

# LEGAL UPDATE



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## DILAPIDATIONS CLAIMS

**R**ichard Robinson specialises in property issues. Here, he discusses what dilapidations claims could mean for FMs and how to mitigate the potential risks and costs involved

### What is a dilapidations claim?

Dilapidations is a claim for damages for alleged failure on the part of the tenant to comply with the repairing (and other) covenants in a lease which is usually pursued by landlords after tenants have vacated property at the end of a lease.

The landlord prepares a "schedule of dilapidations" that is served on the tenant. This may be followed by a period of negotiation and a settlement of the claim may be agreed. This simplistic approach can result in unnecessary and significant expenditure by tenants.

### What is involved in a claim?

In a dilapidations claim a landlord of leased property often seeks to recover monies from a tenant at the end of a lease either to fund the repair of the property (so that it has the best chance of re-letting the property) or simply to bank the cash for other purposes.

However, a landlord should be wary of this approach and consider whether actually what they are claiming is damages that are properly recoverable at law as a consequence of an alleged breach of contract (in the lease and other lease documentation). If it is not,

they will not be entitled to claim these monies from the tenant and, if a tenant is properly advised, the landlord could face serious credibility issues in progressing the claim.

In order to properly bring or defend a dilapidations claim it is best that a team of professionals is brought together to analyse the tenant's actual liability. The team is likely to consist of a solicitor, building surveyor and valuation surveyor, but could also require other professionals.

This may look like an expensive team, but the potential saving of thousands of pounds against poorly quantified claims by landlords can far outweigh the cost of expert advice. It is not unknown for landlords to retain advisers to pursue dilapidations claims on the basis of a "no win no fee" arrangement. Such fee arrangements should be approached with caution.

### What does this mean for facilities managers?

As a facilities manager for a tenant you may be called upon to look at potential dilapidations matters once a landlord has served an 'anticipated' schedule of dilapidations just before the end of the lease.

You may then be tasked with

the almost impossible job of project managing the sourcing of contractors to complete repair works, with very limited time, while space managing employees around ongoing works with all the consequential health and safety and security issues that may come with space management.

The repair works are often rushed and, despite significant sums being spent on those works, the landlord is still able to present the tenant with a further dilapidations claim at the end of the lease.

Thinking ahead is the key to mitigating risk for a tenant and a potential dilapidations claim should be considered 12-18 months before the expiry of a lease.

It may be that a tenant can mitigate its risk by carrying out any necessary repair works well in advance of lease expiry in a manner that makes space management easier. Alternatively, the legal and surveying professional team advising the facilities manager may consider that no works should be undertaken at all because, despite there being breaches of the lease in relation to disrepair, the landlord would still not be able to claim damages for those breaches at law.

For a landlord, forward planning is also key. A landlord may be able to serve interim repair notices on the tenant, in advance of the expiry of the lease, requesting the tenant to undertake remedial works. If the tenant does not undertake these works the landlord may have a right to enter the property, undertake the works itself and claim the costs back of so doing

from the tenant as a debt.

FMs will often have to hand important information that will be needed as evidence in dilapidations cases. For example, maintenance records including test certificates, documentation relating to previous works carried out and photographic evidence of the condition of the property at particular times.

However, FMs should be aware that regular maintenance of a property in line with their company's own internal protocols will not necessarily mean that their company has complied with the legal terms of their lease. It is likely that regular maintenance will help mitigate dilapidations liability, but professional advice should still be sought early to consider whether further cost savings can be made.

FMs should also be aware that even if they move on from a job within a particular company they could still be called to give evidence in a dilapidations claim if it goes to trial.

### Conclusion

The risks associated with owning and occupying property are significant and can have a serious impact on a business. Dilapidations claims are technical claims that need to be assessed properly in order to understand the true liability owed by one party to another. There is much that those who manage properties can do to mitigate dilapidations risks by pulling together the right professional team long before lease expiry. **FM**

Further information and discussion on these types of issues can be found on the dilapidations discussion forum and interest group on LinkedIn at: [www.linkedin.com/groups?gid=4006639](http://www.linkedin.com/groups?gid=4006639)