property is situated. Includes, for example, landscaping, maintenance and lighting of estate roads, as well as security.

Estoppel

Estoppel is the legal principle whereby one party is held to have varied its rights by its actions, and in doing so has given another party sufficient encouragement to act to its detriment in a way contrary to any existing relationship.

Exit yield

The yield that is applied to the projected income on the assumed sale date of the investment.

Expert determination

Expert determination in the UK involves an independent third party, acting as an expert deciding a dispute using their own knowledge and experience. This is a common way of resolving rent review and valuation disputes. It is seen as quicker and cheaper than arbitration and particularly suitable to specialist property disputes.

Expert witness

An expert witness is required to assist the court or tribunal to understand complex technical matters on which their decision might be based. Experience in the subject matter of the dispute is critical and the choice of expert witness can make or break a case. Expert witnesses appear in most property disputes, whether before the courts or arbitrators. While appointed by one of the parties, they have an overriding obligation of impartiality to the court or tribunal.

External valuer

A valuer who, together with any associates, has no material links with the client, an agent acting on behalf of the client, or the subject of the assignment.

F

Final schedule of dilapidations

The final schedule of dilapidations is served after the lease has ended. The timescales for dealing with the dilapidations process is defined under the dilapidations protocol and RICS Dilapidations Guidance Notes.

Fit out costs

Fit-out costs are usually incurred by a tenant prior to being able to

occupy new accommodation. Fit-outs will often include everything from installing cabling through to purchasing furniture.

Five yearly revaluations

Rateable values are generally subject to a revaluation every five years. This ensures that relative changes in markets between locations and property types is properly reflected in the rating list and not allowed to become outdated. Our market coverage ensures that we have proper representation and coverage in all sectors; our rating expertise is supported by good market intelligence.

Fixed and minimum uplift rents

Rent subject to fixed uplifts at an agreed level on agreed dates stipulated within the lease; or rent subject to a contracted minimum uplift at the specified review date (often at annual or five yearly intervals).

Forfeiture

When a business tenant is in rent arrears or is in serious breach of the lease terms, then the commercial landlord will in most cases have the right to forfeit – the right to summarily end the tenancy. The landlord must, however, comply with section 146(1) of the Law of Property Act 1925. There is no automatic right to forfeit a lease unless the lease contains specific provisions by way of a clause setting out the grounds on which the landlord may forfeit. The landlord's actions must indicate that he intends to end the lease, so actions to the contrary, like accepting rent, will remove the right to forfeit. There are two main methods of doing this: (1) by peaceable re-entry to the premises or (2) by issuing court proceedings for possession.

Freehold

The most superior legal title to the ownership of premises – legally referred to as “fee simple absolute in possession” – as opposed to long leasehold (or ground lease) which will often run for 100 years or more, and leasehold (usually the occupational lease interest). For an estate to be a freehold it must possess two qualities: immobility (property must be land or some interest issuing out of or annexed to land); and ownership of it must be of an indeterminate duration.

Freeholder

The owner of the freehold interest.

FRI (Full Repairing and Insuring)

FRI is a term used to describe a lease where the tenant is responsible for all repairs and for insuring. However, the term also applies to the liability for payment of these costs, known as effective FRI. FRI leases therefore include those where the landlord pays for external repairs and recovers the cost via service charge or contribution to “shared” expenditure. Also where, as is most common, the landlord maintains the insurance and recovers the cost of the premium from the tenant, usually as further rent.

G

General Rate Act 1967

The General Rate Act 1967 was repealed and replaced by the Local Government Finance Act 1988, but still carries many of the principles of rating law in use today.

Gross income

The total current income receivable from a property investment before allowing for any deductions.

Gross internal area

Gross internal area (GIA) is the internal floor area of a building measured to the internal face of the external walls. It is most commonly used in the industrial / warehouse sector, but also in foodstores and retail warehousing.

Ground lease

This is usually a long lease, granted at a ground rent but subject to an initial premium payment. A ground lease can vary in length from 30 years up to 999 years.

H

Headline rent

A headline rent is the rent that is paid under a lease, after the end of any rent-free periods or any period of reduced rent. It creates an artificially inflated rent by ignoring the rent-free period, period of reduced rent or any other concessions the landlord may have given to the tenant in return for a higher headline rate. Headline rent is most commonly associated with open market lettings, but increasingly at lease renewal and lease re-gearing / restructuring. Headline rent usually also forms the benchmark for any "upward only" rent review in the lease.

