

Taking a view on the right to renew

Caroline Linsdell, partner at Cozens-Hardy, explains commercial leases and rights to renew.



The government has announced that it is planning to change the current legislation regarding residential tenancies, and the rights of landlords to bring a tenancy to an end.

This got me thinking about commercial tenants, and the protection available to them under the Landlord and Tenant Act 1954.

Whenever a commercial lease is granted, the default position is that the lease will be protected by the 1954 Act. This means that when the lease comes to an end the landlord has only limited

grounds to refuse the tenant a new lease (eg because he needs the premises for his own purposes or for redevelopment), and that lease is to be fundamentally the same as the old.

Many landlords will be happy with that. As long as they have a tenant in place, paying the rent and complying with the terms of the lease, why would they not want to renew it?

From the tenant's perspective, a lease protected by the 1954 act gives them security of tenure, and secures their future plans for the business. The lease is also more attractive to a potential buyer,



Both landlords and tenants need to think carefully about what their requirements are likely to be when the lease comes to an end
Picture: GETTY IMAGES/ISTOCKPHOTO

should the tenant decide to assign the lease before it comes to an end.

There will, however, be situations where the landlord needs to be certain that he can recover the premises at the end of the lease, without having to prove he has grounds for doing so.

By taking the lease outside the protection of the 1954 Act the landlord can do what he likes at the end of the lease. The landlord may have only wanted to let the premises for a short period, with the certainty of being able to get them back at the end of the lease.

Alternatively he may have agreed terms with the tenant that he doesn't want to have to repeat in any renewal lease.

Both landlord and tenant need to think carefully about what their requirements are likely to be when the lease comes to an end. It's no good a tenant taking on premises where he is hoping to build up a business long-term if it is a short lease with no protection. Similarly, a landlord needs to be wary of entering into a short term lease which is protected by the 1954 act when he is likely to want

the premises back, or at least have the flexibility to review his position when the lease comes to an end.

Unlike residential tenants, who the government is looking to protect, commercial tenants are left to agree terms with the landlord, and the market will dictate these terms. Ultimately it's dependent upon the bargaining positions of the parties, but one of the terms that should not be overlooked by either party is the tenant's right to renew the lease when it comes to an end.

Norwich at the centre of legal indemnity

There will be few who work in the property industry not familiar with the insurance products taken out against risks identified by lawyers when a property changes hands or is to be developed.

Many legal practitioners in the East Anglia region will also have noticed, whether in the small print found at the bottom of a policy or perhaps the email signature of the underwriter they've been corresponding with, a Norwich postal address. Few though will be aware of the role Norwich has played and continues to play in this specialist line of insurance.

The products most familiar to property practitioners are the specific risk policies that help property owners and developers manage legal risks identified by their lawyer during the due diligence process. These cover a range of issues such as lack of planning/building regulations, breach of restrictive covenants, or absence of easements.

Underwriters working out of Surrey Street in Norwich in 1990s

Ian Mellor, a solicitor and head of office at DUAL Asset Underwriting explains the central role that Norwich plays in the national legal indemnity industry.

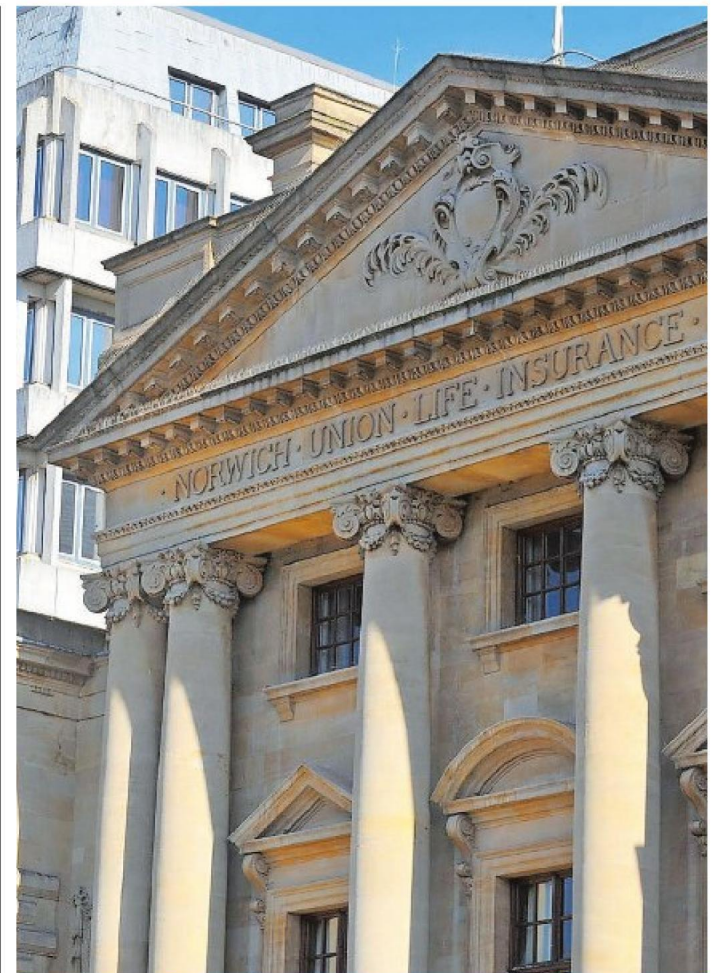


were pivotal in the development of these products, and it was this innovative product development and underwriting that led to Norwich Union becoming the market leader. However, it wasn't long before others looked to enter a new and growing market, and looked to Norwich with its already rich pool of talented underwriters to set-up offices. This clustering effect continues today; DUAL is the most recent entrant having set-up its growing office in Norwich just three years ago.

Norwich's role in the legal indemnity market is as strong now as ever. There are in the region of 100 underwriters based in Norwich and that number continues to grow. These are highly skilled jobs where a deep

understanding of a broad range of risks is required. My team can be looking at anything from an access issue for a property outside Inverness, to rights to light issues for the next new office building to greet us at Liverpool Street.

Norwich also continues to be at the centre of innovation in the industry. It is where our new online portal was developed allowing law firms to obtain quotes from major insurers in seconds. The platform is set to revolutionise the market again, as the website not only reduces the time lawyers spend obtaining quotes, but also helps firms ensure they are complying with the new SRA rules brought about through the new Insurance Distribution Directive.



Underwriters working out of Surrey Street in Norwich in 1990s were pivotal in the development of legal indemnity insurance
Picture: STEVE ADAMS