

H&M - fighting the two tier retail market and daring to push for better clarity on turnover rents

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H&M is the latest retailer to confront its landlords about this 'two tier retail market' in an attempt to explore and negotiate more favourable terms. H&M's stance is particularly interesting in that they are not only pushing for turnover rents - which we are seeing far more often of as a retail legal team – but they are also expressly arguing that all returns (including online returns) are deducted from that store's revenue. This is a hot topic when negotiating turnover rent provisions and landlords aren't always keen to bite the bullet and often prefer to keep the wording vague to allow room for argument.

It will be interesting to see whether this push for certainty becomes the norm? We'd certainly welcome it on behalf of our retailer clients. Arguments like this are expensive and an unnecessary distraction - and we will continue in our fight for transparency in this area. H&M is also offering landlords "total occupational deals" where they offer landlords a turnover rent in return for an all-inclusive lease that would cover rent, service charge and business rates. Ultimately, the retail property market is driven by supply and demand so going forward landlords may have to accept "total occupational deals". Retailers need to look at what their options are in such a difficult market.

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