

Rent reviews and rating assessments



Rent reviews are a mechanism for adjusting a tenant's rent to the current market level. Similarly, the revaluation of rating assessments adjusts the rates an occupier pays, bringing it into line with rental values.

You negotiate rent reviews (if your lease provides for them) with your landlord. You negotiate with your local Valuation Officer over rates. The key questions are whether an increase is reasonable and if you should challenge it.

This briefing covers:

- The rent review terms in your lease.
- How to negotiate a low 'open market rent' valuation.
- How to appeal against a rent review.
- Rating assessments, and how to appeal.

1 Your initial position

The landlord's right to increase the rent, and your right to challenge an increase, are detailed in your lease agreement.

Read it, and discuss it with your professional adviser, who should usually be a chartered surveyor or a solicitor specialising in property.

1.1 The **frequency** of rent reviews is typically once every three to five years.

- As a tenant, you want rent reviews to be as far apart as possible. Your rent then lags behind any general increase in rents.
- A short lease may have no rent review.

1.2 The new rent is usually the **open market rental value** at the date of the rent review.

- This is the rent the landlord could reasonably expect to receive if the premises were leased on that date to a third party, on similar terms to your lease.
- You may have agreed a low rent for the original lease, but this is irrelevant. It does not entitle you to continue with a low rent after the rent review.

Some leases link the new rent to the increase in the Retail Price Index instead.

1.3 If the rent review is '**upward only**', the rent cannot go down at the rent review.

- If the open market value of the rent is lower than your existing rent, your rent will remain at the same level.

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1.4 The lease will include a range of '**assumptions**', aimed at making comparisons with other premises easier when deciding the open market rental value.

The 'use of the premises' assumption can increase the open market rental value.

- Take the example of a building which is valuable as an office, but is of minimal value as storage space. If the assumption is that the premises can be used either as offices or for storage, the new rent will be valued at a rent review on the basis that the tenant uses the space as an office. It is irrelevant that the tenant may really only be using it for storage.

1.5 The landlord must usually give you **notice**, in writing, if the rent is to be reviewed. Three months is a typical notice period.

- This gives you a chance to decide if the proposed increase is reasonable (see **2**).
- If you decide an increase is unreasonable, inform the landlord in writing immediately. Give your reasons.
- There may be a deadline for replying. If you miss it, you may have to pay rent at the new level.

2 Negotiating a market rent

At a rent review your landlord will naturally want to set the new rent as high as possible. To strengthen your negotiating position, you need clear evidence to show that the new rent proposed is unreasonably high.

2.1 Collect information on the rents charged for similar premises in the area.

- In a shared building, ask your fellow tenants what they are paying.
- Most commercial estate agents are quick to provide details of properties to let, if they think you may be a potential tenant.
- Obtaining details of the rents that have actually been agreed is more difficult. You may be able to reach an agreement to swap information with the tenants.

2.2 Form your own estimate of the open market value of your premises.

- When analysing the rent of other premises, make any necessary adjustments for incentives (or premiums). For example, if a three-year lease includes one year rent-free, the real rent is two thirds of the 'headline rent'.

2.3 Try to reach a **settlement** with your landlord at this stage.

- If local rent levels are collapsing, consider proceeding more slowly. But observe any time limits set out in the lease.
- If you are in shared premises, consider negotiating jointly with other tenants. Until agreement is reached, you can continue paying rent at the old rate. On settlement you make up any difference that is owing. Interest is likely to be payable.

2.4 If appropriate, negotiate **better terms** in your lease as part of your rent review.

(See **Renting premises**.)

Your surveyor can compile the necessary evidence and negotiate on your behalf. If the negotiations become acrimonious or legalistic, fully involve your solicitor.

3 Using a third party

If you cannot agree the new rent with your landlord, the lease usually specifies that a third party should resolve the disagreement.

It sets out the procedure, including whether the third party should act as an arbitrator or an independent expert (see **3.2** and **3.3**).

3.1 First try to agree on an **independent** third party, such as a local chartered surveyor specialising in rent reviews.

