

Heads of Terms

The Heads of Terms presented to you for approval should record the essential points to be included within the lease of your premises (i.e. the “skeleton”) – whilst the lease itself will be developed from this to “add the flesh to the bones”.

To ensure the lease terms will provide the appropriate level of protection for you in your specific premises, it is important you should not simply sign the Heads of Terms in the form initially presented to you; instead you are advised to approach a specialist primary care surveyor who can negotiate them on your behalf. Your solicitor should also see and approve the Heads of Terms before they are finally signed off, not least to ensure they accurately reflect any Title issues.

Specific issues to be agreed include:

- your liability to undertake works of maintenance to the premises (this is likely to necessitate the agreement of a Schedule of Condition to establish the “starting point”);
- the level of services to be provided – and the service charge costs associated with this; and
- your ability to retire as an individual tenant or to bring the entire lease to an end before the end of the Term.

Approvals

Once the Heads of Terms have been agreed and signed off in principle, we recommend they should be presented to the District Valuer and the Commissioners for approval. They will need to validate not only the level of rent, but also the lease terms when reviewed as a package.

Whilst this step could be left until the end of the lease negotiation, we are aware of examples where the “agreed” form of lease has subsequently been rejected by the DV, forcing the parties to go back to the drawing board, having wasted both time and costs in the meantime.

The Lease

It is traditional for the Landlord’s solicitor to produce the first draft of the lease based upon the agreed Heads of Terms. It is essential that a full set of coloured plans, approved by your surveyor, is made available to accompany the lease which reflect:

- the space you will occupy;
- any space you will share with other designated parties;
- any areas of common use; and
- any other areas to be retained by the Landlord but over which you require a right e.g. a right of way.

Driven by a reputation for being the firm of choice for GPs, this group is recognised for its breadth of expertise and its great commitment to providing its clients with sound advice in plain English.

Chambers UK

Initial steps: preparing a Report on the Lease

Upon receipt of a complete package of documents (the draft lease based upon the agreed and approved Heads of Terms together with a complete set of lease plans) your solicitor can review the draft lease and report on its contents to you.

In addition, it may be necessary to amend the draft lease in order to:

- pick up any points which may have been missed, particularly those which are uniquely important to your practice; and
- create a greater balance within the drafting between the landlord and the tenant.

Initial steps: preparing a Report on the Title

Additionally it may be prudent for your solicitor to investigate and report to you on the Title to the land on which the premises are constructed, as any rights, covenants and liabilities affecting the land are likely to bind you as the tenant.

Final steps: leading to Completion

Following the agreement of the form of lease, the following key steps must be taken to finalise the transaction:

- final approval must be sought from the DV and the Commissioners to enable the lease to be completed (although this should be quicker if the Heads of Terms have previously been approved);
- a Stamp Duty Land Tax Return must be filed with HMRC; and
- a Land Registration application must be made if the lease is for a term of seven years or longer.

How Hempsons can help you

Hempsons is recognised as the leading firm of solicitors for General Practitioners.

We have a long track record of working with GPs, which has enabled us to develop a thorough understanding of the issues – and concerns – which will be most important to you and your business. We are also already familiar with the BMA approved template lease, which means that (assuming we are presented with all relevant material) we are able to turn round the production of a Report in a short period of time and within a contained budget.

But in addition to the “basics”, we are able to get to the heart of the issues which impact upon your business - and propose solutions, and reassurances, to enable you to survive the challenges you face ahead.

For more information on taking an NHS PS lease, please contact **Bryn Morgan** on **020 7839 0278** or email him at **b.morgan@hempsons.co.uk**