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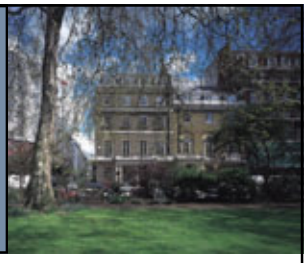

DILAPIDATIONS
By Ian Dias MRICS
Director

For all leasehold properties, it is likely that at some point, a Schedule of Dilapidations will need to be prepared by the Landlord and issued to the Tenant.

Depending on when the Schedule of Dilapidations is served, it will be either during the lease term hence '*Interim'* or at the end of the lease '*Terminal'*. Both Interim and Terminal Schedules of Dilapidations follow the same format albeit Terminal Schedules are usually priced (as 'damages') since the Tenant is no longer entitled to remedy the breaches of covenant identified within the Dilapidations Schedule once the lease has expired.

There are various guides and legislation that influence the manner in which a claim is prepared and indeed defended. Further details supporting the claim may need to be formulated and for best practice, the current protocol by the Property Litigation Association and RICS should be adhered to.

Both Interim and Terminal Schedules of Dilapidations are effectively a claim for breach of lease covenant i.e. breach of contract. Therefore, the claim must clearly identify the breach being complained of, with the applicable lease clause referenced and the required remedy stated.

Since the onus of proving the breach is upon the Landlord, it is essential that appropriate investigation and record documentation is undertaken by skilled individuals. This is particularly the case when the Dilapidations works are undertaken by the Landlord, following lease expiry, thus the immediate or first-hand evidence is destroyed

When preparing or defending a claim, due consideration should be made to the various statutes that may limit or potentially mitigate the claim. For example, a landlord has no claim for damages relating to items of disrepair to a property that is to be demolished (or altered) at or shortly after lease expiry, which would render such repairs meaningless. Thus a damages claim will be capped by the true level of loss to the Landlord i.e. will not exceed the actual '*diminution in the value of reversion*' for that asset.

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Documents incorporated within the lease e.g. Schedule of Condition or side documents, may seek to limit the extent of claim or liability. Whilst Schedules of Condition are often requested as a knee-jerk reaction, in many cases, if the Schedule of Condition is not accurately prepared and suitably incorporated within the lease, the Schedule of Condition may have minimal effect or benefit.

Practicalities of insisting on a Schedule of Condition may be misguided in certain instances e.g. it is doubtful that a leaking roof to an office could be left to leak during the tenant's occupation, even though such a leak may have been recorded in a Schedule of Condition. Furthermore where disrepair is recorded in a Schedule of Condition, if the element is still likely to deteriorate further, how do you repair back to a standard of previous disrepair? It is possible that the tenant could be liable for perhaps more than they had first thought.

Dilapidations requires a structured approach from the outset and needs to establish the intentions of the parties. Since preparing a Schedule of Dilapidations can be the first step towards legal proceedings and even possible forfeiture, due care and expertise is required in order to minimise exposure to costs e.g. legal and court costs to ensure these do not far outweigh the original claim sought.

Whilst Dilapidations may not be an exact science, the claim should still fall within certain parameters that are established by statute, applicable common law and protocol. A proposed claim by the Landlord or defended claim by the Tenant will seek to demonstrate as to whether such parameters have been adhered to.

Our Director, **Ian Dias**, was a founding board member of the RICS Dilapidations Forum and has extensive experience in dilapidations having acted in equal measures on behalf of Landlords and Tenants alike.

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