- You have the right to veto the landlord's suggestion, if there is reason to believe this person would favour the landlord.
- If you cannot agree the appointment, an independent appointment must usually be made by the President of the Royal Institution of Chartered Surveyors.

3.2 If the third party is to act as an **arbitrator**, his or her decision will be based mainly on evidence presented by you and the landlord.

- Your professional adviser can help you build and put forward a strong case.
- The arbitrator decides how the fees and costs of the parties should be apportioned. If there is a clear loser who is seen to have been unreasonable, that party could be ordered to pay the full costs.

3.3 If the third party acts as an **independent expert**, he or she must decide the appropriate level of rent based on his or her own knowledge and investigations.

- ➔ Ask the RICS (see **6**) about the RICS Small Business Scheme, in which an independent expert is appointed to determine a commercial rent (020 7334 3806).
- ➔ The property industry has produced a code of practice for tenants and landlords in England and Wales to follow when negotiating commercial leases. To obtain a copy, visit www.commercialleasecodeew.co.uk.

“Take legal advice to ensure your rent review is not based on the headline rent, and that it takes account of concessions and inducements in the open market.”
**Jo Kitchener,
Reed Smith
solicitors**

- The independent expert need not consult you or the landlord. So the role of your professional adviser may be less important than with an arbitrator.
- Usually you split the fees equally with the landlord and pay your own costs, even if you win the appeal.

3.4 The major drawback of going to a third party is the **cost**, as well as the time.

- The fees are usually agreed by you and the landlord when the third party is appointed.
- Even as a small business, you can expect to pay at least £1,000, plus the cost of your own professional advisers.
- The third party's decision on the case is usually not announced until the fees have been paid.

Going to a third party may not pay off financially for you or for the landlord, especially if your annual rent is low. But it may be the only way to reach an agreement.

3.5 Once the third party's decision is made, any **rent owed** is payable immediately.

- The new rent is backdated to the rent review date. Interest is likely to be payable.

3.6 The alternative way to settle a rent dispute (if your lease allows it) is to use a **mediator**. You and your landlord need to agree who the mediator will be.

- Using a mediator may be a quick and cheap solution. But the mediator has no authority to impose a rent on either party.

4 Understanding rates

4.1 Most **business premises** are subject to business rates.

- Living accommodation — including most accommodation within business premises — is subject to council tax.
- Business rates are normally payable by the occupier of the premises.
- If your lease or licence agreement states that the rent is inclusive of rates, it is your landlord who is responsible for paying the rates. If the landlord defaults, the local council can pursue the occupier.

4.2 The amount you pay in rates is based on the **rateable value** of your premises.

The Valuation Office Agency provides summary valuations showing how your

rateable value has been calculated (www.voa.gov.uk). You can also find out your notional business rate liability at www.mybusinessrates.gov.uk.

- The basic level of rateable value usually remains fixed for a five-year period. The rateable values which became effective on 1 April 2005 were based on open market rental values on 1 April 2003.
- Any new premises (or any changes to existing premises) are valued as they would have been in April 2003.
- The next revaluation is expected to come into force on 1 April 2010. Any national increase in rateable values should be offset by a comparable reduction in the multiplier (see 4.3).
- The rateable value is the same, whether the premises are owner-occupied, leased or licensed.

4.3 The normal rates payable are calculated by multiplying the rateable value by the **multiplier**. The multiplier (sometimes called the Uniform Business Rate or UBR) usually increases each year in line with inflation.

- For the year starting 1 April 2005, the standard multiplier in England is 42.2 pence per pound. So for a building with a rateable value of £50,000, the annual rates would normally be £21,100, but this could be subject to transitional arrangements.
- A lower small business multiplier, 41.5p, is used for businesses eligible for Small Business Rate Relief (see 4.4 below).
- Special rules apply in the City of London, which usually charges a small supplement over the standard multiplier.

4.4 Businesses in England which occupy only one main property with a low rateable value can get **Small Business Rate Relief**.