Heads of terms

A heads of terms agreement identifies and highlights the requirements of both the transacting parties in a property deal. Its advantage is that both parties will fully understand what they are subject to, and reduce or abolish any misunderstandings from each party. The heads of terms will form the basis of the contract and be forwarded to the parties' solicitors to draft the contract or lease.

Hereditament

The unit of assessment for rating, defined in statute merely as a building which is or could be subject to a rate. A proper understanding of what comprises a hereditament relies on case law precedent developed over 400 years. Any decision on rateable occupation requires the existence of an hereditament, that is a physical unit capable of use or occupation or a 'right' to advertise, the latter being expressly mentioned in the main enabling act, the Local Government Finance Act, 1988.

Hold period

The period over which the investment is assumed to be held.

Hurdle rate of return

The target return or IRR from an investment.

Hypothetical lease terms

The basis of valuation under a rent review clause. In most commercial property Leases, rent is reviewed periodically to an open Market rent level – the rent review clause will prescribe the exact terms to be assumed and matters to be disregarded, in a hypothetical letting of the subject property at the review/valuation date. Usually based on the terms of the actual lease, but can vary e.g. length of term, whether break options are imported/included, assumptions as to permitted user etc.

I

Incentive

An incentive is a payment that is used to encourage a tenant to take on a new leasehold contract when a lease is granted or assigned. A common example is where a landlord pays a tenant a sum of money to contribute to the cost of a tenant's fit-out or allows a rent free period.

Independent expert determination

Expert determination in the UK involves an independent third party, acting as an expert deciding a dispute using their own knowledge and experience. This is a common way of resolving rent review and valuation disputes. It is seen as quicker and cheaper than arbitration and particularly suitable to specialist property disputes.

Indexation

The practice of linking the review of the tenant's payments under the lease to a published index, most commonly the Retail Price Index (RPI) but also the Consumer Price Index (CPI). Most commonly associated with service charge payments, annual adjustment of service charge caps and rent reviews.

Interim rent

The rent payable during a period of holding over while a new lease is negotiated or completed under the Landlord and Tenant Act 1954. If the lease is renewed, the revised rent becomes the interim rent, although either party can apply to the court for a variation to this presumption, on limited grounds.

Interim schedule of dilapidations

The interim schedule of dilapidations – served during the lease term, at any time after lease commencement. It is usual for the interim schedule of dilapidations to be served before the last 18 months of the lease. The intention of an interim schedule is to identify breaches of lease and necessary works to remedy the breach within a set time frame.

Internal Rate of Return (IRR)

The rate of interest at which all future cash flows must be discounted in order that the net present value of those cash flows, including the initial investment, should be equal to zero.

Investment property

Property held as an investment with the primary purpose of yielding a return over the life of the holding.

Internal Repairing Lease (IRL)

A lease where the landlord retains responsibility for, and bears the cost of, external repairs. Differs from the more common Full Repairing and Insuring (FRI) lease, and commonly results in a higher rent reflecting the tenant's lower obligations in respect of annual expenditure on repairs.

J

Jervis v Harris clause

A Jervis v Harris clause within a lease provides for a landlord to re-enter the property to remedy breaches of the lease the tenant has failed to rectify after an express notice period. The landlord

recovers the cost of repairs as a debt thus removing some of the defences available to the tenant under dilapidations claims.

Joint sole expert

Joint sole expert is an expert witness appointed jointly by the parties or the court to reduce the cost of litigation by removing the ability of each party to appoint its own expert. The joint sole expert reports to the court and may be questioned by each party. Apart from the saving in costs the main advantage is the removal of the adversarial approach taken by some expert witnesses appointed by parties.

L

Landlord and tenant acts

These are the statutory frameworks for the occupation of buildings and/or land where a landlord and tenant relationship exists. The principal legislation is the Landlord and Tenant Act 1954 (as amended) which confers Security of Tenure and the right to a renewal lease, on specified grounds, on the tenant, and the Landlord and Tenant Act 1927 which relates to the treatment of tenant's improvements and the limitations on a landlord's claim in damages for dilapidations.

Landlord's consent

Many clauses in commercial leases are "permissive", and allow the tenant to implement changes or alterations to the property or its occupation (for example alienation or user). Usually, however, the landlord's formal consent is required, and the lease will contain provisions governing how this is to be obtained and documented. These clauses also usually provide for the landlord's consent not to be unreasonably withheld or delayed and, if not, provisos to this effect are imported by statute in relation to alterations and alienation, but not user.

