

Break Clauses

Second Edition

Mark Warwick QC

Barrister, Selborne Chambers, London

Nicholas Trompeter

Barrister, Selborne Chambers, London

Published by Jordan Publishing, owned by LexisNexis

Jordan Publishing
Regus
Terrace Floor
Castlemead
Lower Castle Street
Bristol BS1 3AG

© Jordan Publishing 2016

Whilst the publishers and the author have taken every care in preparing the material included in this work, any statements made as to the legal or other implications of any transaction, any particular method of litigation or any kind of compensation claim are made in good faith purely for general guidance and cannot be regarded as a substitute for professional advice. Consequently, no liability can be accepted for loss or expense incurred as a result of relying in particular circumstances on statements made in this work.

All rights reserved. No part of this publication may be reproduced, stored in a retrieval system, or transmitted in any way or by any means, including photocopying or recording, without the written permission of the copyright holder, application for which should be addressed to the publisher.

Crown Copyright material is reproduced with kind permission of the Controller of Her Majesty's Stationery Office.

British Library Cataloguing-in-Publication Data

A catalogue record for this book is available from the British Library.

ISBN 978 1 78473 034 5

Typeset by Letterpart Limited, Caterham on the Hill, Surrey CR3 5XL

Printed in Great Britain by CPI Group (UK) Ltd, Croydon, CR0 4YY

AUTHORS' PREFACE TO THE SECOND EDITION

It is a commonplace with a textbook that the progeny is larger than the forebear. This book is an extreme example of that tendency. Although there have been a large number of cases concerned with aspects of break clauses in the last few years, the blame for the growth lies on the shoulders of the authors, not the judges. Further thoughts, plus readers' suggestions, have added topics, and even some new chapters. Really, the book has undergone a substantial re-write.

Case-law since the first edition has tended to emphasise the importance of strict compliance with the conditions in a break clause, and the content of the break notice. The many cases dealing with the former are discussed in Chapters 9 and 10. Prominent amongst the cases emphasising the importance of the careful drafting of a break notice is the Court of Appeal decision in *Siemens Hearing Instruments Ltd v Friends Life Ltd* [2014] 2 P&CR 5.

One topic which now justifies its own chapter is the recovery of 'overpaid' rent and other sums. The recent decision of the Supreme Court (*Marks and Spencer plc v BNP Paribas Services Trust Company (Jersey) Ltd* [2015] 3 WLR 1843), considering the implication of a term as to the repayment of rent, is discussed in some detail in Chapter 11.

We are exceedingly grateful to Lord Neuberger for providing a foreword. He features in many of the cases, both as a judge and an advocate.

Finally, the law is stated as at 25 February 2016.

MARK WARWICK, QC
NICHOLAS TROMPETER
Selborne Chambers
10 Essex Street
London
WC2R 3AA