

Building Surveying &
Project Management

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Dilapidations

Advice for Tenants

The term 'Dilapidation' is described as the state or process of falling into decay or being in disrepair. In commercial lease agreements, Dilapidations arise when such disrepair is deemed to be a breach of a Tenant's lease obligation and often results in a large financial claim for damages being pursued by the Landlord.

Commercial buildings are typically let in a 'used' condition when leases are agreed and not in a brand new condition. The definition of 'Disrepair' in respect of commercial property is therefore described as "a deterioration from a previous physical condition" and Building Surveyors are often employed to establish the extent of the disrepair for Landlords. A commercial lease is a binding contract between two parties and a claim for dilapidations arise when the Landlord perceives that the Tenant is in breach of its repairing obligations.

A Building Surveyor will be appointed and a Schedule of Dilapidations with a Quantified Demand setting out the financial damages resulting from the alleged contractual breaches is prepared. This is often served formally by Solicitors and all costs associated with this process is usually recoverable from the Tenant.

Advice for Tenants

Always seek advice from a Chartered Building Surveyor before considering a new lease or ending a current lease. We are experts in the field of dilapidations litigation and are able to understand the legal phrasing in lease conditions as well as the long standing principles of dilapidation loss claims.

Unless the claim is very low and/or acceptable to you, **don't be tempted to DIY!**

Pre-lease Advice

It's important to always do your due diligence before completing any large transaction where liability will be accepted. Whilst pre-purchase surveys are often commissioned for freehold properties, Tenants rarely seek similar advice for leasehold properties despite the increased liability represented by a short term commercial lease which is likely to be on Full Repairing and Insuring (FRI) terms.

Our advice is to always understand your liabilities before completing any property related acquisition.

Pre-acquisition building surveys for Tenant occupiers will typically focus on dilapidations liability and will often highlight elements of risk and future expense that may have been overlooked.

They can help Tenants make informed decisions as to whether they continue with the proposed leasing of the subject property knowing the risks to be accepted or negotiate better terms with letting agents and potentially dilute their liability to acceptable levels.

Tenants that don't seek pre-lease advice are often surprised to receive large dilapidation claims and consequently incur greater costs post lease defencing against them. **Always do your due diligence!**





Schedules of Condition

Used to limit liability for repair and condition, their strength depends greatly on the evidence revealed by the photos and associated text to highlight issues that may not be visible on the image when reproduced in print 5 to 10 years later.

Schedules of Condition are routinely requested where second hand buildings are involved and Building Surveyors are ideally suited to this purpose. If you are tempted to DIY a Schedule of Condition, don't fall into the trap of taking a handful of general snaps and hoping that will do. Building Surveyors will take hundreds of photos to provide a detailed record of condition as we understand the dilapidations process and will ensure we capture evidence that may assist us defend future claims.

A Schedule of Condition is not a silver bullet.

It is important to acknowledge that these may only help limit and not remove liability and you should not let the condition worsen. The drafting of any restrictions in the Tenant's obligations are key to the strength of the schedule and your Solicitor will often need to negotiate any alternative wording. Input from a Building Surveyor may assist your Solicitor with establishing the risks so that appropriate phrasing can be designed and agreed on your behalf.

Lease ending?

Schedules of Dilapidation are based on a perception of non-compliance by the Landlord's Surveyor supported by their interpretation of the lease wording. It is therefore open to debate and negotiation by the Tenant and their appointed Building Surveyor in order to achieve settlement.

If you have received a Schedule of Dilapidations, it will typically include Surveyor budgets to achieve a financial amount to produce the 'Quantified Demand'. If you have not received advice beforehand, this figure will undoubtedly be far higher than you would imagine and it is often alarming to most Tenants.

You typically have 56 days to respond to the claim and you will need to appoint a Chartered Building Surveyor to act on your behalf.

Dilapidations litigation is a very specialist subject and not all Building Surveyors practice in this area. You should therefore ensure your Surveyor is competent before appointing them.

Once appointed, your surveyor will review the lease documentation and associated claim, inspect the property and make their own assessment of your liability. Their view on the items of claim will be added to the schedule under columns headed 'Tenants Comments' and 'Tenants costs'. Further columns reflecting the Landlord's updated position will be added and this new 'Scott Schedule' format will become the negotiation document.

Dilapidation claims can be for sizeable sums and an informed Tenant will not be surprised if/ when a claim is received.

Have an exit plan

Tenants should routinely assess their financial liability in respect of dilapidations and make provision for it within yearly accounts so that budgets are available to resolve a claim without jeopardising the business should a significant claim be made. There may even be tax advantages to making such allowances in your year end accounts!

Notional Assessments of Dilapidation Liability can be produced by Building Surveyors during the lease to help Tenants understand their liability, establish budgets and guide strategies to reduce lease end pressures. If your lease is due to end in the next 12 months or there is a break option looming in the next 18 months, you should be establishing your exposure now.


Break options allow flexibility for Tenants to relocate if the needs of the business change and the property is no longer fit for purpose. There is usually a cost added to the annual rent to cover this but implementing a break may be harder than you think.

Solicitors will advise you in relation to serving notice, rent payments, penalty payments, vacant possession requirements, etc. but you should also seek advice from a Building Surveyor in advance of the notice period so that you are aware of the dilapidation issues before notice is served.

Depending on the length of prescribed notice 3, 6 or 12 months, etc. you should seek appropriate advice in advance and we typically recommend at least 3 months beforehand. **Get in touch if this reflects your position.**

We are an independent Chartered Building Surveying practice based in Birmingham dedicated to providing clients with professional pragmatic advice so that you can achieve your commercial property ambitions.

What ever your property needs, get in touch with us today.

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