Lands Chamber

This is the judicial forum available to hear appeals from decisions of the lower court for rating, the Valuation Tribunal (VT). The ratepayer, the Valuation Officer or any other 'interested party' can appeal to the Lands Chamber where they are represented at VT.

Lease

A lease is a legally binding contract between a landlord and a tenant which sets out the basis on which the tenant is permitted to occupy a property.

Lease expiry/renewal

The Landlord & Tenant Act 1954 limits the way in which a business tenancy may come to an end. Thus a tenancy that falls within the provisions of the Act will not come to an end unless it is terminated in accordance with its provisions.

Lease length

Lease length refers to the length of the lease term. It will vary depending upon the particular requirements of the tenant and the investment strategy of the landlord. In broad terms, the landlord will normally look for a longer lease of between 15-25 years, whereas tenant's increasingly demand more flexibility and are likely to look for shorter terms of 5-10 years.

Lease regear

A lease regear is a relatively recent term used to describe the

renegotiation of a lease during the term. Often linked to another lease event, for example a break option or rent review, but also applies to early renewal, when the parties renegotiate during the contractual term. Lease regears are most often linked to an extension of the tenant's commitment to the premises, either by extension of term length or removal of a break option, in exchange for a re-basing of the rent to current open market value and/or incentives e.g. a rent free period.

Lease renewal

A lease renewal is the renegotiation of a lease with the existing tenant at its contractual expiry.

Lease security

Also known as "Security of Tenure". Unless the parties have "Contracted Out" of the Landlord and Tenant Act 1954, tenants of commercial premises have the right to remain in occupation, and to a new tenancy on terms proscribed under the L&TA legislation.

Lease surrender

A lease surrender is an agreement whereby the parties bring a lease to an end other than by contractual expiry or the exercise of a break option. Frequently involves negotiation of a surrender premium by one party to the other, but may rely on mutually beneficial release, e.g. early termination of a lease where the tenant is no longer in occupation and the landlord is able to re-let or refurbish/redevelop early.

Lease term

A lease cannot be open ended. The lease term is the period of time the Lease runs for (as a "term of years" or "length of term") under the lease.

Leasehold

The Law of Property Act 1925 simplified the conveyancing process by creating two "estates" or interests in land.

Legal costs

These are the lawyers costs incurred by both a purchaser and vendor of a property, or in connection with the sale or grant of a new lease by a landlord and a tenant. Such costs can include conveyancing fees, litigation advice, counsel's opinion, stamp duty, local authority search fees, bank transfer fees and court expenses, plus other disbursements and VAT.

Lessee

Lessee is the legal term for "tenant".

Lessor

Lessor is the legal term for "landlord".

Letting agent

The agent (usually a surveyor) acting for the party seeking to create a lease by offering the premises "to let" in the open market. Refers to the landlord's surveyor in a transaction, which includes those acting for a tenant seeking to sub-let, who then becomes an intermediate landlord. If represented, the tenant's surveyor in any transaction is often referred to as "acquiring agent".

Licence

An authority to do something that would otherwise be inoperative,

wrongful or illegal. This may be used, for example, to permit occupation of land and buildings or allow a tenant to carry out alterations, or to assign or sub-let.

Licence for alterations

Licence for alterations will define the works which have been agreed by the landlord for the tenant to undertake. It will include additional covenants for the tenant to comply with in undertaking the works and may include reinstating the works at lease expiry. The Licence may also include provisions for the landlord to notify the tenant to reinstate such works including a timescale before lease expiry.

Licence to alter

A legal document "licensing" the tenant to carry out alterations to the premises. Usually relates to a specific, approved Schedule of Works for which landlord's consent has been obtained. Commonly time-limited and also addresses the tenant's reinstatement obligations at lease expiry, and how the alterations are to be treated at rent review.

Lifetime cost

The total of all costs relating to the holding of a property over its expected life, including the amount paid to acquire it. These extra costs include items such as maintenance spend, business rates and utilities consumption. Lifetime cost analysis may reveal that a modern building with higher headline rents is actually cheaper than a secondary property, due to higher running costs.

Liquidity

The ability to convert an asset into cash within a required period.

Loan to value (LTV)

Loan to value is the proportion a bank will lend on an asset in relation to its overall market value.

Loan to value ratio

Loan to value ratio is the loan amount, expressed as a percentage of a property's market value.

