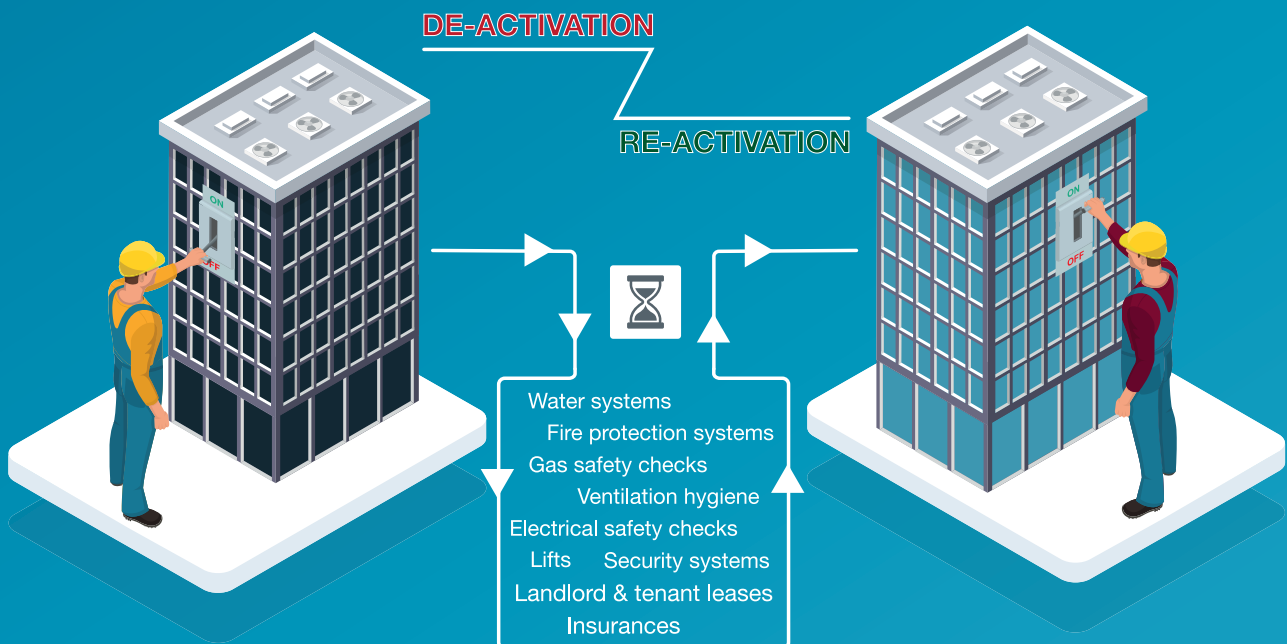


Property Knowledge: Real Estate Insurances & Leases

Expert guidance on getting your estate
back online post Covid-19 lock-down



On 23 March 2020, the government stepped up measures to prevent the spread of Coronavirus and save lives, effectively advising all but “essential businesses” to close their doors for an initial period of three weeks, having now since been extended by a further three weeks. As we continue to wrestle with life under “lock down” and face the prospect of the closure continuing for as yet an indeterminable period, we ask whether each party to a lease is familiar with their obligations?

In our experience, most leases will require the landlord to insure the building, with the tenant then being obliged to pick up the corresponding premium. However, whilst the landlord would normally have the full policy information at their disposal, has this been shared with the tenant and are they aware of their obligations around vacant buildings? In our experience, many commercial policies cease to offer full cover once the building has been unoccupied for 30 days, so whilst we are aware that in the current crisis some insurers have already taken the decision to extend the unoccupied threshold to 60 or in some cases 90 days, steps need to be taken now to make sure that the policy wording and risk management obligations are fully understood by all concerned. In addition, if the property was vacant prior to Covid-19, then has the insurer been informed and are procedures in place to comply with the insurance obligations during “lock-down”?

Occupiers and Landlords

With their doors closed, we are aware that some occupiers have taken or are considering taking the approach of either withholding, or part paying their rent and/or service charge payments. Whilst Section 82 of the Coronavirus Act 2020 may prevent landlords from forfeiting (and now following the further extension of measures, issuing a statutory demand or using CRAR) ‘relevant business tenancies’ until at least the 30th June, it does not create a rent-free period. Clearly the government is looking for collaboration in these unprecedented times, but could the insurance come to the aid of both parties? We recognise that each lease is different and we would encourage you to review your particular agreements.

However, within leases, the rent cessation provisions often require “damage or destruction” to occur and may well not cover a pandemic. From the landlord’s perspective, what does the lease and policy wording say about the range of insured perils, and does the tenant have a business interruption policy that they might be able to claim their rent and other occupational costs against whilst making their claim? All of this very much depends on policy terms, including exclusions and limitations.

Multi-Occupancies

In a multi-occupancy scheme, further thought needs to be given during Covid-19 imposed restrictions as to how services are performed within buildings and how service charge expenditure is managed. Clearly the occupiers will want to see the costs minimised, but statutory compliance needs to be considered to ensure that buildings can be swiftly and safely brought back into full use when the time is right. SFG30 (Mothballing of Buildings) provides the appropriate industry guidance and is a useful reference point for both service charge managers, as well as occupiers looking to manage their maintenance responsibilities whilst buildings are not running at full capacity. Some security and potentially other services may also still be necessary depending on the particular circumstances and obligations.

We are further conscious that there are potential sensitivities around the formal closure of buildings; the tenants deciding to leave of their own accord is arguably a very different situation to the landlord denying access and closing a building. There could well be issues around quiet enjoyment and derogation from grant to consider, unless the lease potentially offers some relief in circumstances beyond a landlord’s control. Clearly, we are in uncharted water, but if we face a prolonged period of lock-down, then we are conscious that some landlords and tenants may well be confronted with further difficult challenges. How, for example, would a tenant go about yielding up in good repair at the end of a term, and how would a conditional break clause be complied with under lock-down? There is a need for pragmatism on both sides in arriving at a potential solution.

In Summary

The impact and consequences of Covid-19 will be with us for some time. There are challenges for both landlords and tenants falling within a framework of lease compliance and legislation. Openness, dialogue and collaboration is essential to mitigate these consequences. This needs to be underpinned by property knowledge and technical expertise.

Key Points

How many days of un-occupancy is covered by the commercial policy?

Are procedures in place to comply with insurance obligations during lock-down?

Could insurance come to the aid of both the landlord and occupiers?

Does the tenant have a business interruption policy?

SFG30 provides the appropriate industry guidance to manage maintenance responsibilities

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Russell Heath is a Chartered Surveyor who, for the last 15 years, has specialised in commercial service charge management. Russell is an acknowledged expert in the service charge field, with long-standing blue-chip clients in the retail and leisure sectors. He provides occupiers with comprehensive service charge management advice, focused on a commercial return.

Russell has been actively involved in the RICS Professional Statement - Service Charges in Commercial Property, and also speaks regularly at RICS CPD seminars.

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