

# Leases and side letters – time for a rethink?

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Landlords can be reluctant to depart from their normal lease terms. Even a small deviation like agreeing to a monthly rent instead of a quarterly one may generate concern and frequently the instruction is to put the concession in a side letter rather than the Lease. The thought process is often automatic – it's a concession therefore put it in a side letter. Often, the next thought is to make the concession conditional on lease compliance, so that if there is a breach the concession can be withdrawn.

This can be the pattern for documenting all sorts of arrangements demanded by Tenants for their bespoke requirements. Landlords' solicitors tend to populate the middle of a standard concession letter with the special arrangement and make it conditional on compliance. The Landlord closes the deal in the belief that the concession can be terminated if there is any non-compliance, for example, if the rent is not paid on time.

## Time for a rethink

Following the recent case of [Vivienne Westwood Ltd -v- Conduit Street Development Ltd](#) the withdrawal of a concession for non-compliance with the lease may not be effective as it may breach the legal rule against penalties. In that case a side letter concession capped the annual rent at £125,000 and was expressed to be conditional

upon compliance with the terms of the lease. A successor landlord purported to withdraw the concession because the Tenant paid its rent late. This new landlord demanded the market rent of £232,500 per annum, backdated to the start of the lease. The Tenant successfully claimed that the withdrawal of the rent concession was a penalty and not lawful.

This new case does not mean that the withdrawal of each and every concession is likely to be shot down. It does mean that more thought should be given by Landlords to the appropriateness of a side letter. Where a side letter is appropriate, greater care should be taken in drafting, to reduce the risk of future withdrawal being attacked for being a penalty. Tenants' solicitors can cite the case in seeking reasonable amendments to the terms of the side letter.

For further advice please contact John Gillette.

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Note: This is not legal advice; it is intended to provide information of general interest about current legal issues.