Loan valuations

A lender will normally require a loan valuation prior to lending on a particular property purchase to ensure that the value of the asset meets the security and equity criteria of the loan contract. The lender will normally appoint a suitably qualified surveyor. In the case of a surveyor that is a member of the Royal Institution of Chartered Surveyors (RICS), it is mandatory for the member to prepare the loan valuation in accordance with the RICS Appraisal and Valuation Manual. This publication sets out various practice statements and guidance notes that should be adopted by the surveyor in order to ensure consistency of approach and quality assurances for the lender.

Local authority searches

A local authority search is essentially an application for an official search of the local authority's records, for written confirmation or a certificate disclosing matters or encumbrances affecting the land. Where a lease is being granted or conveyancing takes place, a local authority search should be undertaken.

Loss of rent

Loss of rent is the term given to the rent a landlord has lost due to the tenant's breaches of the lease. The loss of rent may relate to

the period of time it takes for the landlord to remedy the tenant's breaches of the lease after lease expiry. Some leases include provision for this to be paid in any event.

M

Managing agent

The managing agent is someone who works for or represents the property owner. Duties include collecting rents and monitoring the tenant's and landlord's compliance with their respective lease covenants.

Market Rent (MR)

Market Rent (MR) is the estimated amount for which a property would be leased on the valuation date between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

Market Value (MV)

Market Value (MV) is the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's-length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

Market Value with existing use

The definition of market value with existing use disregards potential alternative uses and any other characteristics or development.

Material change in circumstances

A Material Change in Circumstances (MCC) is a physical change, defined under Schedule 6 of the Local Government Finance Act, that can be cited as a reason to alter any existing assessment in the rating list and which may lead to a change in Rateable Value following a ratepayer proposal or a Valuation Office Notice. An MCC gives rise to fresh/specific grounds of appeal against an entry in the Rating List. Examples would include temporary disruption arising from building or road works in the vicinity, or a permanent change to the accessibility of the premises. For example a pedestrianisation scheme, resulting in a material change to the physical parameters determining their rental (and therefore Rateable) value.

Material compliance

Material compliance is a legal phrase used to describe the extent to which the conditions in a lease must be met.

Mediation

Mediation is an informal method of resolving disputes in which an independent mediator works with the parties to help them resolve their dispute. The decision they reach is documented formally and then becomes binding upon them. Mediation is encouraged by the courts and has a very high success rate. It is particularly suitable to landlord and tenant, boundary and other disputes where the parties have an ongoing relationship to preserve.

Memorandum of review

A memorandum of review (or rent review memorandum) documents the outcome of the rent review process, whether the review is settled by agreement or arbitration / independent expert

determination. It is a simple legal document identifying the lease, the relevant review provisions and both the original and current parties, which records the amount and effective date of any revised rent. It may either be annexed to the lease or, more typically, retained with each party's deed packet as a separate document.

N

N/J formula

This is the formula used by the billing authority where an assessment has been reduced (N) after the compiled list date (J), and where a property is affected by transitional relief. It is critical that ratepayers in these circumstances get the date of decrease right or matters could prove costly.

Net effective rent

The equivalent rent that would be payable after all incentives (for example capital contributions and rent free periods) are taken into consideration. This calculation is used by the VOA to determine the actual Rateable Value. It is also used in lease negotiations to identify the appropriate level of rent.

Net income

The net income from a property investment after deducting ground rent and non-recoverable expenditure.

Net initial yield (NIY)

The net initial yield is the initial net income at the date of purchase, expressed as a percentage of the gross purchase price including the costs of purchase.

Net internal area

The 'useable' measured internal floor area of a building, which is measured to the internal face of external walls, by excluding 'non-useable' but ancillary/essential areas such as stairwells, WCs and permanent essential access routes. Most commonly used in the office and retail sectors.

Net present value

The sum of the discounted cashflow of a project, with all tranches of net income discounted to a present value at a rate derived from the investor's target rate of return or the cost of capital.

Net yield

Net yield takes the assumed or actual costs associated with purchasing the property into account, providing a more accurate position in respect of the relationship between the rental income and the total capital investment.

Nil increase

Shorthand term referring to the outcome of an 'upward-only' rent review, where the current open market rental value is at or below the level of the passing rent, and the review is documented at the same (nil increase) level.

O

O'May rules

A landmark lease renewal case under the Landlord and Tenant

Act 1954 – O'May v City of London Real Property Co Ltd (1982). Frequently referred to in lease renewal negotiations where one party, usually the landlord, seeks to vary the terms of the renewal lease to reflect 'modernisation' of the lease covenants, as the result of changed market practice since the grant of the original lease. In summary, the case held that the tenant's statutory protection under the 1954 Act means that the starting point in any renewal is a lease on substantially the same terms, and in effect imposes a 'presumption against' change. The party proposing the change must prove that it is 'fair and reasonable in all circumstances' (including the existing covenants, and not merely current open market practice), and that the tenant can be compensated for the proposed change via an adjustment in the rent.

