

Legal Update for PMA Members

Carbon Reduction Commitment

In my experience CRC issues continue to delay transactions. This can happen either at heads of terms or during the legal process. It is clear there is no consensus between owners and occupiers at present. Many landlords appear to wish to deal with the issue simply by passing on all costs to tenants. These costs include:

- Cost of CRC registration;
- Cost of CRC administration (believed to be significant);
- Cost of CRC levy for demised areas;
- Cost of CRC levy for common parts/communal systems.

I have yet to see any drafting which apportions these costs between the parties. Landlords who do include drafting treat CRC as just another cost to be passed to tenants. Tenants need to be alert to the CRC implications of any deal. Ideally they should liaise closely with their agents and lawyers.

Best advice would include:

- At heads of terms stage, ask the landlord if it is a CRC participant.
- Also at heads of terms stage, ask the landlord how electricity suppliers are dealt with e.g. is the supply to the tenant demised direct, or via a sub-meter, or simply charged back by the landlord on a floor area or similar basis?
- Depending on the answer, engage with the landlord re cost implications.

On the basis of the property industry working together for a solution, and in the continued absence of any Government regulation, my personal thoughts are:

- The landlord should pay the cost of registration;
- The landlord should also pay the cost of all administration;
- The tenant should pay the CRC levy re its own demise (giving tenants incentive to improve);
- Landlords should pay the CRC levy re common areas and communal systems (giving the landlord the incentive to improve its own investment).

As a final comment, please do not take at face value comments by some (lawyers and agents) that CRC is a tax and therefore payable by tenants. It isn't. It is also not correct to say that the wording of existing leases will inevitably cover CRC.

Display Energy Certificates

The Government announced last week that display energy certificates would now be rolled out to all commercial properties in 2012. This is further evidence of the Government's commitment to environmental and sustainability issues.

Service Charge Code

The RICS has recently completed work on a revised code, which will be launched soon. Detailed consultation has taken place. The new code will be shorter than before, and continue with most of the basic principles of its predecessor. I would not wish to criticise it for not containing CRC guidance.

If any member would like advice or further views on the above, please let me know.

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