Grey Areas and Unresolved Arguments Over Break Clauses

Vacant Possession; Reinstatement; Removal of Tenant's Chattels and Fixtures

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"It is easier to get into something than to get out of it."

Donald Rumsfeld

Arguably, that ought no longer to be as true as it once was about break clauses.

2007 - The Code for Leasing Business Premises in England and Wales 2007[1]

Landlord Code

The only pre-conditions to tenants exercising any break clauses should be that they are up to date with the main rent, give up occupation and leave behind no continuing subleases. Disputes about the state of the premises, or what has been left behind or removed, should be settled later (like with normal lease expiry).

2014 – Model Commercial Lease (originally commissioned by BPF)

Conditional break clause

8.1 The Tenant may end the Term on the Break Date by giving the Landlord formal notice of not less than [xxx] months following which the Term will end on that Break Date if:

8.1.1 on the Break Date the Main Rent due on or before that Break Date and any VAT payable upon it has been paid in full; and

8.1.2 on the Break Date the whole of the Premises are given back to the Landlord free of the Tenant's occupation and the occupation of any other lawful occupier and without any continuing underleases; …

2019 – (Draft) RICS Professional Statement – Code for Leasing Business Premises

3.3 Unless the landlord has special reasons for imposing stricter conditions, a tenant's break should be conditional only on there being no rent arrears, the tenant paying the basic rent up to the end date, giving up occupation and leaving no subtenants or other occupiers. Disputes about the state of the premises, or what has been left behind or removed, should be settled later, as at normal lease expiry.

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[1] "The result of a pan-industry discussion between representatives of landlords, tenants and government."

That is the wording in the consultation draft. The 1st edition of the final new Code is due to be issued today (7 November 2019).

I have set out fuller versions of the relevant provisions in Appendix 2.

Arguably, the subject of this talk ought to have been of decreasing relevance for over a decade, and should by now be of no more than minority, even historical, interest.

You will know better than I do whether all this has really made a difference on the ground, but it is clear that the issues covered below continue to cause problems in break clause cases. Indeed, even the Model Commercial Lease raises a potential question about what is needed to operate the break effectively.

So will the new Code make any difference?

RICS members will now be obliged to tell a party who is not represented by an RICS member or other property professional about the existence of the Code and the Supplemental Guide. They will also be obliged to recommend professional advice.

At least in their draft form, paragraph 3.3 of the Practice Statement and the Supplemental Guide are not mandatory, but departures will need to be justified. The most recent Professional Statement before this one (Service Charges in Commercial Property[2]) says:

> *"Sections within professional statements that use the word 'should' constitute areas of good practice. RICS recognises that there may be exceptional circumstances in which it is appropriate for a member to depart from these provisions – in such situations RICS may require the member to justify their decisions and actions."*

I assume that the position will be similar in relation to the new Lease Code. Some may try to argue that explicit client instructions are "exceptional circumstances"; others may try to rely on their landlord clients having "special reasons". So, for the surveyors among you, how will your practices stand up to RICS scrutiny?

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[2] September 2018, effective from April 2019.

The issues

I have spoken before about the payment of rent and other sums as break conditions. My subject today is break conditions concerning what the tenant has to give back to the landlord.

The importance of this goes without saying. Break conditions must be strictly complied with, unless the lease says otherwise, so knowing exactly what you have to do is critical to the effective operation of a break clause.

Four core questions

In every case, four core questions need to be asked:

- What has to be removed by the break date,
- What changes need to be made before the break date,
- What has to be left behind on the break date,
- What has to be done on the break date,

… as pre-conditions to the effective exercise of the break?

That final words are important. Most leases will impose obligations at the end of the lease, including if it is brought to an end earlier by the exercise of a break clause, and these may give rise to a liability to pay damages; but what matters here is those which have to be complied with as break conditions.

The answers to those questions will depend on the wording of the lease in each case and the premises in issue. Even apparently modest or subtle differences in wording could make a significant difference in their context, so I am not even going to try to look at particular forms of wording, except for one example.

But any relevant wording has a legal context; and what I can do is to look at some of the key concepts that you need to know about.

Important concepts – the easier ones

I propose to start with the easier concepts to comply with.

To illustrate their role, I can take you back to the Model Commercial Lease. This requires the tenant to "give back" the whole of the Premises back to the landlord free from three things:

1. Occupation by the tenant.
2. Occupation by any other lawful occupier.
3. Continuing underleases.

This is at the less onerous end of the spectrum of break clause conditions, but it still leaves open for debate what 'giving back' requires, and what 'free of occupation' will mean in practice. That brings me to my first two concepts.

