

# Landlords, Surveyors and Solicitors all arguing against Schedules of Condition

Schedules of Conditions can save you lots of money and are a fair way of agreeing a lease

## What is a Schedule of Condition?

A Schedule of Condition is a record of the condition of a property. A Schedule of Condition is usually used by tenants when going into a property to record the properties condition but they can equally be used by landlords to record the condition.



We believe that Schedules of Condition are a fair way of showing the condition of the property. We would go further than this and say a Schedule of Condition is a fair way of getting a good basis to start a lease and also a good way to resolve any future issues and disputes with regard to the condition of the property and maintenance that should or should not have been carried out under the terms of the lease.

## Can you give me an example of how a Schedule of Condition can be used?

It is probably best to give an example of where a Schedule of Condition has not been used. A case that we have been dealing with was rented at what is generally now considered to be a below market rent.



Open market rent or market rent defined

What is commonly known now as a market rent is the rent that a property would achieve if the property was put onto the market and marketed appropriately for the type of property.

You may wonder why this has to be defined and therefore give you an example of a below market rent which is what we have used in the last paragraph where a property is perhaps sub-let after so many years and because of the level they got the property at many years ago and the market has now gone up can offer a below market rent if they so wish.

In this example the company moved into the property and duly paid their rent every month for the next six years. During this time the company advised that they hardly ever saw the landlord and when they did it was usually because they had requested permission to alter and improve the property and he sent a surveyor down to take a look at what they wanted or responded via email. During the six years the tenants would say that the landlords did little more than take the rent. Equally to be fair to the landlord he would probably say that the tenants did little more than pay the rent! It was the maintenance of lack of maintenance that became the issue.

# Every landlord is very friendly until the tenant goes to leave the property

When the tenant decides that he wishes to move onto another property or simply move out of the existing property for whatever reason the landlord will normally send a Surveyor to the property to check the condition of the property; this is of course to protect the asset that makes the landlord money which is the property. You need to remember whatever your business the landlord's business is utilising property to achieve rents and make a profit.



## Two types of Surveyors

In our experience you usually get two types of Surveyors looking at the property; either a Surveyor that knows the property from of old and is aware of the condition as they were involved with the original Letting or a completely new Surveyor will be appointed who will just look at the terms of the lease. The second type of Surveyor you need to be particularly aware may turn up to carry out Dilapidations and have no prior knowledge of the condition of the property. Equally we would say that even a Surveyor that has had a prior knowledge of the condition of the property may stick strictly to what is in the lease.

### Dilapidations defined

Dilapidations come in many forms but as a general generic comment we would say that Dilapidations is a list of the repair issues in a property as set out within the lease (note not as the condition that you took the property on unless a Schedule of Condition is appended to the lease).

## Where do Surveyors come from?

We have this heading rather tongue in cheek but it is an interesting one as often it does depend where the Surveyor comes from as to how the Surveyor deals with the Dilapidations claim. In our experience usually a Surveyor will not know the property and will have been selected on recommendation or via a selection from the internet or the Royal Institution of Chartered Surveyors (RICS). As such when the Surveyor is instructed by the landlord he will request a copy of the Lease to understand the terms the property has been let under and examine the various covenants which are within the Lease.

### Covenants defined

Covenants are the rules and requirements of the lease. For many these relate to everything from how you use the property to how you pay the rent etc, etc.

## What does a Surveyor look for in a lease?

When we were teaching Dilapidations we found it best for the students to divide leases into four sections and these are what we would term the 4 R's:-

**R**epairs

**R**edecoration



## **R**einstatement

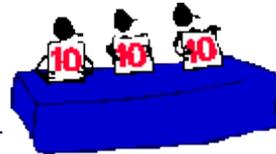
## **R**egulations (Statutory Regulations)

(We know that they all do not begin with R but it is a very good way of remembering the different covenants – the four R's).

There are other important clauses, or covenants one of these is the Yield Up Covenant which is how the property should be yielded up at the end of the Lease which may be different to how it is set out within the lease document.

## **If the Surveyor only has the Lease and the property inspection to go by they will assume that the property was perfect when the property was originally rented**

If the landlord's Surveyor has nothing else to go on with regard to the condition of the property they have to assume that the property was in a good or near perfect condition when it was originally rented. As such any deterioration or lesser standard than that stated in the Lease is recorded and costs put against the repair items. All the costs are added up together with other factors such as loss of rent and professional fees and then this becomes the Dilapidations claim.



## **Most tenants argue the property was in a poor condition when they took on the property**

Sorry to repeat the heading but the common comment we hear time and time again is that most tenants advise us that the property was in a poor condition when they took on the property. Unfortunately tenants also advise us that they do not have any photographs of the property or if they do have photographs they will tend to be more of the opening party! than a record of the property.



## **Tenants guilty until they prove themselves to be innocent**

From this standpoint the landlord's Surveyor is perfectly correct however the tenants will argue time and time again that they have improved the property considerably and carried out a great deal of maintenance as the property was in such a poor condition originally. Unfortunately without evidence it is impossible to comment further and it is very difficult for the Surveyor to argue your case.

## **The beauty of a Schedule of Condition**

The beauty of a Schedule of Condition for all those involved with a Lease Dilapidations Claim is that you do have a record of what the property looked like when you took it on. However, we would add that some Schedules of Conditions are really not worth the paper that they are written on and you do need to have a common sense check when you read your Schedule of Condition.