Onerous lease provisions

Some of the tenant's covenants in a lease may impose restrictions on its occupation of the premises which, when assessing the rental value of the property at rent review, warrant an adjustment in the rent. If the premises were offered in the open market on the same tenancy terms (and a discount could be expected in any open market bids), to reflect the onerous lease provisions in comparison to the 'market norm' for the class of property concerned, a similar discount may be applied to the rent review.

Open market rent

Open market rent is the most common basis of valuation at rent review (also known as open market rental value – OMRV). It is commonly defined as the rent at which the premises might reasonably be expected to let, in the open market, at the review date, on the terms of the hypothetical lease. Typically, this is framed with primary reference to the terms and covenants of the actual lease of the premises, although this is not always the case (for example, in relation to the assumed length of term) and due diligence is essential in understanding the particular definition of open market rent in any review clause.

Open market rent review

A rent review to open market rent.

Overage

Overage is also known as a clawback. It is a right to receive future payments which are triggered by future events – for example, achieving planning permission for change of use or development, practical completion of a development, or the sale or lease of the completed development.

P

PACT

Professional Arbitration on Court Terms (PACT) is available to the parties to a disputed lease renewal, by agreement, as an alternative to the expense and procedural complexity of a Court determination. Usually only adopted when all other terms of the renewal lease have been agreed, and the parties feel it more appropriate to have the question of rent determined by a surveyor who is an expert in the field/class of property concerned, than a judge.

Part 36 offer

Part 36 offers are offers to settle a claim and can be made by

both a claimant and defendant in a legal dispute. They relate to this section of the Civil Procedure Rules which govern court action. Part 36 offers are usually made 'without prejudice except as to costs' and are usually made by solicitors as they have to comply with the strict requirements of Part 36 rules of court to be effective.

Party wall surveyor

A party wall surveyor is appointed in relation to the condition of, or work to, a party wall. This arises when works are planned to adjoining property and impinge on the party wall. The surveyor is independent; they produce a set of guidelines in respect of the work and its progress, a record of condition of the party wall, photographs and any relevant drawings. This is a statutory process with the advantage of removing partiality from the process and resolving what would otherwise be an ongoing dispute between adjoining owners.

Premium

A premium is the price paid for a lease, in the open market, where one tenant assigns its interest to another, replacement tenant. See also surrender premium and reverse premium.

Prime investment

A property investment regarded as the best in its class and location, determined by occupier and investor sentiment. Typically a modern or recently refurbished building, finished to a high specification, well-situated in a commercially strong location and let to a strong covenant.

Private treaty

This is the most common form of buying/selling a property, involving a binding private contract for sale between the parties. A sale of a property or investment opportunity by 'private treaty' allows the vendor more control over the sale process and any specific conditions that apply. However, the completion of the sale can take longer than other routes, such as auction.

Privity of contract

The legal doctrine whereby the contractual relationship between the original parties to a lease (i.e. property contract) remains in place, notwithstanding any assignment(s) of the tenant's interest.

Proposal (business rates)

An 'interested party' (usually the owner or occupier) is permitted to make a proposal to alter the rating list where they are dissatisfied with the level of assessment or any other part of their entry within the list. The grounds of a valid proposal will define the extent of any case brought before a hearing and must be carefully served. A proposal can usually be made within the term of the rating list, and where the matter remains unresolved it becomes an appeal and may proceed before the valuation tribunal for a hearing.

Purchase costs

With property acquisitions, a prospective purchaser will normally incur acquisition or purchase costs, which relate to legal and surveyor fees, VAT and stamp duty.

Q

Quantified demand

The quantified demand sets out all aspects of the dispute and quantifies the monetary sum sought for damages in respect of the breach detailed in the schedule as well as any other items of loss for which damages are sought. It should also set out whether VAT applies or not.

Quiet enjoyment

Quiet enjoyment is a term that means the tenant is entitled to operate the premises without any interference from the landlord.

Quinquennial

Rating revaluations in England, Wales and Scotland usually take place at five yearly intervals which are termed Quinquennial reviews.

R

Rack rented

An historic term, still in common use in rent review clauses of modern leases, to the effect that the rent is at a full open market level. A 'rack' rent is one which has been 'stretched' (derived from the medieval torture instrument) to the full extent which could reasonably be expected on an open market letting.