"Yielding up"

This requires no particular procedure, but it probably does require the tenant in practice to show (objectively) a clear intention to hand over control of the property, sufficient to avoid a finding that the tenant was continuing to assert a right to use, occupy or control it.

'Giving back' is probably the plain English equivalent of this[3], but as ever, a lease that uses this plain English term might be interpreted a little more generously towards a tenant.

So what does 'yielding up' require? There are a number of cases you need to know about.

The first in time is Amber Pass. On the break date, the premises were surrounded by free-standing security fencing and removable concrete vehicle barriers, the tenant continued to instruct a security firm to keep the premises secure, and the tenant had kept the keys. Despite all three factors, it was held that the property had, nevertheless, been 'yielded up' (see [45]-[47]). The reasons given included that it was clear that the landlord was challenging the exercise of the break, and that there was a serious risk of vandalism and unlawful occupation.

The decision in Amber Pass has been criticised, with some force, at least as regards the significance of the retention of keys and the absence of any other act of handing over; but the judge's approach was approved by the Court of Appeal in Jones v Merton at [33]. Similarly, although the focus in the Riverside Park case (see below) was on vacant possession rather than yielding up, a failure in that case to deliver up all key fobs and to turn off an alarm system did not have the result that the tenant

[3] On this, note the comments in Amber Pass at [42(1)] and [45(1)].

failed to give vacant possession (see [41]): they were said not to be enough on the facts to involve any claim by the tenant to a continuing right to use the property[4].

By way of contrast, in South Essex College the tenant continued to operate an alarm system after the break date, and held on to the keys, and the judge held that the property had not been handed back ([52], [55]).

The Court of Appeal reached a similar conclusion in NYK Logistics ([49]), where the tenant had retained the keys and continued to occupy and control the premises after the break date. The tenant ran out of time to complete repairs (which were not required by the break clause), so kept the keys, kept up its security, did nothing else to deliver up possession, and continued to finish off repair works on site on the Monday after the break date on the preceding Friday.[5]

The continued retention of all of the keys by the tenant in Expeditors International was also a significant factor in Lewison J reaching the conclusion *obiter* at first instance that vacant possession had not been delivered up ([44], [47]), although as in Riverside Pari, the argument focused on vacant possession not yielding up. That outcome was particularly ironic, because the tenant had reached a compromise with the landlord over much more difficult pre-conditions, particularly the requirement to have "substantially performed and observed [its] material covenants up to the date of expiry of the notice".

What is the right position? Given that after the break date the risk of damage to the premises lies with the landlord (as the Court of Appeal pointed out in NYK Logistics at [47]), it would be a brave tenant who retained any keys or maintained any form of security after a break date.

"Vacant possession"

As you will already have appreciated, there is a considerable overlap between what 'yielding up' requires and what is needed to give 'vacant possession', but the latter

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[4] The landlord's own evidence may well have encouraged the judge to reject its argument about the key fobs and the alarm system: see [19.4]-[19.5].

[5] An attempt in such circumstances to hand over only some of the keys is not likely to improve the tenant's position: compare Mourant at [32].

focuses on the position at the premises, rather than what the tenant has to do to show it is handing them back.

In basic terms, there are two overlapping requirements:

- The property is empty of people and chattels (other than any landlord's chattels that may have been demised). *[The direct physical element.]*
- The landlord is able to assume and enjoy immediate and exclusive possession, occupation and control. *[The control element.]*

A failure to comply in either respect will mean that vacant possession has not been given, unless the failure is *de minimis*, although there is more flexibility where only chattels are involved (see below).

To adopt modern marketing jargon, vacant possession requires a trilogy of "free from" requirements: free from people, chattels and legal interests (see Goldman Sachs at [39]).

The requirements overlap because if chattels and people are still there after the break date, that might lead to either or both two conclusions:

1) If the chattels prevent or interfere substantially with the landlord's enjoyment of its right to possession of a substantial part of the property, then 'vacant possession' will not have been given in a direct physical sense: Cumberland Consolidated at 270; Expeditors International at first instance at [41]-[42]; NYK Logistics (CA) at [42]. Those cases show that this will be the case "*only in exceptional circumstances*", but the tenant failed on this basis in Riverside Park.

2) The presence of both chattels and people may mean that the tenant is still using or occupying the premises. If so, then vacant possession will not have been given in the sense of giving the landlord full control.

