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# Negotiating lease heads of terms in primary care settings



**Jennifer Lewis** of Mills & Reeve reveals the importance of a carefully-crafted lease agreement for primary care facilities

For those renting in the primary care setting, having a robust lease is important.

But having a sector-specific lease could be crucial for two reasons.

Firstly, it ensures there is certainty over the terms agreed. And, secondly, it ensures the terms take account of the unique circumstances and rules for primary care contractors, whether under their core contracts, the *Premises Costs Directions*, or otherwise.

## WHAT DO WE MEAN BY LEASE HEADS OF TERMS?

Lease heads of terms are a standard way to capture agreement on key commercial terms before getting into the detail of a full draft lease.

While heads of terms are not binding, and steps should be taken to ensure that they are flagged as being non-binding; it can be difficult to make a case to change key commercial terms once agreed.

In addition, some terms included in heads of terms can seem innocuous, but they can have a big impact if not considered carefully.

In this article, we identify five key areas to consider when negotiating lease heads of terms for primary care premises.

### 1. DEFINING YOUR PROPERTY

A lease can be for the whole, or part, of the property and may include the structure or be internal only, so you need to be clear what is, and is not, included to know:

- What your costs will be
- What areas you can access and use
- What you should expect the landlord to be responsible for

### 2. BE CLEAR ON THE TERMS

Exclusion of security of tenure under the *Landlord and Tenant Act 1954* means you do not automatically have the right to a new lease at the end of the term.

This might be acceptable in some circumstances, but you shouldn't agree this without taking advice.

### 3. THE LEVEL OF FLEXIBILITY

Alienation clauses determine how flexible the lease is in terms of transfer, underletting, and sharing.

In particular, most GP practices will share with other service providers, and it is key to ensure this is permitted.

### 4. REPAIRS, MAINTENANCE, AND SERVICE CHARGES

Ensure it is clear who is responsible for what when it comes to repairs and maintenance, what (if any) services will be provided by or on behalf of the landlord, and the extent to which those costs are recoverable from you as a tenant.

This point is particularly important when we consider that the costs of repairs/services are not reimbursed under the *Premises Cost Directions*.

As part of this you should consider what the current state of the property is.

And, before agreeing heads of terms,



you should inspect the property and it may be appropriate to carry out surveys or request more-detailed information from the landlord.

You must not assume that because the property is in poor repair that you only have to maintain it to the same standard and/or that the landlord is under an obligation to address items of disrepair.

That is all down to the terms you agree.

Only by knowing the current state of the property can you negotiate terms, particularly around repairs and maintenance, that are fair and financially viable.

### 5. SECURING NHS INTEGRATED CARE BOARD APPROVAL

Integrated Care Board (ICB) consent is required for new leases, including renewals or new leases of existing premises.

Failure to obtain this could impact your reimbursement and leave you in a situation where the level of rent payable under the lease does not align to your level of rent reimbursement.

While this isn't an exhaustive list, hopefully it gives an idea of the core elements that need to be discussed when agreeing a lease.

It is important that you seek advice at an early stage to avoid revisiting these key commercial terms later in the transaction. ■