Raised floor

Modern office buildings have floors raised above the structural slab, to provide ease of access and enable a high degree of flexibility in the positioning of floor boxes for telecomms and computer networks.

Rateable Value

This is the assessment required of any non-domestic property (with some exceptions) under statute and is supposed to represent the rental value of any unit of assessment (hereditament) at the prescribed valuation date, subject to assumptions about repair on a full repairing and insuring basis. The tenancy assumed is from year to year with a reasonable prospect of continuance

Rates exemptions

There are certain statutory exemptions from rates.

Rating liability

A rating liability is a charge based on the occupation of commercial land and buildings, administered by the local authority. Separate arrangements exist for Scotland and Northern Ireland.

Rating list

This is the national list of all assessments (apart from those relating to utility/national networks contained within the central list). The list is available through the [Valuation Office website](#)

Red book valuation

The RICS 'Red Book' contains rules and practice statements for all Chartered Surveyors who undertake asset and other forms of formal types of valuation. The latest edition of the Red Book came into effect on 30 March 2012.

Reinstatement

Reinstatement refers to the tenant's liability to remove its alterations at lease expiry, and reinstate the premises to their original condition, as at lease commencement. If carried out under licence, there will usually be an express covenant to reinstate in the licence in addition to the 'general' obligation to do so in the Yielding Up clause. Frequently encountered in dilapidations cases, where the landlord's claim for damages, based on the cost of reinstatement, is subject to a Diminution in Value test (under common law principles rather than statute, as for repairs).

Rent

The consideration paid by the tenant to the landlord for the ability to occupy premises under a lease.

Rent review

A rent review is a periodic review (usually five yearly) of rent during the term of a lease. The vast majority of rent review clauses require the assessment of the open market, or rack rental value, at the review date, in accordance with specified terms, but some are geared to other factors, such as the movement in the Retail Price Index.

Repair covenants

Repair covenants are the contractual obligations in a lease which identify the landlord and the tenant's liabilities to repair.

Repair notice

A repairs notice usually takes the form of an interim schedule of dilapidations. The intention of the repairs notice is to highlight to the landlord or tenant breaches of the lease during the term. They are frequently used in conjunction with Jervis v Harris provisions (see "Jervis v Harris").

Restrictive covenant

A covenant that imposes a restriction on the use of land to enable the value and enjoyment of the land to be preserved.

Revenues and expenditure method

A method for valuing trading properties, including public houses, bingo, hotels and marinas, by adopting an accounts method of assessment in the absence of rental evidence.

Reverse premium

The opposite of a premium payment on assignment; instead of the outgoing tenant (assignor) receiving a lump sum for the Lease, it pays the replacement tenant (assignee) to take the lease on.

Reversionary yield

A measure of investment analysis showing the relationship between the capital cost of acquisition and the estimated rental receivable at the next lease event.

Revenue per available room (RevPAR)

Revenue per available room (RevPAR) is one of the standard benchmarking measures in the hotel industry. However, it is not straightforward as the revenue is related to room-generated revenue rather than total revenue. It is calculated by taking all rooms revenue and dividing by the number of bedrooms. It can also be calculated by multiplying the ADR (or ARR) by the occupancy rate.

Retail Price Index (RPI)

The Retail Price Index (RPI) is a measure that examines the weighted average of prices of a basket of consumer goods and services. The RPI is used to track price changes associated with the cost of living. In the commercial property market leases are often granted with rent reviews occurring by reference to the RPI (or occasionally the Consumer Prices Index) (normally on an upwards only basis). Unlike the CPI Index, the RPI includes mortgage payments. The RPI was first introduced in 1947 and was for many years, the Government's main measure of inflation. In 2003 the Government announced that the UK inflation target would be based on the CPI, replacing the RPI for this purpose.

S

Schedule of condition

A record of the condition of premises at the commencement of a lease. Usually appended to the lease and referred to in the Repairing and Yielding Up covenants to limit the tenant's liabilities – typically to repair, keep and give back the premises in 'no better than' the condition than that evidenced by the schedule. Limits the tenant's exposure to various items of repair during the lease, and its dilapidations liability at lease expiry.

Schedule of dilapidations

This is a list of outstanding repair and maintenance items (that a landlord has assessed) that have accrued under the terms of a tenant's repair and maintenance obligations. It is often served by the landlord at the end of the lease in the form of a 'Terminal' Schedule of Dilapidations. The tenant is obliged to carry out the outstanding works listed in the schedule, or pay damages which represent the cost to the landlord of doing the works.