   This was what happened in Expeditors International, where the tenant had retained the keys, had at least one employee on site, had continued to use the warehouse for storing chattels of use to the tenant, and was awaiting further vehicles to collect the remaining chattels. As a result, the landlord could not have occupied the property without difficulty on the day after the break date, and the judge concluded that the situation was one of continuing use / occupation of the property by the tenant.

Only the latter would appear to matter under the Model Commercial Lease; but if chattels left behind are such as to satisfy the first test, then it may be difficult to avoid a finding that the tenant is continuing to use the premises to store them.

Sometimes a lease will use add the word "full" or the words "the whole of the premises" in a clause requiring vacant possession; but this has not yet persuaded a trial judge to interpret such leases as imposing stricter requirements (arguments to this effect failed in Goldman Sachs at [19] and South Essex College at [31] respectively).

To comply with a requirement to yield up with vacant possession, or similar:

- Make sure that, at the break deadline (or before – it will usually be midnight!) you do your utmost to give all of the keys (including those used for electronic entry) to the landlord in some way, or at least to tender them.
- Unless the balance of risk is unacceptable, make clear to the landlord that it may take over security arrangements if it wishes, but that the tenant will not continue them after the break date. If the balance of risk is unacceptable, then what alternatives may be available will depend on the circumstances.
- Prepare a checklist in advance of the acts to be done, when and by whom.
- Make sure any removals are completed in good time[6].
- Make sure any works being done are finished in good time before the break date, ideally with a buffer period. If they are not finished, just leave them as they are on the break date.
- Consider what else you should do to show objectively that you are 'handing back' the property to the landlord, particularly if the landlord is trying to make it difficult to hand over the keys, or there is difficulty in doing so.

Important concepts – the harder ones

I shall now move on to the more difficult issues: those that the Model Commercial Lease and the RICS Code seek to avoid.

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[6] But do not lose heart as the deadline approaches. Apparently, there are companies that can remove even very large and heavy items at short notice, at least if they are accessible: see Cantt Pak, esp. at [68]-[71]; [99]-[101]. But note that this was not put to the test in that case.

Fixtures and alterations

The last set of principles that I want to mention concern fixtures and alterations. These principles are all subject to the terms of the lease.

You will all be familiar with the distinction between fixtures and chattels, even if it can be difficult to apply in practice. For present purposes, the key point is that fixtures become part of the land, and so part of the property that has to be given up at the end of the term (including on a break date). The same applies to anything which is part and parcel of the land itself.

You will also all be familiar with the position with tenant's fixtures. The position in this respect is probably as follows[7]. Tenant's fixtures become part of the land, but the tenant will have the right – but not an obligation – to remove them at the end of the term, subject to making good; and as a result, their presence will not inhibit the giving of vacant possession (see, e.g. Expeditors International at first instance at [32]-[34]).

The position is similar so far as alterations are concerned. Lawful (i.e. permitted) alterations to the property, unless they involve the installation or alteration of chattels, will be part of the property to be given back, whether they are fixtures or part and parcel of the property itself[8]. As a result, it is the property as altered that has to be given up at the end of the term (including on a break date). The same probably applies to unlawful (i.e. not permitted) alterations, although there may be a liability to pay damages.

In short, to go back to my questions at the outset

- No fixtures or alterations need to be removed by the break date,
- No changes need to be made before the break date,
- What must be left behind is simply the property as is,

unless the lease says otherwise.

But what if the lease does say otherwise, or arguably does so?

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[7] There may still be room for argument about this (see the Riverside Park case), but it is likely to be right.

[8] The distinction is intended to reflect everyday life and language as regards what people regard as 'fixtures' rather than as an integral part of the land@ see Elitestone at 690.

Problems and Uncertainties

Particular problems can arise with terms altering the general law on tenant's fixtures and alterations.

Complications can be added by requirements as to the condition of the property on the break date, or to comply with more extensive 'end of term' obligations on or by the break date.

All depends on the terms of the lease, of course, but too often it is also not clear which, if any, 'end of term' obligations are break conditions, and there may be both uncertainties and 'hidden' or unexpected conditions.

Problems can arise in many ways, but there are three particular causes that I want to mention: the use of definitions, cross-references to other clauses, and potentially conflicting requirements.

Definitions

I can illustrate the first of these with the example of the Model Commercial Lease. You might expect this to have been drafted in such a way as to avoid any uncertainty, but if so, then you are going to be disappointed.

