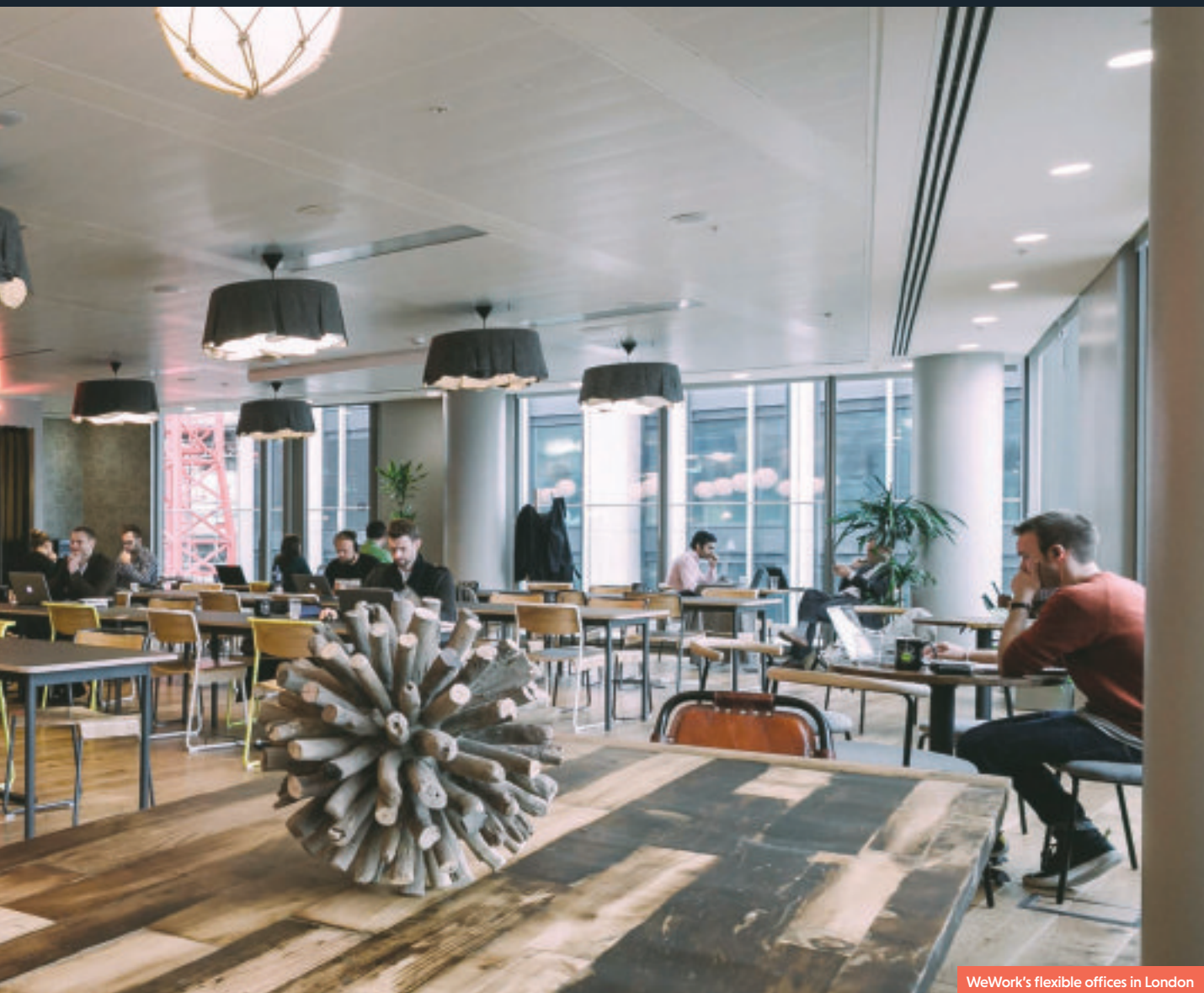




NAVIGATING CO-WORKING

Flexible offices are definitely the future for businesses looking to avoid a long-term commitment. But ensuring that you fully understand your rights is essential. Simon Keen, counsel in the real estate division at Hogan Lovells, provides a handy how-to guide on getting the most out of your workspace



WeWork's flexible offices in London

With a boom in the amount of co-working space available across the world, making sure that you get the best deal on the space you occupy and understand all the intricacies of leasing flexibly is paramount.

What to ask when starting out

Many businesses, large and small, are using serviced offices or co-working space to satisfy both their short- and medium-term occupation requirements.

The ability to move in and out quickly is a key attraction, as is flexibility in the terms offered and the desire to avoid a long-term commitment.

Even if the headline terms

look just the ticket, there are certain details that prospective occupiers should think about before signing up for the space.

We look at some of the questions that you should ask at the early stages of the process to help you understand how the space operates and to check that it will work for you.

What space will I get?

Will you get the same desks and/or offices every day or is everything available to everyone on a first come first served basis?

If it is the latter, are there enough desks to accommodate everyone who is entitled to use them?

Will an open-plan

"hot-desking" arrangement work for you? For instance, will it meet any specific technology security or confidentiality requirements you might have, and will you need some kind of secure storage overnight or for when you are not at your desk?

Does your provider even offer the solution you need? You might not be given an office with a door you can lock, for a variety of reasons.

For how long can I have the space, and what if I want to leave early? Will the space be available when, and for as long as, you need it?

If you want to leave early, most providers will agree to some kind of early exit, but at a price. There may well be a minimum period before you

can terminate or for which you have to pay regardless. Make sure you understand your provider's terms if you want this flexibility.

