

Tips for retail occupiers agreeing turnover rents



An article by Retail Gazette at the beginning of 2021 questioned whether [‘turnover rent has become the new future for retail’](#) and suggested the traditional lease model is giving way to more flexible landlord and tenant arrangements.

Turnover rent is rent payable by the tenant calculated by reference to their income generated at the premises over a certain period. It is often an agreed percentage of the tenant’s turnover and sometimes there will also be a fixed rent alongside the turnover rent.

Turnover rent during and since the pandemic

Many retail occupiers see turnover rent provisions as a more sustainable way to manage market disruptions. There has been a huge trend towards tenants taking them up at the moment.

Some of this change has been driven by the large number of CVAs that have been entered into by high street retailers in recent years.

Savills carried out [a report on turnover rents in July 2020](#). The results found that at least 82% of UK retailers were looking re-evaluate their lease arrangements and seek to incorporate some level of turnover rent.

Landlords are also more willing to consider alternatives to the standard market rent structure and may feel that the only alternative is an empty premises.



Things to consider during turnover rent negotiations

1. Some landlords may want to make the turnover rent provisions personal to a particular tenant so that a new tenant won't benefit from them on an assignment. Turnover arrangements are often designed to work for a particular tenant.
2. What should be included within the definition of "turnover". This will vary significantly from retailer to retailer and will depend a lot on the types of income. Online sales and deliveries and collections from the premises are frequently negotiated issues. There is also the issue of the time and the place of the payment.
3. Landlords will want to ensure turnover is maximised by including 'keep open' requirements in the lease. Tenants will want this to be limited by excluding situations where they can't be open for business, for example, when required to be closed by law or when carrying out permitted alterations.
4. In a case where the physical premises are closed consideration should be given to a reduction in turnover rent to only account for online sales or deliveries.
5. The parties also need to agree how the rent is calculated in times when the premises are closed, if it is payable throughout the period of closure and how a balancing exercise might work when the premises re-opens.
6. The level of reporting on turnover required by the tenant. For example, do accounts need to be independently audited?
7. The frequency of reporting also needs to be considered – (monthly, quarterly, yearly).
8. Requirement for a tenant to keep certain records on turnover and the ability for the landlord to inspect them. Can they be inspected on demand, or only at particular points in time?
9. Provisions for dealing with discrepancies in the tenant's reporting and the landlord's auditing and how disputes will be handled. Property technology and data systems are being applied by tech-savvy landlords to improve reporting and transparency.
10. How a specific retailer's policies on vouchers and discounts, for example, will feed into the turnover calculation.

The more detail agreed at Heads of Terms (HOTs) stage, the easier it will be when it comes to drafting the complex lease provisions.

There is a massive trend towards turnover rent provisions at the moment, but it is unclear whether this will continue after the pandemic. The Savills report revealed that 74 per cent of landlords saw current rent negotiations as being short-term commercial solutions rather than a permanent arrangement.

Owners and occupiers must be mindful of the fact that turnover rents are not an easy option. They are tricky to get right and a lot of thought needs to be given by the parties as to how they will be structured and measured. They do however mark a shift in the landlord-tenant relationship and the need to more than ever to focus on and forge successful commercial partnerships.

How we can help

If you need help or advice on any of the aspects written about in this article, please [get in touch](#) with our expert team today.