

Retail Quarter

January 2016



Turnover Rents and Lease Renewals

Tenants' desire for rent based proportionately on its turnover has become increasingly popular for retailers, especially during an uncertain economic climate, as it provides flexibility and ensures that rent aligns with performance.

Unfortunately, there is no clarity as to whether the Courts have jurisdiction to grant turnover rents on renewal. Courts can determine rent for the renewal lease, disregarding current rent provisions and a tenant's occupation and goodwill. Arguably, as the current lease terms are irrelevant and the Court's approach is valuation based, if nearby properties routinely have turnover rents, this will be the relevant open market rent.

The most useful supportive evidence will be expert valuations showing that it is commonplace for retail leases in the immediate vicinity to reserve turnover rents. The quality of evidence is vital to persuading the Court, or indeed the landlord, to grant a turnover rent.

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EU Decision on Workplace email and Messenger Monitoring

A recent judgment of the European Court of Human Rights has led to a number of alarmist front page newspaper headlines in the UK, suggesting that employers can now read the private messages of their workers. But is it all much ado about nothing? A Romanian employee was dismissed for his private usage of a Yahoo messenger account, in clear breach of company policy. The employee, in turn, accused the company of unlawfully accessing his personal communications.

The Court held that it is in effect a right and freedom of an employer to take reasonable steps to verify that an employee is indeed doing the work he is there for, and that this legitimises its accessing and monitoring employee use of communication systems which it requires or provides. Nothing in this decision allows an employer to seize an employee's personal smart phone and go through its contents on a whim, as the headlines imply. The judgment does, however, contain some useful guidance for UK employers on the subject of monitoring and surveillance of workplace emails and internet use. For more commentary, please click [here](#) for our blog.

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Pensions for Retailers in 2016: Hot Topics in a Nutshell

Occupational pension plan sponsors and trustees may see increased interest from employees/members about the new defined contribution pension flexibilities, including the option to take all benefits in cash form after age 55. Decisions will be required about which options should be offered through your pension plan.

For retailers who have defined benefit pension plans, liability management exercises (such as offering cash as an alternative to small pensions) remain popular. A well-designed exercise can be an effective way of reducing funding deficits.

The thousands of small retailers who reach their auto-enrolment staging date in 2016 are urged to act quickly to ensure that they meet their duty to provide a workplace pension for their workers. Assessing the action required and identifying a suitable provider takes time, and failure to comply with the duties can result in a hefty fine. Meanwhile, the largest retailers will need to prepare for the three-yearly automatic re-enrolment process.

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New Data Protection Regulation

In December, the text of a new Data Protection Regulation, which will replace the Data Protection Act 1998, was agreed, that will have a major impact on retailers. It strengthens protections for and rights of individuals, with tough extended rules about informing individuals about processing and obtaining consent, as well as imposing some new obligations and beefing up others. It gives regulators the power to fine up to €20 million, or 4% of global turnover. The many changes include mandatory notification of data breaches, and the requirement to design processes and systems to meet privacy requirements. It will come into force in early 2018, but businesses need to start preparing now.

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Revised dates for our upcoming retail debates

20 April 2016 – Leeds

10 May 2016 – London

17 May 2016 – Birmingham

Further details to follow

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