Scott Schedule

The Scott Schedule is a document that enables the parties to compare their respective positions in relation to the landlord's original schedule of dilapidations. It comprises a series of columns in which each party sets out its response to the opposing party's contentions.

Section 18

Section 18 is a reference to Section 18 of the Landlord and Tenant Act 1927. The Act is split into two parts or 'limbs'. The first limb S 18(1) provides that the damages recoverable for breach of the repairing covenant, may not exceed the diminution in value of the landlord's reversionary interest. The second limb S 18 (2) that a landlord may not recover damages where it intends to demolish or carry out structural works to the property that render the tenants repairs valueless.

Section 25 notice

The Landlord's Notice at lease renewal under the Landlord & Tenant Act 1954 procedure. Cannot be served less than six nor more than 12 months before the lease expiry date. Must confirm whether renewal of the lease is opposed or unopposed and on what terms the landlord is willing to offer a new tenancy.

Section 26 notice

The Tenant's Notice at lease renewal under the Landlord & Tenant Act 1954 procedure. Cannot be served less than six nor more than 12 months before the lease expiry date. Must confirm the terms which the tenant is seeking for the renewal of its lease.

Sections 24-28 of the 1954 Act

The sections of Part II of the Landlord & Tenant Act 1954 (as amended) which govern Security of Tenure. Section 24 deals with the Continuation of the Tenancy after the contractual expiry date, including the rules relating to interim rent payable during the continuation or 'holdover' period. Sections 25-27 deal with the Notices which must be served to either renew, oppose renewal, or end the tenancy by Tenant's Notice to Quit. Section 28 deals with the agreement of future 'reversionary' leases.

Security of tenure

The protection (security) afforded to tenants of commercial premises by Part II of the Landlord & Tenant Act 1954 at the end of their lease.

Service charge

A service charge is payable by a tenant for services provided by the landlord for the repair and maintenance of common parts, such as lifts, reception areas and the external structure of the building. The service charge usually includes managing agent's fees. It is normally collected quarterly in advance, at the same time as the rent. A service charge payment can be capped in order to limit a tenant's financial liability. The RICS has developed a Service Charge Code of Practice to improve standards and promote consistency, fairness, transparency and best practice in the management and administration of commercial property service charges.

Specialised trading property

Property with trading potential, such as hotels, fuel stations, restaurants or the like, the market value of which may include assets other than land and buildings alone. These properties are commonly sold in the market as operating assets and with regard to their trading potential. Also called property with trading potential.

Stamp Duty Land Tax

This is a Government fixed tax, chargeable on the execution of documents, pertaining to transactions such as Leases, Agreements for Leases and Conveyances. The duty is payable by the purchaser or lessee, and the disposal document can not be adduced as evidence of the transaction unless adequately stamped. The rate applicable is set by Central Government and varies depending upon the value of the transaction.

Statutory obligation

A lease will generally include for covenants relating to the tenant's or landlord's obligations to comply with statute or regulations.

Sub-letting

A sub-letting takes place when a tenant grants a new lease for their property, or part thereof, to an alternative occupier, for a period less than the residue of the tenant's lease. The period of the sub-letting must be at least one day less than the unexpired period of the superior lease. If a tenant attempts to sub let the property for a period equal to, or more than, the unexpired period of their own lease; this operates as an assignment of the term and not as a sub-letting.

Subject to contract

Is a term used as a provisional agreement before contracts are exchanged where either party can withdraw from the transaction.

Substantial compliance

See Material compliance.

Sui generis

Uses that do not fall within any particular Use Class, including theatres, houses in multiple occupation (where not C4), hostels providing no significant element of care, scrap yards, petrol filling stations and shops selling and/or displaying motor vehicles, retail warehouse clubs, nightclubs, laundrettes, taxi businesses, amusement centres and casinos. The change permitted is from casinos to D2.

Supersession

Supersession is the process by which a landlord's actual or intended future works to a property render of no value a tenant's repairs. This is used as a defence to the landlord's claim.

Surrender

A legal mechanism whereby a Lease may be brought to an end before its Contractual Expiry date. Often linked to the grant of a fresh Lease (aka Surrender and Regrant transactions) and associated with Lease Regearing, but also where the Landlord and Tenant simply agree an early exit from the contract (Lease). For example, to permit redevelopment, or where the Tenant has marketed its interest and the replacement tenant requires a longer term than that available by assignment of the existing Lease.

