

## Watch Points - Break Clauses

- **Express requirements**

It is vital to comply with any express instructions contained in a break clause, however seemingly irrelevant or unimportant. The court will not usually apply the “reasonable recipient” test to express requirements so that failure to comply is likely to invalidate the break.

- **Service provisions**

Check carefully the express service provisions in the lease to ensure compliance. Check the dates carefully to ensure that the notice is served in time bearing in mind any deemed service provisions.

- **Beware the registration gap**

It is the registered proprietor of the relevant title who must be served with any break notice and not the beneficial owner. This can cause problems where an interest has been transferred but the registration has not yet been completed. It means that it is essential to carry out a further land registry search immediately before serving the break.

- **Conditional breaks**

Great care is needed regarding compliance with the conditions in a conditional break. The conditions must be complied with or the break may be invalid.

- **Breaks conditional upon payment of rent**

This a common condition of a break clause. It is not as simple as it sounds to comply with a provision which requires all rents due to be paid. It is important to check carefully the definition of rent in the lease, to avoid apportioning rent payable in advance up to the break date unless it is beyond doubt that the lease permits this, and to ensure any interest due on late payments has been paid.

- **Breaks conditional upon vacant possession**

This condition needs considerable care. Particular attention is needed regarding the question of partitions. Leaving partitions in situ may result in a failure to comply with the requirement to give vacant possession – this may depend upon factors which include the extent of the partitioning, the definition of the demise, the extent to which partitions are tenant’s fixtures, the terms of any licences to alter and any other relevant tenant’s obligations.