

GUIDANCE NOTE Insurance

INSURANCE; WHAT ASPECTS ARE COVERED?

Together with rent and service charge, insurance is another occupational charge levied by the Landlord on the Tenant. Often reserved as rent and invoiced annually, the Landlord is obliged to put in place the insurance cover for the building. This buildings policy will cover the property for damage caused by an insured peril but will not include contents cover that will need to be taken out by the Tenant.

For a commercial property the insurance policy will cover: -

- **Building's reinstatement cost:** The cost to rebuild the property should it be damaged through one of the insured perils. Under the guidance of the Royal Institution of Chartered Surveyors Good Practice a review of the reinstatement cost should be undertaken once every three years.
- **Loss of rent:** The Tenant is obliged to continue to pay their rent even though the property may not be habitable due to damage from an insured peril. The lease will stipulate the maximum length of cover, usually anything between 3-5 years, and this length of time will be influenced by the complexity of the building. For example a terraced building may take longer to reinstate than a detached building. Throughout the rebuilding of the property the insurers will meet the rental cost of the lease. This will include your contribution to the service charge, where other parts of the building are still capable of being occupied.

The insurance policy may also cover: -

- **Terrorism cover:** This may be an additional policy or it may be included in the principal policy and covers damage to the commercial building as a result of terrorist action. In practice it works on the basis that each insurer will pay out losses up to a certain threshold and beyond that they can then call upon PoolRe to top up the claim.
- **Property Owners Liability:** It is not always appropriate for the Landlord to charge the Tenant for the placing of this insurance as it directly affects the property owner. This policy insures the owner for any claim that results from a problem with the building, such as people tripping on raised paving slabs or items falling from the building onto passersby below. Carefully consider the policy to determine if this is included and consider the terms of your lease to verify if it is appropriate for the Landlord to pass on the cost to the Tenant.
- **Engineering Cover:** Within any multi let property where a Tenant benefits from communal services such as heating or air conditioning the Landlord may well procure Engineering Cover which protects the early failure of some of the main electrical/mechanical components in the system. For example if the air conditioning system is relatively new and the chiller fails early (before the end of its natural predicted life) then it may be possible for the Landlord to claim for the entire, or partial cost of the repair.

The liability for these costs rests with the Tenant and rarely, unless the occupation is documented using a Licence Agreement, will the costs be included in the rental amount.

How is the insurance cost apportioned?

Unless there are influencing circumstances the insurance premium will be apportioned based on the floor area occupied by the Tenant as a proportion of the whole lettable space.

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Do I need additional property insurance?

The answer to this is not simple as it depends on a number of elements. Aspects where further insurance cover maybe required are: -

- **Tenant alterations:** Where a Tenant has undertaken extensive alterations to their space or installed equipment that is valuable then it is sensible to understand if the Landlord's policy covers these changes. If it does not then a Tenant would need to secure further cover. This does not simply refer to damage caused by destruction such as an explosion but may also include water damage resulting from a leak in an air conditioning pipe.
- **Sub letting:** Should you sub-let any space then income is being received from the occupant. Similar to the loss of rent cover (above) procured by the Landlord, a Tenant should take out an identical policy for their Tenant.
- **Contents Insurance:** The Tenant requires contents insurance to protect their own items such as computers, desks, printers, photocopiers and other items used in the course of the Tenant's business. This is an important policy and is not something the Landlord would ever provide.

Do I need to declare anything?

With all policies there is an implied reliance on all parties, whether the Landlord or the Tenant to declare any changes in their occupation. Needless to say it is important to make your Landlord aware of any changes that may affect the insurance policy.

By way of an example a recent case explains this principle clearly:

Ansari v New India Assurance Limited: The insured party owned a property which was badly damaged by fire. New India Assurance Limited had been told there were automatic sprinklers protecting the building when they placed the insurance cover but when the fire started these did not work as the system because the sprinklers had been disconnected due to the non payment of a service invoice. Furthermore, to prevent the system being serviced a filing cabinet had been placed across the control handle preventing the reconnection of the system.

The policy stated cover would, "cease to be in force if there is any material alteration to the premises..... or any material change in the facts stated on the proposal form". In the current economic climate it is important to ensure all material facts are notified to the insurer because if they are not the insurer may not meet the claim.

How do I make a claim?

Each claim will depend on the particular circumstances of accident and whether it falls under the Landlord's policy or the Tenant's policy cover. The approach to recovering any cost is similar to that you would undertake if you had an accident in your car where 2 policies were involved. In this instance both parties should make a claim through their own policies and then the insurers of those policies will settle the liability.

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By way of an example, should a computer be damaged as a result of the leaking pipe maintained by the Landlord, many Tenants would expect the Landlord to settle the claim through their insurance policy. However, the correct course of action would be for the Tenant to claim on their own contents insurance policy and to detail the circumstances of the damage, advising, in the claim, details of the Landlord's insurance policy. This will enable the claim to be settled much more quickly.

REMEMBER

Under the terms of the lease the insurance premium, invoiced to the Tenant by the Landlord, will be reserved as rent and as such can be distrained upon should it not be paid. Consequently, if the premium is not paid and no query has been made about the level of premium, then the Landlord is at liberty to instruct bailiffs to collect the outstanding monies.

Should you need to contact our advisers about anything contained in this note then please feel free to call us on 0800 865 44 50

This Guidance Note is not a substitute advice on specific matters and should not be seen as providing legal advice.