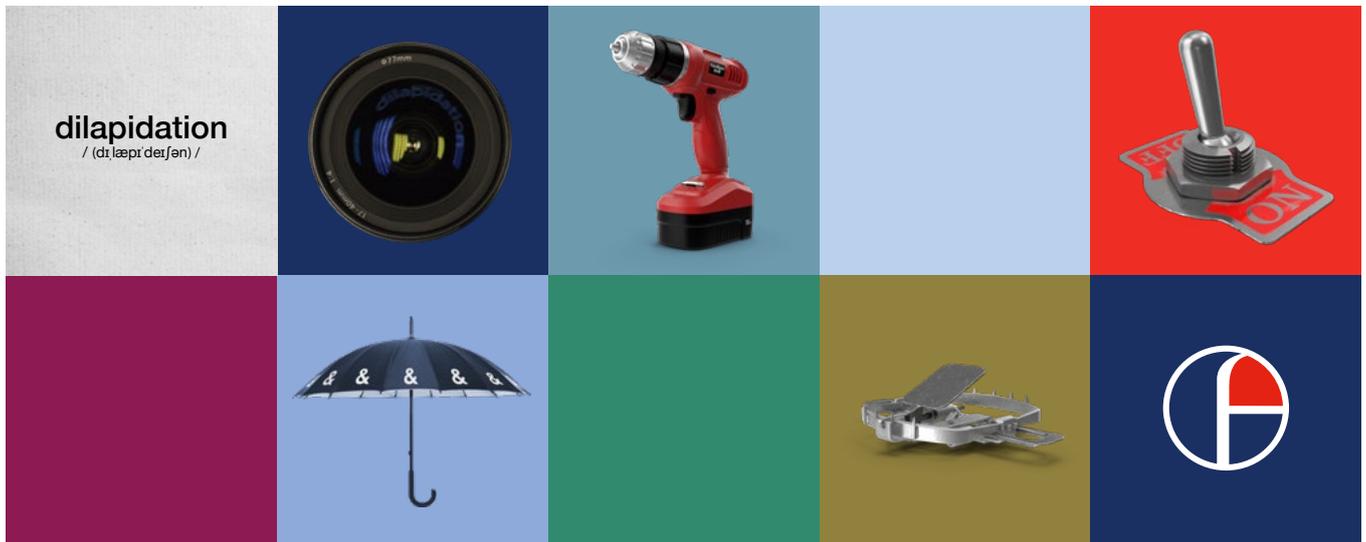




Dilapidations



# Dilapidations

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# dilapidation / (dɪˌlæpɪˈdeɪʃən) /

*noun*

- the state of being or becoming dilapidated
- (often plural) property law
  - a. the state of disrepair of premises at the end of a tenancy due to breaches of lease obligations / failure to comply with lease obligations
  - b. the extent of repairs necessary to such premises

## Translation

- A condition of most lease agreements to repair, maintain and redecorate the premises during its occupancy and undertake any reinstatement when the lease ends
- The tenant is responsible for rectifying any disrepair to the property when they move out of their workplace

## Focus on ...



### We can help

Dilapidations, often an overlooked aspect of the workplace planning process, can have a serious impact on your business.

In terms of:

- **Financial considerations:** the cost of repairing and/or yielding up the premises to its lease commencement condition can prove expensive – especially if the remedial work was not anticipated and no financial provision was made for it
- **Executives' time:** managing a claim can prove time consuming – and a distraction from your day job ... especially if it's an issue you have to address in the middle of an office move
- **'Brand':** if a claim ends up in court, there could be ramifications for your company's reputation, as well as the credit profile of the company and its Directors

However, Dilapidations undertaken during a lease – consider lease breaks and lease end clauses – can limit these and other liabilities.

If it's not your day job, consult a Dilapidations specialist. It will save you time and money.

# Future-proofing



## We'll help you plan

Critical questions you should ask before signing a lease agreement.

- Are the clauses which cover your future repair obligations fair
- If the condition of a rent-free period (at the commencement of a lease) is undertaking repairs to the property, what will your liabilities at the end of the lease be
- Are the clauses relating to redecoration and repair fair and commensurate with the age and condition of the property
- Make a detailed record of the condition of the premises at the outset, as this will minimise your dilapidations liability in the future – normally called a 'Schedule of Condition'. This must be appended to the new lease to provide a restricted lease end liability
- This factual record is a benchmark which has significant legal and contractual value, especially in any future dilapidations related claims by, or negotiations with, the landlord.

It is imperative you know what your commitments are throughout the term of the lease and at lease end because understanding your future dilapidations and repair liabilities is critical to any cash flow and financial planning.

Seek specialist input to address any ambiguities.

# Lease terms



## We'll look out for you

Good lease terms will allow you to choose when you decide to comply with repair and/or dilapidations obligations.

This should be negotiated before the lease is signed, but the situation is not irretrievable. For example:

- Can your landlord force you to comply with repair obligations detailed in your lease – or can you choose when you want/can comply with the landlord's request
- Did you agree to any amendments, during the lease negotiation stage, which would allow you to negotiate relief to any repairs
- Are there any onerous conditions to opting for a 'lease break' should you choose to – such as those related to repair, redecoration and/or refurbishment of the premises, or any associated financial penalties

Appointing a Dilapidations specialist to represent you will give you the greatest chances of negotiating favourable terms and minimise the cost and extent of the landlord's claims.