T

Tenancy

The holding of a legal interest in Property by a Tenant under a Lease or other Tenancy Agreement.

Tenancy at will

Essentially a form of Licence – a legal (but non-Property) interest under which premises may be occupied by way of a "personal" agreement. A Tenancy at Will does not grant a formal Tenancy, or create any legal/enforceable interest in the property, which is occupied "at the will of" the Landlord. Often used to allow early access to Premises pending completion of a Lease.

Tenant's improvements

The expression tenant's improvements is used to describe a wide range of works, that are usually carried out by a tenant, at their own cost, and usually require the landlord's prior approval. Tenant's improvements may not necessarily increase the value of the demised premises, but can have an impact upon the future rent payable by a tenant. Section 19 (2) of the Landlord & Tenant Act 1927 provides that a covenant in a lease against the making of improvements, without the consent of the landlord, is deemed to be subject to a proviso that consent will not be unreasonably withheld.

Tenant's representative

An agent, usually a Surveyor, appointed by the Tenant to represent them in negotiations and/or third Party dispute resolution – Arbitration, Independent Expert or Court proceedings.

Terminal schedule of dilapidations

The terminal schedule of dilapidations, served at lease end, is

intended to address all breaches of lease, prepared following the recommended format in the dilapidations protocol.

Transfer of a Going Concern (TOGC)

A mechanism used on the sale of a property investment where VAT is chargeable but not actually payable and therefore has a cashflow benefit. It is only applicable where the asset is and remains income producing after the transaction.

Transition

This is a mechanism employed by government under statute to limit (phase) year on year changes in liability following a rating revaluation. The system is self funding so that limits in increases are financed by limits in decreases.

Triple net income

The net income from a property investment after deducting ground rent, non-recoverable expenditure and void holding costs.

Turnover rent

A method of calculating all or part of the rent of commercial premises, by reference to the Tenant's turnover. Exact terms vary between Leases, but usually this is based on a percentage of Gross Receipts. The tenant will typically pay a Base Rent "on account", either based on the previous year's rent or a percentage (eg 80%) of Open Market Rental Value, with a balancing charge at year end. Most common in "destination retail" locations such as Regional Shopping Centres, and the Licensed and Leisure sectors.

U

Uniform Business Rate (UBR)

The Uniform Business Rate (UBR) is adjusted annually by inflation (RPI) and is the multiple applied to Rateable Value to calculate rates payable (subject to transition and some other reliefs for small business).

Use class

The category of Town Planning Use to which the current or intended use of a property is allocated, as defined in the Town and Country Planning (Use Classes) Order 1987. This is a Statutory Instrument and is subject to periodic variation and updating.

User clause

This is a contractual provision within a lease, that specifies the use, or uses to which a property may be put and the uses which are prohibited. The formal classification of "Uses" are set out in the Town and Country Planning (Use Classes) Order 1987 as amended, which is a statutory instrument defining various use classes. The terminology of a user clause contained within a lease is critical in determining whether the use specified is restrictive or open. This aspect can be very important when considering the open market rental value of a property.

V

Vacant possession

Vacant possession is a legal term denoting the empty state of a property on hand back to the landlord. Usually required in a lease

the extent of compliance will be determined by the factual position at the date the premises are handed back.

Valuation Office Agency (VOA)

The VOA is responsible for maintaining a fair and accurate rating list.

Valuation roll

This is the Scottish equivalent of the Rating List and [can be accessed here](#).

Valuation Tribunal

This is the lower court responsible for hearing rating appeals in England and Wales.

W

Without prejudice

A legal term applied to negotiations and correspondence with the intention that anything said, or offers made, are Privileged, and cannot be subject to forced Disclosure in the event of litigation or Arbitration. This allows the parties and/or their agents to negotiate more freely, and explore the potential for settlement without making binding offers – i.e. without prejudicing their position in respect of what may be presented, in e.g. Expert Evidence, if matters become contentious and subject to formal dispute resolution procedures.

Y

Year to year

Under the rating hypothesis it is assumed that the actual property is let in an arrangement between a reasonable landlord and tenant, but on the assumption that a tenancy will run from one year to the next with an expectation of continuance.

Yield

A measure of the return on an investment. A yield is the reciprocal of the multiplier that converts an income stream into a capital value.

Yielding up

The yield up clause sets out the conditions on which the property is to be handed back to the landlord, e.g. in accordance with the lease covenants and may impose additional obligations.

Z

Zoning

This is the accepted "market standard" method of rental analysis and valuation adopted for conventional high street retail premises, but not retail warehousing or large shops.