- If the rateable value of your building is below £5,000, you are eligible for 50% relief.
- For rateable values between £5,000 and £9,999, the percentage reduction decreases on a sliding scale by 1% for every £100.
- For rateable values between £10,000 and £14,999 (or up to £21,499 in London), there is no percentage reduction but the small business multiplier is used.
- Businesses that occupy additional properties may still be able to claim the relief on the main property, provided that the total rateable value of all the properties is less than £15,000 (£21,500 in London). Apart from the main property, the rateable value of each additional property must be less than £2,200.

► This briefing applies to business premises in England only. Similar arrangements apply in **Scotland, Wales** and **Northern Ireland**. Each has its own multiplier, relief schemes and transitional arrangements. For more information on the arrangements in Wales visit www.wales.gov.uk, in Scotland visit www.scotland.gov.uk, and in Northern Ireland visit <http://vla.nics.gov.uk>.

“Rating legislation is complex and the process convoluted. Take advice, but avoid any ‘up-front fees’. Consult an expert.”

David Brokenshire, FPD Savills chartered surveyors

- Small Business Rate Relief is not automatic. You must apply to your local authority. A false application is a criminal offence. All businesses not eligible for Small Business Rate Relief pay a UBR supplement of 0.7p per £ of rateable value, which covers the cost of the relief.

4.5 You may qualify for **other reliefs**.

- If the property (or part of the property) is empty, you may qualify for rates relief.
- For empty premises, the relief is 100 per cent of the occupied rate for the first three months. After that, the relief is usually reduced to 50 per cent (industrial and storage premises remain at 100 per cent).
- Listed properties and those with a rateable value of under £2,200 are exempt from empty property rate.
- There are a number of specific reliefs for properties in rural areas and for charities and qualifying amateur sports clubs. If you believe you might qualify, contact your local authority.

4.6 If your rates increased or decreased sharply following the revaluation in April 2005, they may be subject to **transitional arrangements**. These phase in major increases or decreases by setting caps on the level of change.

- For the year up to 31 March 2006, increases are capped at 5 per cent plus inflation for small business premises with a rateable value of less than £15,000 (£21,500 in London).
- The equivalent limit on increases for larger business properties is 12.5 per cent, plus inflation.
- Decreases are limited to 30 per cent (small businesses) and 12.5 per cent (larger businesses).

4.7 You receive the rate demand from your local authority each year around 1 April. You have a choice of when to **pay**.

- Most businesses choose to pay in ten equal monthly instalments.
- You can also pay the whole amount immediately, or pay half immediately and the other half on 1 October.

5 Challenging your rates

The rateable value of your premises is assessed by HM Revenue & Customs' Valuation Office Agency.

5.1 There are two main **grounds of appeal**:

- The rateable value of the premises is higher than the open market rental value of the premises on the 1 April 2003.
- The premises are adversely affected by a change in circumstances. For example, structural alteration of the premises, a road closure or building works.

5.2 Your appeal is considered by a local **Valuation Officer**, who will discuss the matter with you.

- A professional adviser such as a chartered surveyor can advise you and appeal on your behalf.
- You can appeal yourself using a standard form, or on the Valuation Office Agency's website (www.voa.gov.uk).
- The Valuation Officer will advise you when he or she is ready to discuss the appeal.
- If you cannot agree a revised assessment, you can take your appeal to a Valuation Tribunal.

5.3 If your rates appeal is successful, you receive a **rates refund**.

- This might be a cheque, a reduction in the amount of your monthly payments, or a credit for the next year.
- You usually receive interest on the amount owed to you.

6 Where to get help

6.1 The **Royal Institution of Chartered Surveyors** (RICS) runs several helplines.

- For the RICS Rent Review and Lease Renewal Helpline and the RICS Dispute Resolution Service contact 020 7334 3806.
- The RICS Rating Helpline provides information for non-members (0870 333 1600) and provides up to 30 minutes free advice from a local chartered surveyor.

6.2 The **Institute of Revenues Rating and Valuation** (IRRV) (020 7831 3505).

6.3 The Law Society's '**Lawyers For Your Business**' initiative (020 7405 9075) offers a free half-hour consultation for you with a participating firm of solicitors.

Expert contributors

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Further help

There are other Directors' Briefing titles that can help you. These briefings are referred to in the text by name.

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