Model Commercial Lease:

"on the Break Date the whole of the Premises are given back to the Landlord …"

*"**Premises**"*

> *"the premises known as … including:*
> *(a) all buildings from time to time on the Premises …*
> *(c) all Conducting Media and landlord's plant, equipment and fixtures exclusively serving the Premises;*
> *(d) all tenant's fixtures; and*
> *(e) any Permitted Works carried out to or at the Premises."*

*"**Conducting Media**"*

> *"any media for the transmission of [water, gas, air, foul and surface water drainage, electricity, oil, telephone, heating, telecommunications, internet, data communications and similar supplies or utilities]"*

*"**Permitted Works**"*

> *"any works or installations to which the Landlord has consented or for which … the Landlord's consent is not required"*

These definitions include items that the tenant would otherwise be entitled to remove. So, looking only at the break clause and the definitions:

1) Must all tenant's fixtures be left behind? These are expressly included.
2) Must all data cabling (for example) be left behind?
3) Must any works which are not Permitted Works be removed? Are these implicitly excluded by the inclusion of Permitted Works?

Now compare the specific 'end of term' obligations in the Model Commercial Lease, including (most obviously) the express obligation to remove tenant's and trade fixtures, all Permitted Works and all non-permitted works by the end of the term, before then "[giving] back the Premises":

*"**End Date**"*

> *the last day of the Term (however it arises);*

*"**Wireless Data Services**"*

> *the provision of wireless data, voice or video connectivity or wireless services permitting or offering access to the internet or any wireless network, mobile network or telecommunications system that involves a wireless or mobile device*

4.12 Obligations at the End Date

4.12.1 By the End Date the Tenant must have removed:

4.12.1.1 all tenant's and trade fixtures and loose contents from the Premises;

4.12.1.2 all Electronic Communications Apparatus and apparatus relating to Wireless Data Services installed by the Tenant or any undertenant at the Premises;

4.12.1.3 all signage installed by the Tenant or any undertenant at the Premises;

4.12.1.4 unless and to the extent that the Landlord and the Tenant otherwise agree, all Permitted Works; and

4.12.1.5 without affecting any other Landlord's rights, any works that have been carried out in breach of any obligation in this Lease.

*4.12.2 The Tenant must make good all damage to the Premises caused when complying with **clause 4.12.1** and restore them to the same configuration, state and condition as they were in before the items removed were originally installed.*

4.12.3 At the End Date the Tenant must:

4.12.3.1 give back the Premises (and the fixtures, plant and equipment in them) in good decorative order and in a state, condition and working order consistent with the Tenant's obligations in this Lease;

4.12.3.2 give back the Premises with vacant possession …; and

4.12.3.3 …

4.12.4 …

In the light of those obligations, the Model Commercial Lease may well be read as using the definition of "Premises" in the break clause only to identify the property in a general sense (i.e. the property as it is on the break date), not as imposing any implied pre-conditions on the exercise of the break clause.

But if you are acting for a tenant, will you be happy to use the Model Commercial Lease, or a similar lease, without modification?

The dangers in the use of definitions can be seen from the Riverside Park case. This case was about whether the tenant had "given vacant possession" of 'the Premises', as the break clause required. The argument centred on various items that had been brought onto the premises by the tenant. The judge held that a large number of partitions were chattels, and they were so extensive that vacant possession had not been given in the direct physical sense. As a result, the judge held that the tenant had failed to exercise the break, though having failed to comply with the requirement to give up vacant possession.

However, the judge then went on to consider *obiter* what the position would have been **if he had decided that these partitions were tenant's fixtures**. He concluded that this would not have made a difference: the tenant would still not have given vacant possession for essentially the same reason.

He identified first that tenant's fixtures were expressly excluded from the definition of 'the Premises'. It seems that, for him, this would have been enough in itself to require him to regard all tenant's fixtures as things which had to be removed in order to give vacant possession (see [36], [69]-[77]). It is not clear whether it was also argued that handing back the Premises with additions would, in itself, have involved a failure to give back 'the Premises' as defined.

Even if he had been wrong about that, he would still have reached the same conclusion, on the ground that the tenant was under a pre-existing obligation to reinstate the premises under a licence to alter, which required the tenant to remove the partitions ([78]-[92]). Thus, he said, "*their presence in the Premises on the date of purported termination of the Lease meant that vacant possession of the Premises was not given*" (see [92]).

Both parts of the judge's analysis are open to question.