# Lease end



## We'll help defend you

At the end of the lease, have a clear strategy to minimise any liabilities and potential dilapidation claims from your landlord.

This could include:

- An accurate assessment, commissioned by you, of what repairs/reinstatements need to be undertaken to comply with the terms of your lease
- Establish what redecoration has to be undertaken (as stated in the lease)
- Realistic and validated costs you will be liable for
- Interrogate the validity of any end-of-lease related claims made by the landlord and if they can be legally capped
- Undertake a robust negotiation to ensure that any settlements with the landlord are valid and equitable to both parties

The landlord's claim, presented as a 'Terminal Schedule of Dilapidations', will probably be served in the last six months of the lease. It will include a detailed list of identified:

- Breaches/work deemed necessary to comply with the lease terms
- Remedial actions required
- Costs associated with the above

Beware: not all Schedule items, identified by the landlord, are deemed a breach of tenant's covenants. You can challenge them, but your rebuttals must be validated – and stand up to legal interrogation.

# Beware bear traps



## We'll help protect you

If a part of the property is in disrepair before you sign the lease, be careful you are not required to 'put into repair' or worse, if the repair is not possible, be responsible for renewing it:

Although you might be able to exercise a break clause, if the landlord considers that you have not complied with certain conditions - such as compliance with decorating, repair and/or reinstatement covenants – he/she might refuse to accept the break. It's critical you understand this from the outset.

If the landlord considers that the Terminal Schedule of Dilapidations has not been complied with fully, you might be liable for unbudgeted additional costs such as the landlord's:

- Loss of rent, whilst works are being undertaken
- Professional fees incurred - uncapped

# Take control

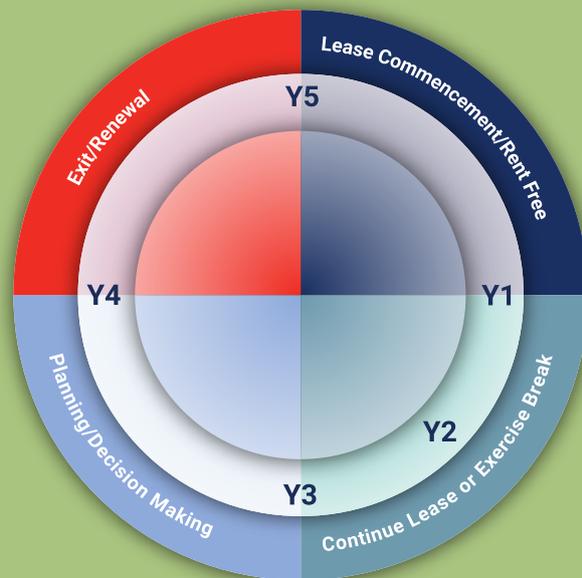


## Top tips

- Record the condition of the workplace before you sign the lease – your own ‘Schedule of Condition’
- Understand the full implications of a ‘rent free’ benefit – in terms of your repair commitment
- Agree a License to Alter before you start putting your stamp on your workplace - obtaining the landlord’s approval to carry out improvements or alterations first, will prevent any future threat of ‘breach of lease’ claims
- Dilapidations is an inevitable cost – IFRS16\* allows you to allocate your dilapidation costs to the balance sheet
- Keep the premises in good repair (through proactive maintenance), as it minimises end of lease headaches
- Exit planning – do it early
- Consult a qualified Dilapidations specialist – it will prove a wise investment

\*IFRS16 is an accounting standard which applies to leased assets and liabilities – including property leases

# Dilapidations - timing is everything



## A guide for occupiers



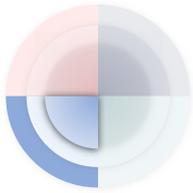
### Lease commencement/rent free

- Sign the occupational lease
- Agree a License to Alter
- Take occupation
- Plan regular maintenance to minimise lease end expenditure
- Review your lease for maintenance and repair obligations, to ensure compliance
- Complete interim repairs



### Continue lease or exercise break

- Consider whether you will stay or exercise the lease break
- Seek advice from a Building Consultancy specialist on possible lease break options to maximise your position
- Business decision regarding the lease break is required now
- Seek professional advice to ensure the conditions of the break are complied with
  - e.g. a defined notice period of 6 or 12 months
- If exercising a break, a detailed analysis of the break clause is required to limit your liability with the landlord
  - The break may be conditional and include a financial penalty or repair obligations



## Planning/decision making

- Commence exit planning
- Consider a dilapidations liabilities assessment to help budgeting ahead of year end and IFRS16 compliance. Allocate budget to balance sheet.
- Review end of lease obligations
- Open early dialogue with landlord around options:
  - Lease renewal
  - Relocation
- If lease renewal: this cycle starts again at the “Lease Commencement/Rent Free” stage
- If relocation: receive and review the landlord’s Schedule of Dilapidations and Quantified Demand and develop exit strategy



## Exit/renewal

- Consider your defence strategy and negotiating position with the landlord – talk to a Building Consultancy specialist
- Undertake works or negotiate a financial settlement
- Yield up and hand back
- Agree lease
- Complete due diligence on new premises and new lease terms, to ensure future liability is limited
- Create business space suitable for occupation which reflects your firm’s culture and working practices
  - Carry out fit-out works (Cat A/Cat B)



## Our Promise

Irrespective of the sector or the property, we promise that we will combine our informed, impartial and independent advice, with our deep understanding of dilapidation issues to minimise your liabilities.



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