

Your monthly e-newsletter from TAP

JUNE 2009



Welcome to our first e-newsletter. TAP has been conceived, designed and delivered by 2 individuals who consider that, with access to the right information, Tenants can be better informed to make decisions and improve the use of their commercial business premises. This service allows a commercial tenant to make an informed decision based on up to date information.

Each monthly issue will alert Tenants to changes in legislation, endorsements of good practice and variations to working practices that will impact the occupier's obligations.

## Are you satisfied with your Landlord?



Apparently Tenants' sentiment with the service they receive from their Landlord remains unchanged when compared to 2008 according to the latest UK Occupier Index produced by Real Service; this despite the taxing economic climate. Real Service have just unveiled their findings from a telephone poll of 231 occupants where retail and industrial tenants feel their satisfaction has marginally declined and with office tenants reporting no change in their satisfaction.

Real Service produces this annual survey in partnership with Property Industry Alliance and Corenet Global UK with support from a number of property associations, including the RICS, and British Property Federation (BPF). The survey analyses the provision of service to an occupier by the Landlord to identify if it meets or exceeds a tenant's need. In so doing

questions were raised with Property Directors, Business Owners and Senior Managers who have the responsibility of providing the property facilities for their organisation and should cover all aspects of delivering such a service. The principle conclusions are:

1. Landlord's flexibility - Occupiers recognise landlords are more flexible when looking at agreeing lease terms.
2. Occupier relationships - these seem to be improving but the pace of improvement remains slow and reticent.
3. Cost control - Sentiment is that the UK remains an expensive place to occupy property and there is unwillingness for the landlord to share cost.
4. Environmental issues - These remain high on the agenda of occupants, and with the use of Energy Performance Certificates it is perceived this provides the evidence that this is positively moving forward.
5. Service charge - Remains poor value. Tenants seem to endorse these results by seeking to agree shorter leases or by asking for greater flexibility in their ability to break earlier. This is proving a challenging situation for any landlords who have to react to this by upping their service offering.

If you are interested in looking through the survey then please log on to [www.occupier-satisfactionssurvey.co.uk](http://www.occupier-satisfactionssurvey.co.uk).

## How much redecoration will the Landlord expect when a tenant vacates?



In these current economic times Landlords will be taking a close interest in the "yielding up" provisions when a lease is close to expiry. However, in each case the Landlord can

only recover an amount which is capped at a level equal to the diminution in value of the property. In other words the value of the works to return the premises back to a state of good repair, identical in standard to when it was first let to the tenant. Case law has been established which supports this principal (Business Environment Bow Lane Ltd v Deanwater Estates Ltd 2007). Here the Landlord has submitted a claim for approximately £400,000 but the case was settled at just above £1,000. This is an extreme case but emphasises the need to be vigilant in these times when cashflow for all companies is limited and the pressure to keep vacant space let is high.



## The cost of carbon compliance is coming...

Last year the Government passed The Climate Change Act 2008 and this piece of legislation now requires those responsible for the purchase of electricity (in most cases Landlords) to buy Carbon Credit Allowances which will match the amount of CO2 emitted as a result of the use of this power. The regulations will capture those who use more than 6,000mwh per annum (approximately £500,000 per annum). This scheme is known as the Carbon Reduction Commitment (CRC) and obligatory and begins in April 2010. Those companies who meet and exceed the 6,000mwh criteria are currently being requested to register as "participants" within the scheme. This request involves declaring data collected from meter readings (half hourly data) and along with details of the property ownership, this information is used to forecast the "participants" usage and subsequently calculate the number of Allowances they will need to purchase for the period April 2010 - April 2011.

Although the scheme begins in April 2010 the "participant" will not need to pay for these Allowances until April 2011 when they will be required to buy Allowances for the period April 2010 - April 2011 and April 2011 - April 2012.

It is the Government's intention for the cost of administering this scheme to be met by the Landlord. However, the Landlord will look to the terms of the lease to recover the costs of these Allowances from the Tenant and so companies should begin budgeting for increases in their service charge contributions. This new legislation will apply pressure on the property owner to rein in the amount of energy they use and as a result the need to measure usage will be at the forefront of how this is done. Smart meters will become the norm and these will be reviewed in a later e-newsletter. Landlords across the country who are recording their energy usage on a half hourly meter, and who fall within the annual £500,000 spend on energy, will be sent packs to register themselves as a "participant" in the scheme and although a property owner may register himself as a "participant" in the scheme it is not certain whether they will inform a tenant of their application. This is a self

certification scheme and non compliance will receive a strict financial penalty and any participant not complying will be named and shamed. Consequently a property owner will be under a strict obligation to comply. A tenant may wish to make his own enquiries of the managing agent or property owner to understand the financial implications of being involved in such a scheme, but the confusion may result in limited information being available.

Prudent Landlords will be adjusting their service charges and adding the certificate costs to the Energy Categories as of now and tenants should be wise to this and begin setting aside monies to meet this increase in their service charge budget. There is one good piece of news and that is should a landlord consume less electricity than the number of certificates purchased then a rebate will be made in the following October (2011 being the first). Be careful to monitor what your Landlord is doing and if in doubt ask questions. More to following in future editions of this e-newsletter.

If you are interested there are 2 Guidance Notes on our Environmental page

## Refrigerant gases nearing depletion deadline.

In 2000 Britain agreed to the Montreal Protocol to reduce and eliminate the use of harmful gases which had been shown to deplete the ozone layer. The date upon which we need to comply is nearing and, under EU Regulation, with effect from 1st January 2010 the use and sale of virgin hydrochloroflourocarbons will be banned. However, where the gas has been stock piled this still is permitted but this also has a limited life span and will need to be exhausted by 1st January 2015. The most talked about refrigerant is R22.



For tenants this may not require much attention as many of the air conditioning units are small wall hung cabinets with a sealed leak free unit. The Regulation will have a bigger impact on the central air conditioning system that serves the entire building and which is the responsibility of the Landlord. Here the Landlord has limited options other than to program a replacement of the gas used in the compressors. Disruption may occur to the provision of air conditioning to the building but if programmed correctly this can be overcome with limited impact on tenant life. Reports do however say those units which are modified and not replaced may incur more maintenance visits. Overall, be aware that these regulations may have an impact on operational costs in the building and caution may be necessary when reviewing future budgets.

**For further detail on this matter the Government Department, Defra, has issued a guidance document and this can be seen using the link [www.defra.gov.uk/environment/air-atmos/fgas/index.htm](http://www.defra.gov.uk/environment/air-atmos/fgas/index.htm)**