

The ongoing lockdown imposed by the UK government as a response to the COVID-19 outbreak has had a radical effect on all of our working lives and brought with it difficult trading conditions for many.

For certain sectors, such as retail, hospitality & leisure, the lack of trading has impacted their business dramatically.

For those with premises, there are a number of knock on effects as a consequence of the lockdown including rental levels coming under pressure and some tenants being forced to downsize their current working premises. One area that shouldn't be overlooked is the impact on potential dilapidation claims and tenants' ability to settle these.

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## DILAPIDATION CLAIMS

Dilapidation claims relate to the tenant reimbursing the landlord at lease expiry for any breaches of the tenant's repairing covenant under the terms of their lease. It often includes the removal of any tenant alterations, prior to the lease expiry too. In many cases, these claims can run into hundreds of thousands of pounds.

The landlord will often have budgeted to receive the property back at the end of the lease in a good re-lettable condition or to receive monies in lieu of this, to allow the landlord to undertake the works themselves. However, with many businesses feeling the economic effect of the pandemic, what if the tenant goes into administration or receivership, where does that leave the landlord?

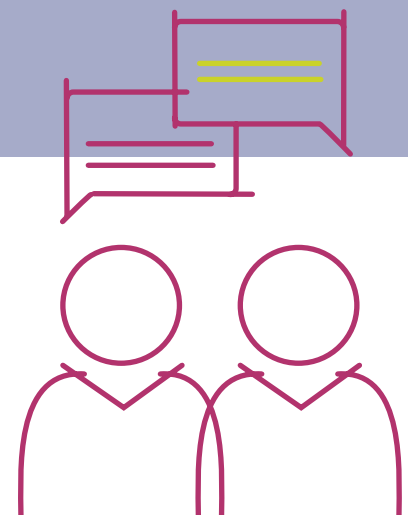
What if due to the ongoing impact of COVID-19, the tenant is unable to undertake the works or make a financial settlement? This could be due to cashflow issues; restrictions on accessing the property to undertake the works due to lockdown or if the market suffers a major downturn such is the case across markets from airlines to barber shops.

We have outlined some guidance on key estate management related issues that landlords and tenants should consider to mitigate the impact COVID-19 could have on both parties.

## COMMUNICATION TO ENABLE COLLABORATION

The most important action that both landlords and tenants should do is communicate to each other throughout this period of uncertainty.

- How has COVID-19 impacted the tenant's business? Are they working in a booming market (manufacturing PPE; working on vaccines; food retail, etc) or a market that has been impacted severely (small practices, including dentists, barbers, cafes, etc). With this knowledge, the landlord should be able to undertake a quick temperature check on the risk of the tenant defaulting on their lease obligations.
- Both the landlord and tenant should also review their lease repairing obligations and reinstatement clauses – what should each party be doing at or prior to lease end?
- Parties should keep an open dialogue with each other to discuss such matters as rental holidays/rent reductions as landlords will often prefer a tenant in occupation on a lower rent, than a void property.



## LANDLORD - ACTIONS TO CONSIDER

- Keeping good tenant relations and all lines of communication open is key.
- Be aware of your tenant's trading position, sector and business plan so that you can predict any issues or opportunities as soon as possible. Will the tenant be struggling to pay the rent? Do they have too much space or will they be under pressure to expand, taking additional space?
- If the tenant is struggling financially, with a lot of pressure on them just to keep their business going, then the everyday maintenance of the property could be neglected. Over time, this could impact on the landlord's investment and impact on key items of the property, such as chillers or boilers. Landlords should check that regular maintenance is being undertaken by the tenant and if it isn't, then consider steps to remedy this.
- If a break clause of the lease is on the horizon, then consider how you could keep the tenant in occupation and work with them on a lease re-structure. Would you consider offering a softening of the lease terms or even a reduction in the rental area? Are these options more attractive to you as an investment compared with having a void property?



## TENANT - ACTIONS TO CONSIDER

- It is important to keep the dialogue open with your landlord and be honest about how the market has impacted your business. Give them confidence that you will be continuing with the maintenance and upkeep of the property.
- Is there a break clause that you can exercise? With the panic of COVID-19, it is often very easy to miss key lease events and therefore the ability to exit the property.
- If you are looking to exercise a break clause, then ensure that you do everything possible to see it is exercised correctly. Questions you should be thinking about include:
  - do you have to serve notice by a certain date?
  - what are the conditions of the break?
  - does the lease require you to reinstate the premises by a certain date?
  - do you have to seek landlord's approval?Legal advice should be sought prior to exercising a break clause.
- If you are currently negotiating a dilapidation schedule, has the market changed significantly yielding a reduction or even mitigation of your repairing liability?



## THE IMPACT OF COVID-19 ON LEASE NEGOTIATIONS AND DILAPIDATION CLAIMS

A break clause will often be conditional on the tenant providing vacant possession and full compliance with lease repairing and decorating obligations. With the current difficulty to undertake strip-out, reinstatement and remedial works under the lockdown restrictions, it is expected that many tenants will not be able to comply with their break clause, thus losing the ability to vacate the premises and avoid further years of lease obligations which could be detrimental to the business.

Careful consideration should be given by both landlords and tenants on how the courts may see their behaviours at this time of international lock-down restrictions. Will the courts take a less than positive view of landlords who take advantage of these conditions to frustrate a break clause? Perhaps, a short-term lease extension or licence to allow the reinstatement of works to continue would be a better solution?

It is worth remembering that the ability to prepare a Schedule of Dilapidations and negotiate a settlement, when neither party has been able to inspect the demise could prove challenging too. The ability to procure the works and obtain certain building products (ceiling tiles; carpets; etc) may also be difficult, if the factories and suppliers are impacted by lockdown restrictions, and activity is affected through the furloughing of staff.

## CONCLUSION

The COVID-19 pandemic has brought new challenges to many sectors with no rule book to refer to and guide landlords and tenants. Having expert advice and understanding the complexities of the situation as well as the legal requirements is key to being able to navigate your way into the future.

RLB's team of dilapidation advisors is currently working with both landlords and tenants on a number of leases throughout the UK. These range from both contracting businesses to those in an expanding market.

We can advise on a number of matters, including:

- The review of leases and lease documentation to advise on liabilities and assist in the determination of an appropriate exit strategy
- Preparing a Schedule of Dilapidations, whilst practicing full social distancing measures
- Negotiating any claims using virtual platforms (e.g. MS Teams) as well as photographs and drones
- Advising parties on how to mitigate their losses by utilising Section 18 Valuations, at this time of rental level changes
- The review of accommodation requirements and space planning following any reduction or increase in operational requirements
- Advice on how a sub-let may be accommodated within existing premises
- Acting in accordance with the CPR and RICS Protocols, to achieve a realistic settlement, whether acting for landlords or tenants.



## GET IN TOUCH

If you would like to find out more or have any questions, please get in touch:



**Andrew Ellingworth**

Partner,  
Building Surveying

**e.** [andrew.ellingworth@uk.rlb.com](mailto:andrew.ellingworth@uk.rlb.com)

**t.** +44 (0)776 756 7009