

# Break clauses: the grey areas

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# Strict compliance

Why a party who fails to comply with a break condition is stuck with its lease

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## Breaks are options

- Party with benefit of break has option to terminate.
- Stipulations are of the essence of option agreements: *United Scientific Holdings v Burnley* [1978] A.C. 904.

### Rely on:

- *Dun & Bradstreet Software Services (England) Provident Mutual* [1998] 2 EGLR 175, CA. 6 months penalty rent a “condition” of T’s break.

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## Fairness irrelevant

Strict compliance, even where seems unfair.

Rely on:

- *Legal & General Assurance Society v Expeditors International (UK)* [2006] EWHC 1008. “No room for general considerations of fairness or conduct”.
- *Avocet Industrial Estates v Merol* [2012] 1 EGLR 65.

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## Triviality irrelevant

*Siemens Hearing Instruments v Friends Life* [2014]

EWCA Civ 382:

- Break clause: notice "must be expressed" to be given under s.24(2) LTA 1954.
- With unilateral or "if" contracts, such as options, terms of exercise must be fully complied with.
- Never a question whether failure is trivial.

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# Non-strict compliance

When a party who fails to comply with a condition may effectively break its lease

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## Qualified conditions

- “Substantially complied”  
“reasonably complied” etc.
- *Fitzroy House Epworth Street v Financial Times* [2006] EWCA Civ 329.

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# Vacant Possession

Frequently, only condition is for T to give v.p.

Although compliance strict, it is question of fact - and courts can be flexible.

*Riverside Park v NHS Property Services* [2016] EWHC 1313 (Ch)  
and *Ibrend Estates v NYK* [2011] EWCA Civ 683:

- VP = free of people, empty of chattels and free of legal interests.
- If chattels left, test is (i) substantial interference with enjoyment of (ii) substantial part of premises.

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## Extended time for compliance

- e.g. Covenant to disrepair on notice.
- *West Middx Golf Club v Ealing LBC* [1993] EGCS 136: vandalism near end of term.

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## Waiver

- Recipient can always waive defect in notice
- *MW Trustees v Telular Corp*  
[2011] EWHC 104.

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## Ambiguity

- *Mannai Investment v Eagle Star*  
[1997] AC 749.
- Reasonable recipient test for ambiguity.

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When a condition is not a condition

- *Goldman Sachs International v  
Procession House Trustee* [2018]  
EWHC 1523 (Ch).

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