

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 discuss rates with your local Valuation Office. 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 query your valuation.

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 specialise 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.

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 expect to receive if the premises were leased to a third party, on similar terms.
- 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.

Some leases have fixed increases or link the new rent to increases in the Retail Price Index or some other inflationary indices.

1.3 If the rent review is '**upward only**', the rent cannot go down at the rent review even if the open market value of the rent is lower than your existing rent.

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

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value. The 'use of the premises' assumption can increase or decrease the rental value.

- If a building can be used either as high-value office space or low-value storage space, the rent will be valued on the assumption that the tenant will use it 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 want to increase the rent. Strengthen your position by gathering evidence to show that the proposed rent is too high.

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

- Ask fellow tenants what they are paying.
- Commercial estate agents can provide details of properties to let.
- 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).

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 will have to pay the difference between the passing and revised rents.

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

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, the lease usually specifies that a third party should resolve the dispute and sets out the procedure to be followed.

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

- You can veto the landlord's suggestion, if you think this person favours 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 An **arbitrator's** decision will be based 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 An **independent expert's** decision will be based on his or her own knowledge and investigations.

- The independent expert need not consult you or the landlord.
- Usually you split the fees equally with the landlord and pay your own costs, even if you win the appeal.

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

- The fees are usually agreed by you and the landlord with the third party when he or she is appointed.
- You can expect to pay at least £1,000, plus the cost of your own professional advisers.
- The third party's decision is usually announced once the fees have been paid.

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

➔ Ask the RICS (see 6) about the RICS Small Business Scheme, in which an independent expert is appointed to determine a commercial rent (0870 333 1600).

➔ 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.bpf.org.uk/whowere/commercialleases.

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 All **non-domestic** property is 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 (VOA) in England and Wales and the Assessor in Scotland provides summary valuations showing how your rateable value has been calculated (www.voa.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 at the rent they would have commanded in April 2003.
- The next revaluation comes 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**). Information on the revaluation can be found at www.voa.gov.uk/2010.
- 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 changes each year in line with inflation.

- For the year starting 1 April 2009, the standard multiplier in England is 48.5p (including the Small Business Rate Relief premium of 0.7p (see **4.4**). So for a building with a rateable value of £50,000, the annual rates would normally be £24,250, but this could be subject to transitional arrangements (see **4.6**).
- A lower small business multiplier, 48.1p, is used for businesses eligible for Small Business Rate Relief (SBRR) (see **4.4**).
- 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 **SBRR**.

- Buildings with a rateable value up to £5,000 are eligible for 50 per cent relief.
- For rateable values between £5,000 and £9,999, the percentage reduction decreases on a sliding scale by 1 per cent 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.
- SBRR is not automatic – you have to apply once every five-year valuation period to your local authority. This means that if you applied for relief in 2008/09, you will not have to re-apply until 2010.

You must inform your local authority if your circumstances change in any way that is likely to affect your entitlement to SBRR, for example, moving to new premises.

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

- If the property (or part of the property) is empty, you may qualify for rates relief.
- Since 1 April 2008, empty commercial premises have been exempted from business rates for the first three months. Industrial and warehouse buildings qualify for a further three months' exemption. After that, full business rates are payable.

► 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.mybusinessrates.gov.uk/wales, in Scotland visit www.scotland.gov.uk, and in Northern Ireland visit www.lpsni.gov.uk/index.htm.

- For the financial year 2009/10 empty properties with a rateable value of less than £15,000 are exempt from the business rates. In 2010/11 the threshold will increase to £18,000.
- Listed properties and those with a rateable value of under £2,200 are exempt from empty property rate. Assessments of land are also exempted.
- 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 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.

5 Challenging your rates

5.1 If you disagree with the rateable value set for your premises, you can contact your **local VOA office** to discuss the valuation and why you think it is incorrect.

5.2 If you still do not agree with the rateable value, you can make a **formal proposal**. There are two main grounds of appeal:

- The rateable value of the premises is significantly different to 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 or the loss of nearby parking facilities.
- You may not make more than one proposal on the same grounds during the life of a rating list (the current list runs from 1 April 2005 to 31 March 2010).

5.3 The **VOA** will consider your proposal and discuss it with you.

- You can complete the proposal form yourself, or make a proposal on the VOA website (www.voa.gov.uk). This is free of charge.
- A property adviser, such as a chartered surveyor, can advise you and make a proposal on your behalf.
- Avoid 'cowboy' advisers who may provide you with poor advice for a large fee. Try and use an adviser based on a personal recommendation.

- The person at the VOA dealing with your proposal will advise you when he or she is ready to discuss it.
- If you cannot agree a revised assessment, you can appeal to a valuation tribunal.

5.4 If your rates challenge is successful, you receive a **rate 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.

- The RICS Helpline provides information for non-members (0870 333 1600). It provides up to 30 minutes free advice on rating issues from a local chartered surveyor.

6.2 The **Institute of Revenues Rating and Valuation** (IRRV) (020 7831 3505; www.irrv.org.uk) offers a free helpline.

6.3 Staff at the **VOA** are available to discuss your property's rateable value. Call the VOA helpline to get connected to your local office (0845 602 1507).

6.4 The Law Society's '**Lawyers For Your Business**' initiative can arrange a free half-hour consultation for you with a participating firm of solicitors (www.lawsociety.org.uk/choosingandusing/helpyourbusiness/foryourbusiness.law).

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