The vast majority of Schedule of Conditions do help considerably when putting together Dilapidations.

## Why don't landlords always have a Schedule of Condition carried out?

We have wondered over this over the years time and time again and we believe that often from the landlord's point of view the property can be one of many properties that they own and possibly not even near to where their offices are located or where they live and have probably not visited the property they rent for many years as the property is normally run by a management company. As such landlords just do not have a good record of up to date photographs of the condition of their property or quite simply is it to their advantage not to have a good up to date record of the condition of the property.



## Why don't tenants always have a Schedule of Condition carried out?

As for why tenants do not always have a Schedule of Condition carried out we believe that often in the excitement of the tenant taking on the property and getting their business going or expanding their business they just do not think about the future and a possible Dilapidations claim and as such do not have a Schedule of Condition.



Interestingly we have found companies that have had the experience of moving and expanding will always call us to arrange a Schedule of Condition. We have heard so many stories where tenants have advised how much a Schedule of Condition has saved them at the end of their lease.

## Anyone can do a Schedule of Condition

Some tenants are tempted to carry out a Schedule of Condition. We have over the years seen some terrible Schedule of Conditions which have not adequately described the condition or the part of the property or have left us hanging in mid air due to the ambiguous statement about the condition of the property.



Take a look at some of our examples of Schedules of Condition and you will see the detail that we go into.

## We recently took a telephone call from a Surveyor who said that our Schedule of Conditions included elements of supposition

Interesting word supposition, we believed and still believe that our Schedule of Conditions are a detailed record the facts of what a property looks like and we believe that they do not have supposition but have facts recorded to a level of detail that this Surveyor was not used to or to be exact we were actually dealing with a Letting Agent. We could see that the Letting Agent was simply protecting his client the landlord's position.



The Schedule of Condition we carried out was for the tenant and it was a requirement our tenant had for the Schedule of Condition to be signed and appended to the lease

to make it a record of the condition of the property was part of the agreement. The Schedule of Condition will be used in many years time to discuss what repairs should or should not be carried out.

## Have a Schedule of Condition carried out to make things crystal clear

Whilst we are bias as we are Surveyors and we carry out Schedule of Conditions we would say that a good Schedule of Condition with many photographs does make the condition of the property crystal clear. We would always argue that a Schedule of Condition needs to be more than just a description of the property and the condition it also needs to recommend the remedial action as this gives a much better understanding as to the nature of the problem.



Let us give you an example as this is the clearest way to demonstrate

In a room where the paint is peeling on one wall we would do the following Schedule of Condition item

DESCRIPTION	CONDITION	ACTION REQUIRED
<b>Walls:</b> Modern gypsum plaster Painted with emulsion paint	Marked	Paint left hand wall (all directions given as you face the property)

However given the same marks but within a boardroom for example we may detail the following:

DESCRIPTION	CONDITION	ACTION REQUIRED
<b>Walls:</b> Modern gypsum plaster Painted with emulsion paint	Marked	Redecorate all walls

We believe that this type of Schedule of Condition with an Action Required column is a far better understanding of the condition a property is required to be back in at the end of the Lease. Equally a better description of the condition may also help.

DESCRIPTION	CONDITION	ACTION REQUIRED
<b>Walls:</b> Modern gypsum plaster Painted with emulsion paint	Dampness in the walls	Lower ground levels externally to stop the capillary action from the high ground level.  Redecorate all walls

And finally we would comment that we are great believers in Schedule of Conditions being as clear as possible so we will add photographs to our Schedule of Conditions if we believe they are required and will keep a photographic record of the property.

We believe that it is essential to add the Action Required column although we do understand that many landlord's Surveyors would argue against a Schedule of Condition as detailed as this. We believe that they say this as the landlord ultimately wants the tenant at the end of the Lease to carry out repair works and improve the condition of the property that is being Let.

This may well be a contentious statement but from our experience over many years of surveying this is what we have found to be true. We have been involved with discussion after discussion when representing the tenant or the landlord where there has been massive disagreement over the condition of the property originally and how it affects the property.



Let us give you an example as this is the clearest way to demonstrate this. We would add that we do appreciate that when as a tenant you have spent a long time hunting for a property and have finally found what you believe to be the ideal property in the ideal location you are just dying to get your business moving and the last thing you want to be talking about is potential future property issues.

An example, as we do believe it is worth explaining further, we were involved with a warehouse where there had been a roof leak. The roof leak in turn had lead to damage to stored goods in the warehouse which had been happening for many years and various patch repairs had taken place by the tenant to allow his business to carry on running.



When the Dilapidations was made at the end of the Lease the Surveyor working for the landlord put in amongst other items that the property required the roof to be repaired and repairs to the gutters as well as repairs to the walls. The tenant of course argued that the roof had been leaking all along as had the gutters which in turn had affected the dampness in the walls.

The landlord's Surveyor said that the Lease is a Full Repairing Lease so why had the tenant not carried out repairs/replacement as now they were in such a bad condition that probably the most economic way forward is to replace the roof and rusting gutters and redecorate the walls.



As is common with most Leases the professional fees to prepare the Schedule of Condition and the legal fees to serve the Dilapidations claim are all tenants costs. Therefore to disagree and argue about such problems can cost a tenant further money which is why we recommend to have a Schedule of Condition carried out at the start point and for everyone to agree the condition of the building.