

## **Back to basics: be demise wise**

The extent of an area to be demised to a tenant in a lease is of importance when negotiating leases as the majority of the covenants in the lease relate to the area demised. It is important not to agree the demise simply on the basis that the address and plan look ‘about right’.

The demise can have practical importance, particularly when it comes to repair obligations. Landlords are concerned about the risk of being left with a dilapidated and empty property as more and more tenants succumb to financial woes. As a consequence, landlords are being more proactive than usual in ensuring that tenants are complying with repairing covenants in their leases. Tenants are also looking more closely at their leases and assessing what their responsibilities are in this regard. The starting point for assessing responsibility for repairs is to identify the exact extent of the property demised.

The extent of the demise can also be critical for other issues. For example, does a tenant have to comply with a statutory obligation such as asbestos control, what happens if a tenant wants to carry out alterations outside of its demise (e.g. to comply with disability discrimination legislation). In the case of the latter example, a landlord could hold the tenant to ransom over consenting to the alterations.

Leases are often identified as being either a full repairing and insuring lease (“FRI lease”) or an internal repairing and service charge lease (“IRSC lease”):

### **IRSC Leases**

An IRSC lease means what it says on the packet – the area demised is only the internal parts of the building and will therefore include within the demise items such as the internal wall and ceiling finishes and non-load bearing walls within the premises. The landlord should maintain responsibility for the structure of the building in which the premises is situated and usually seeks reimbursement for the costs of maintenance from all of the tenants in the building.

### **FRI Leases**

An FRI lease incorporates the structural parts of the building within the area demised to the tenant. The extent of the demise in an FRI lease will often include the external and structural walls. A landlord may also seek to include the foundations of a building (in the case of a ground floor shop being let) or the roof (in the case of a top floor being let). From a tenant’s perspective, FRI leases are often undesirable because of the more onerous maintenance responsibility in relation to structural elements of the building. Any tenant taking an FRI lease should instruct a surveyor to assess the repair and condition of those structural elements

before agreeing to be responsible for them. What is my demise? There is no hard and fast rule when it comes to the extent of the area to be demised in a lease. Whilst technically either an FRI or IRSC lease could be used for a lease of a whole building, it is most common for an FRI lease to be used because a landlord will be eager to dispose of all responsibility for the property whilst the tenant is in occupation of the whole building. In the case of a lease of whole, the definition may simply be "all that property at 1 Piccadilly Circus", in which case the lease will be an FRI lease of the whole of the building located at that address. Leases of part of a building come in a variety of shapes and forms. It could be a lease of an office on part of a floor in a building or a lease of a ground floor shop on the High Street with residential premises above it. Leases of part can be either FRI leases or IRSC leases. In the case of a lease of part, the definition is likely to go into fine detail about what parts are included within the demise and what parts are not and each definition needs to be looked at closely to determine which parts of the let premises are the landlord's responsibility and which are the tenant's responsibility.

As parties to leases are always focussed on limiting their potential financial exposure, it is important to consider during lease negotiations the extent of the land being demised, and the extent land retained by the landlord. It is also important to remember that tenants can be responsible for areas outside their demise due to the insurance and service charge obligations in the lease.

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