

Commercial Leases – repair obligations

This article talks about the importance of a tenant fully understanding their repairing obligations in a commercial lease.

Whenever I speak about negotiating commercial leases to clients, or to trainee solicitors for that matter, there's one quote that springs to mind. It's something John Hyatt, a partner at Butcher and Barlow, once said: "If you get repair wrong it almost doesn't matter what else you do right in a lease, because repair is going to be one of your biggest liabilities."

Making sure your client understands what they may be liable for in a commercial lease and mitigating their liabilities from the outset is the best way forward.

For instance, clients can often get confused and misunderstand the conditions around a full repairing lease. A full repairing and insuring lease (FRI lease) is a lease in which the tenant takes on all of the costs for repairs and insurance for the property being leased from the landlord. The requirement for repair of the premises applies even if the property is in a poor state of repair to begin with.

That can be a surprise to many people. The common misconception is that a tenant only has to give the property back in the same condition in which they took it. This is not the case. By entering into an FRI lease, the tenant takes on complete responsibility for repairs, even if the disrepair already existed when the lease was granted.

If there are any doubts as to the condition of the property, a tenant should obtain an independent survey on the property. This then allows you to create a "Schedule of Condition" to be attached to the lease. The better the schedule, the better the potential safeguard against future dilapidation claims from the landlord. It's all about trying to minimise any potential liabilities right from the start.

Similarly, if the client is taking a lease on a premises which is situated within a larger premises, such as a shopping centre, it's crucial you check the service charge and cap the liability from the outset to prevent the client being exposed to significant costs during the lifetime of their lease.

For example, the service charge element, which covers the maintenance of communal areas including the roof, may state that should the roof need repair your client would be liable to contribute to the cost of that repair. If you can cap that service charge at the start of the lease, this will minimise their liability.

There are undoubtedly many more things to consider when negotiating a commercial property lease, the length of the lease, what happens at the end of the lease and whether there are break clauses. You have to know your client, know their needs, look at the bigger picture and try from the start to anticipate issues that may arise during the lifetime of the lease and mitigate any liabilities.

However, it always comes back to John Hyatt's mantra – "If you get repair wrong it almost doesn't matter what else you do right in a lease because repair is going to be one of your biggest liabilities." From my years of experience here at Butcher and Barlow, I can testify that never a truer word was spoken.

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