



# Break Clauses – Exercise Caution!

Break clauses are contractual provisions that are now more often being included in leases and which provide a landlord or a tenant (or both) with an option to end a lease early, usually provided that certain conditions are met.

Break clauses must be drafted with precision to ensure each party's intention is reflected and achievable. A failure to do so leads to unintended consequences as evidenced by the recent Court of Appeal judgment in:

## ***Capitol Park Leeds plc v Global Radio Services Ltd [2021] EWCA Civ 995***

The facts of the case were:

- Global (Tenant) served notice on Capitol (Landlord) to terminate the lease.
- The Tenant removed certain fixtures in the premises as part of their remedial works and left the premises in a shell-like state.
- The case hinged on the interpretation of whether the Tenant had given “vacant possession”, which was a condition of breaking the lease (break clause paraphrased below):

*The Tenant may terminate this Lease on either 12th November 2009 or 2017 if “the Tenant gives vacant possession of the Premises to the Landlord on the relevant Tenant’s Break Date”*

The Court of Appeal held that although the Tenant was in breach of its repairing covenant by removing the Landlord’s fixtures, the wording of the break clause did not make the physical state of the premises a condition of the break; the requirement on the Tenant to provide “vacant possession” was limited to the Court’s interpretation of that term, requiring the property to be “*free of people, chattels, and interests*”.

The decision is unusual as the vast majority of case law interpreting vacant possession has, in recent years, been largely landlord-friendly. Furthermore, it is surprising that the court decided that “vacant possession” did not require the Tenant to hand back the premises with the Landlord’s fixtures.

However, the decision is a stark reminder that poor drafting or generalised break clauses can lead to unintended

consequences, often with dire financial repercussions for one of the parties.

## A practical approach to break clauses

- Check the heads of terms and be clear on the conditions of the break clause.
- Be precise with the wording of the break clause ensuring there is no room for ambiguity.
- Try and imagine exercising the break and confirm with your solicitor if the break would be successful.
- Ensure notice provisions are clear and check the rent liability at the time of the break.

## Help is here

Lester Aldridge has a long history of providing commercial property advice across its Southampton, Bournemouth and London offices, with expertise in [landlord and tenant](#) work. Our teams have a wealth of experience and are always on hand to deal with your enquiries. Please contact us on [online.enquiries@la-law.com](mailto:online.enquiries@la-law.com) or call 0344 967 0793.