Can I stay for longer or take more space if I expand?

Most providers will also offer a right to renew, but there is normally a deadline for exercising it.

If you are late exercising your right, it will have fallen away and the provider could offer the space to someone else and refuse to renew with you.

Expansion rights can often be agreed but may be subject to availability at the time, which might not be worth very much in popular space. You may need to move quickly at the time to secure it.

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Flexible working offices are ideal for creative workspaces

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Open-plan offices are the norm

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Providers do not normally offer rights of first refusal, but there may be circumstances in which they can be negotiated.

What will I pay for the space?

There is more to this than just the basic fee for the space itself. You need to know the whole cost, not just the provider's headline figure.

Will you have to pay a deposit upfront? If so, how much, and how do you get it back? Deposits are generally paid when you sign the contract, not when you move in, so signing up early may mean tying up your deposit for longer than you might have expected or wanted.

If you agree an option to renew or to expand, make sure you also agree how much you will be charged for the extra time or extra space if you exercise the right, or at least how the fee will be calculated at the time.

Are there any extra costs? The basic fee should

include things like a receptionist and cleaning but won't always include all the printing, scanning, photocopying, telephones, internet data services and IT support you might use – although it might include a pre-payment for a capped amount each month.

Check what is included and what will cost you extra. You can normally change the amount for which you are pre-paying, which will change your basic fee, but you are unlikely to get a refund if you don't use everything for which you have pre-paid and not every provider carries unused allowances over from month to month.

Refreshments may be extra. Find out how all this is usually invoiced and how you can avoid receiving unexpectedly high bills.

There are several different solutions, each with their own benefits and disadvantages.

Finally, check that you won't be paying for things such as business rates, a building service charge or buildings insurance on top of the basic fee.

Can I bring my own IT equipment/telecoms cables etc into the space?

You might, for instance, need private, secure connections, especially if you are a major corporate. Will you need consent from anyone else before installing your cables and who obtains and pays for that consent?

Make sure you can arrange everything before you commit to taking the space, so you are not paying when you can't use it.

Can I see the contract?

Once you've had the necessary initial discussions with your chosen provider and agreed the main terms for the space you want, you need to have a look at the

contract and make sure it correctly reflects what you've agreed.

What to look for in a contract

Once you have decided to take co-working or flexible office space you need to consider how that translates into the contract and what you should look out for in it.

It's worth mentioning that most contracts like this are signed with no (or at most very little) input from lawyers, and that's not necessarily a bad thing.

All providers have their own forms, which they roll out as a matter of course. In some cases you simply book the space online and accept the standard terms and conditions by ticking a box as part of the booking process.

This is a quick and easy process, which is one of the key advantages of using space like this.

It also makes it hard to negotiate specific terms, so



Does the office have all the secure digital connections you need?

space, for the same reason, but will that work for you if you have security or confidentiality requirements?

Some providers do not even commit to giving you any space at all. If that is what your contract says, you will be relying on their word, and therefore their concern to protect their market reputation, to let you use the space – and there is risk in doing this.

Term and termination

Check for any pre-conditions to your rights to break, renew or expand, which might make them difficult to exercise in practice. Also check the drafting around your termination is right, as you may need to serve notice by a specified date for it to be effective, and/or pay for a minimum period.

If you have a flexible break right, you may only be able to break at the end of a month, and so have to pay for the whole month even if you only want the first few days of it. Can you improve on that?

Conversely, watch out for the provider's right to terminate. Termination for failing to pay on time, for other breaches and for your insolvency, is fair enough but some providers seek the flexibility to terminate at any time without cause, which allows them to clear the space for a more profitable booking.

Do you have all the rights you need?

The contract should grant rights to use shared facilities such as toilets, but if you need to bring in your own cabling for secure IT connections, for instance, does it give you sufficient rights for that?

Check how access works. Do you need to identify your staff by name or obtain building passes for them from someone?

Finally, read the small print

There could be some hidden traps buried in it. Clauses on things such as anti-money laundering, bribery and corruption, and the use of brokers, are often found there. Can you sign up to them?



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you should look carefully at the contract to ensure it meets your expectations and requirements.

What sort of contract are you getting?

You will probably be offered a licence, rather than a lease. There are several reasons for this, but the main one is that a licence offers greater flexibility and is especially appropriate for an open-plan, "hot desking", co-working environment where you will simply have a right to be in the space and use available workstations on a first come first served basis.

Having a genuine licence also makes things such as renewals and expansion easier, as statutory security of tenure does not apply,

so avoiding the convoluted contracting out process.

In some cases, your provider may not actually be able to grant you a lease anyway. There are other options beyond a licence, which can be suitable in different situations, but most contracts are licences.

Main terms

Most contracts start with a section summarising the main things such as the space you are getting, how long you are getting it for and what you will pay. Any specific terms you have negotiated, such as an option to extend or to take extra space, or a break right, will also be described here.

It may sound obvious, but check terms carefully to make sure they reflect

what you think you have agreed, and also that there is nothing in the contract itself that contradicts them. The summary at the front may be nothing more than that, so any inconsistencies in the main text could prevail.

Is the space really yours?

Even if you are taking dedicated offices, rather than just a number of workstations, you may well find that the provider has a right to move you around. This gives the provider flexibility to accommodate future customers, but denying you exclusive possession also helps to prevent the licence inadvertently becoming a lease.

Providers also often retain rights to control and use the