Just because items are excluded from the definition of the "Premises" in a lease, and thus from any obligation (or condition) to deliver them up, does not necessarily mean that they are not still, in law, part of the property, or that the tenant is not entitled to leave them as part of the property, or that they are any hindrance to vacant possession of the property. Nor (contrary to the judge's view at [76]) is there any inconsistency between items being part of the property and there being a contractual right or obligation to remove them.

Similarly, it is not easy to accept that vacant possession is not given of a property if alterations which form part of the property have not been removed, even if they involve unauthorised alterations (which is how he regarded them).

An argument similar to the first strand in Riverside Park was noted but left open by Nugee J in Goldman Sachs at [46]-[47]. He also declined to decide the second strand of argument (see [36]-[42]), or to comment on the correctness of Riverside Park.

As a result, Riverside Park currently stands as the only case dealing directly with these arguments; and leaving criticisms aside, it demonstrates two things:

1) The degree of litigation risk in these situations; and
2) The need to look very carefully at the position regarding tenant's fixtures and any items the status of which may be debatable.

Cross-references

Some leases use wording such as "shall yield up … in accordance with clause X" or "shall yield up … with vacant possession as provided in clause Y". Does this import into a break clause the more detailed provisions in clause X or Y covering yielding up (imposing obligations in addition to the delivery of vacant possession), and turn them into conditions as to the valid exercise of the break?

This will depend on the interpretation of the documents in question, but arguments that they did were rejected in Goldman Sachs.

The clause in question stated that "*On the expiration of [a break] notice, the Term shall cease and determine (and the Tenant shall yield up the Premises in accordance with clause 11 and with full vacant possession) …*". Clause 11 imposed obligations as regards reinstatement and the condition of the premises.

On the particular wording in that case, the judge held that the cross-reference did not bring into the break clause the additional obligations in clause 11. On the wording of other leases, a different conclusion might be reached.

One factor which weighed to some extent with the judge in Goldman Sachs was the degree of uncertainty and room for argument that would be introduced if the lease were interpreted in such a way that several obligations concerned with the condition in which the property was to be yielded up were break conditions, although he did not find this of great weight (see [56]-[59]).

Another factor in the tenant's favour in Goldman Sachs – but only as a 'make-weight point' – was the proposition, derived from the *contra proferentem* rule of interpretation, that "if the landlord wishes to impose a precondition on the tenant, he should make it quite clear in the drafting of the clause what it is that the tenant has to do rather than leave it to be argued out at the stage at which it may be too late to do anything about it, with the prize for the landlord being the potential ability to defeat the clause".

Both of those points could be useful in a range of situations, but they will need to be more than 'make-weight' points to make a real difference.

Potentially conflicting obligations

The Model Commercial Lease is an example of this. Another example might be where a clause requiring delivery up of "the Premises" as defined would require the tenant to carry out works of alteration that are not permitted.

Additional uncertainties

Those uncertainties of interpretation may be compounded by other uncertainties. For example:

- Factual uncertainties: e.g. where alterations may have been made by a previous tenant, but the records are missing.
- Uncertainties over the status of particular items: e.g. are they chattels, tenant's fixtures or landlord's fixtures? A typical example is partitions. In Riverside Park, most of the partitions (standard demountable metal stud partitions, covered with painted plasterboard on each side, with fixed aluminium skirtings and with some a/c units and electrical wiring and sockets attached) were merely screwed to the raised floor and to the suspended ceiling grid, and arranged in a "unique" configuration designed for the tenant's purposes, were held to be chattels. By way of contrast, a folding partition, suspended from a steel track fixed to the structure, was held to be a fixture.
- Where a standard of condition is debatable, or is dependent upon the landlord's supervision or 'reasonable satisfaction' or notice (perhaps very late in the day).
- Uncertainties as to the physical extent of the demise.

What advice can you give to tenants?

- Read the lease and all related documents carefully.
- Take the best advice you can afford.
- Plan as far ahead as you can.
- Allow enough leeway to address last minute difficulties.
- Consider trying to force the landlord to commit to a position on difficult issues, or to risk stacking the merits in the tenant's favour.
- Make sure exercising the break is the priority in all respects, leaving any other consequences to a damages claim.

