

An Occupier's Guide to Repairs and Maintenance

Wednesday 23 April 2014, Lewis Silkin, Chancery Lane, London EC4

Introduced by: Robin Harris, UK Chapter

Speaker: Rachel Francis-Lang, Lewis Silkin



Billed as part of CoreNet's commitment to deliver educational content to our members, this was a seminar which offered to delve into lease obligations that occupiers often miss. Property is a core asset to business, therefore complying with lease obligations can be critical.

So on a shiny April morning we assembled in Lewis Silkin's Chancery Lane offices. Introduced by **Robin Harris** of CoreNet Global's UK Chapter, **Rachel Francis-Lang**, partner at Lewis Silkin, led us through the legal pitfalls of repairing and maintaining the buildings we occupy.

Starting with the initial negotiations for a lease following a landlord's development or refurbishment, Francis-Lang highlighted a few essential points to look out for in the Heads of Terms: a full description of landlord's works the scope for variations to them, target dates and the consequences of delays; tenant's works - who is responsible, the risks of starting before the completion of the landlord's works and insurance issues; and when can the premises be occupied?

Moving on to the question of repairs she looked at the meaning of 'full repairing lease', and the definitions of 'premises' and 'inherent defect'. You need she said to consider what might be repairable from inside the property and what might not (eg windows), and the consequences of damage by insured risks or by a risk that's not insured.

Passing swiftly over breaches of repairing covenants, she next tackled alterations and the importance of clarifying just what the tenant can and cannot do, either with or without landlord's consent (think about minor works, or IT cabling): consider also the scope for works outside the leased area, or to the structure of the building.

Any alterations undertaken by the tenant which require landlord's consent will she said be dealt with in a separate deed, supplementary to the lease - a Licence for Alterations. It is most important, she insisted, that if the lease is registered at the Land Registry, anything which might vary the lease or the definition of the premises should likewise be registered. And you must always, as a tenant, consider obligations to remove the alterations at the end of the lease and anything that might impact on your rent review.

Finally she considered the position at the end of the lease and a probable requirement on the tenant to deliver up the premises in a particular state of repair and condition. Many clauses in the lease will be relevant she said: obviously those dealing with repairing and maintenance obligations, but also those addressing compliance with legislation, tenant's alterations, signage and so on. Ideally you should start to prepare at least one year in advance. Non-compliance may entitle the landlord to claim damages, but if discussions start early enough, it may be possible to reach a financial settlement with the landlord instead of the tenant actually carrying out the necessary works.

Five key points to come out of this included:

- * Even entering the premises before completion could trigger the rent free period service charge and so on, bringing forward the review date;
- * Repairing obligations : can mean putting the premises in a better state than they were at the start - so make sure you know what that state was and therefore what you might have to do;
- * Make sure all alterations requiring consent are properly documented
- * Monitor the service charge and carry out regular audits
- * Start to plan for dilapidations in advance.

Overall, she said, there is no better advice than to check your leases carefully and ensure you are fully aware of what you are letting yourself in for from the beginning. Better a delay to final agreement of a lease than expensive subsequent litigation.

AV Sutherland

