

## **Covid-19 : Commercial property – Service charges for management and safety of common areas in multi-occupancy buildings**

**As businesses prepare to start coming out of lockdown, landlords and tenants of multi-occupancy buildings need to consider planning for the management and safety of common areas to ensure adequate social distancing and enhanced hygiene, and liability for the cost of it.**

On 29 May, Scotland entered Phase 1 of the Scottish Government’s Covid-19 Routemap for changing the current restrictions, taking the first, tentative steps on the road to economic and social recovery.

This first phase does not change the position for landlords and tenants of non-essential offices, or indoor shopping centres. These premises will not be re-opened until Phase 3, and even then, home-working will remain the default in the case of offices. However, Phase 1 starts the process of easing restrictions and landlord and tenants are stepping up their preparations for re-opening.

Both landlords and tenants of multi-occupancy buildings need to consider an additional factor in their planning: management and safety of common areas and liability for the cost of it.

Ensuring adequate social distancing and enhanced hygiene in common areas will involve landlords increasing and in some cases adding, common services. For example:

- More frequent cleaning of common areas and extra supplies of soap in common toilets
- Checking and restarting systems and services which have been unused during the lockdown
- Provision of masks, hand gels, etc to on-site staff
- Managing physical access to common facilities such as public areas, staircases, lifts, toilets, showers, common meeting rooms and shared kitchen facilities
- Possibly adding common facilities, for example creating extra bike rack spaces in response to restrictions on the use of public transport.

A responsible landlord will want to provide safe common areas for its tenants and their visitors and customers in all cases. However, doing so will naturally mean that the landlord’s service provision will be more extensive than before the crisis and, unfortunately, it is likely that the “new normal” will last some considerable time.

It is understandable that both landlords and tenants will want to know whether the additional costs can be off-set through the service charge. The lease should be reviewed to confirm the position.

The most likely category that would allow recovery is if the lease permits the landlord to charge for services provided in accordance with “good estate management”. It is very common for leases to allow this. There can be no real doubt that delivering safe common facilities is good estate management so, provided the lease includes this in chargeable services, the landlord in principle should be able to pass the costs on to its tenants.

Leases often also include an ability to recover costs for complying with statutory obligations applying to common areas. As the coronavirus emergency legislation does not currently impose specific obligations on management of common areas, such a provision in a lease is less likely to support a service charge claim being made.



However, establishing a basic entitlement to charge for the services is not the end of considerations. The lease should be checked to see if the tenant's liabilities are limited. It is possible the lease frees the tenant from the cost of specific services and/or puts an upper limit on how much service charge a tenant is obliged to pay.

Both landlords and tenants should check their leases to assist their cost-planning for re-opening.

**For further guidance and support, get in touch with your usual contact or:**

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