

Commercial Property Factsheets

Repairing obligations in leases

Negotiating a lease

Your responsibilities for maintaining and repairing the premises are a key item for negotiation.

- The landlord may press for a fully repairing lease, under which you are responsible for keeping the premises in good condition - even if they are not currently. The precise standard of repair required depends on factors such as how old the premises are and what can be reasonably expected.
- You may aim to limit your obligations to keeping the premises in their current condition. A schedule of condition should be included in the lease, providing written (and photographic) evidence.
- If you are taking on an existing lease, you are bound by the terms originally agreed. For example, you might be required to maintain the premises to the standard when the lease was originally granted, even if they are currently in poor condition. You might negotiate a reduction in any premium (or a reverse premium) to compensate, or require works to be carried out before you take on the lease.
- Your obligations generally include maintaining the premises throughout the life of the lease, rather than just repairing them at the end of the lease.
- The lease may also require you to redecorate at the end of the lease, and to remove any alterations you have made. You will not normally be required to remove alterations made to comply with statutory requirements (eg making the premises accessible for the disabled or managing asbestos).

Maintaining the premises

It is generally cost-effective to carry out routine maintenance and repairs rather than letting the premises become run down and risking further damage.

- If you fail to maintain the premises, the landlord may take action against you by serving a schedule of dilapidations. If you fail to respond, he may be able to claim damages, carry out the works and reclaim the costs, or start proceedings to forfeit the lease and evict you.
- Responding to any demands from the landlord, and negotiating constructively, can help resolve the situation as cost-effectively as possible. You can strengthen your position by taking advice on the precise legal situation: for example, you may be able to resist any attempt to evict you.
- If you fail to maintain the premises as required, you will in any case be in breach of your obligations. This may mean that you lose the right to exercise any break clause.

The end of the lease

The landlord will almost invariably want to claim some dilapidations at the end of the lease. It's essential to plan in advance how you will approach this. Understanding your landlord's plans for the premises, and taking expert advice, can help.

- You may wish to carry out repairs and redecoration during the final months of the lease, to reduce the scope of any potential claim. Alternatively, repairs might be unnecessary if, for example, the landlord plans to demolish the premises (see below).
- A pro-active approach can be the best option - having a chartered surveyor prepare a schedule of condition, and approaching the landlord to negotiate a settlement. Typically you might negotiate to make a payment and be released from any further liability for dilapidations.
- Once the lease is over, you are no longer in a position to carry out any works (as you have vacated the premises). The landlord can serve a schedule of dilapidations and claim damages for any works he needs to carry out. The landlord may be able to do this months after the lease ends, though the lease may specify otherwise and a claim should normally be made

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within 56 days.

- The landlord's claim can include the costs of the works, professional fees, loss of rent while the premises are being repaired, and other expenses.
- The level of damages the landlord can claim is limited to the reduction he has suffered in the value of his investment. So you can resist (or at least limit) a claim if: the landlord is planning to demolish or substantially alter the premises; the new tenant wants to substantially alter the premises; the premises will in any case need substantial alteration (eg to update them to meet modern requirements); or the premises are unlettable for some reason (eg lack of market demand).