APPENDIX 1

Cases Mentioned

Cumberland Consolidated Holdings Ltd v Ireland [1946] KB 264

Elitestone Ltd v Morris [1997] 1 WLR 687

John Laing Construction Ltd v Amber Pass Ltd [2004] 2 EGLR 128

Legal & General Assurance Society Ltd v Expeditors International (UK) Ltd [2007] 1 P&CR 5 (first instance decision)

Jones v Merton LBC [2008] EWCA Civ 660

Mourant Property Trust Ltd v Fusion Electric (UK) Ltd [2009] EWHC 3659 (Ch)

NYK Logistics (UK) Ltd v Ibrend Estates BV [2011] 2 P&CR 9

Riverside Park Ltd v NHS Property Services Ltd [2016] EWHC 1313 (Ch)

Secretary of State for Communities and Local Government v South Essex College of Further and Higher Education (CLCC, 28.7.2016; HHJ Dight)

Goldman Sachs International v Procession House Trustee Ltd [2018] EWHC 1523 (Ch)

Cantt Pak Ltd v Pak Southern China Property Investment Ltd [2018] EWHC 2564 (Ch)

APPENDIX 2

The Code for Leasing Business Premises in England and Wales 2007

Landlord Code

The only pre-conditions to tenants exercising any break clauses should be that they are up to date with the main rent, give up occupation and leave behind no continuing subleases. Disputes about the state of the premises, or what has been left behind or removed, should be settled later (like with normal lease expiry).

Occupier Guide

A right to break should allow you to walk away from the lease at a given time after informing the Landlord in writing. This should be conditional only upon having paid the rent due under the lease and giving up occupation of the property, leaving behind no continuing subleases. You may have other liabilities to fulfil, but these should not be used to invalidate the right to break.

> **Tip 18** Be careful that it is only the principal rent and not any other sums (such as service charges) that must be paid in cleared funds before the break date.

When your lease ends, whether by expiry or by exercise of a break option, you will be liable to the Landlord for any sums due and for any repairs you should have carried out during the lease (dilapidations).

> **Tip 19** When granting any subleases or in sharing possession with any suppliers or business partners, always make sure your agreement with them expires on a date before your right to break, AND that you have not given them any rights to stay in the property beyond the term of your agreement with them.

Be sure that you understand what notices you would be required to serve on the Landlord to end the lease, and how and when these should be served.

Model Commercial Lease (launched 10 July 2014)

8. BREAK CLAUSE

8.1 The Tenant may end the Term on [any][the] Break Date by giving the Landlord formal notice of not less than [LENGTH] months' [specifying the Break Date] following which the Term will end on that Break Date[.][if:]

8.1.1 [on the Break Date the Main Rent due on or before that Break Date and any VAT payable upon it has been paid in full; [and]

8.1.2 on the Break Date the whole of the Premises are given back to the Landlord free of the Tenant's occupation and the occupation of any other lawful occupier and without any continuing underleases[.][; and]

8.1.3 [the Tenant has, on or before the Break Date, paid to the Landlord an amount equal to [insert figure/proportion of the Main Rent] (plus any VAT payable on that amount).]]

8.2 The Landlord may waive any of the pre-conditions in [clauses 8.1.1 to 8.1.3] at any time before the [relevant] Break Date by notifying the Tenant.

8.3 [If the Tenant gives notice to the Landlord under clause 8.1, the Tenant must on or before the Break Date make the payment to the Landlord as detailed in clause 8.1.3.]

…

Professional Statement: Code for Leasing Business Premises in England and Wales (2019) – CONSULTATION DRAFT

3.2 Any break rights … for either party should be clearly specified, including the dates (or range of dates) when a party can end the lease, the length of prior notice to be given and any pre-conditions for the break being effective.

3.3 Unless the landlord has special reasons for imposing stricter conditions, a tenant's break should be conditional only on there being no rent arrears, the tenant paying the basic rent up to the end date, giving up occupation and leaving no subtenants or other occupiers. Disputes about the state of the premises, or what has been left behind or removed, should be settled later, as at normal lease expiry.

3.4 Leases should require landlords to repay any rent, service charge or insurance paid by the tenant for any period after a break takes effect. Repayment of service charges may be deferred until the service charge accounts are finalised.

Appendix B – Supplemental Guide

"A tenant's right to break should allow the tenant to walk away from the lease at a given time after informing the landlord in writing. This should be conditional only on the tenant having paid the main rent due under the lease and giving up occupation of the property, leaving behind no continuing subleases or occupation by others. The tenant may have other liabilities under the lease to fulfil, such as paying service charges or handing the property back in good condition, but failure to comply with these should not be used by landlords to invalidate the right to break."