



SPF VOICE

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As I approach the last few days of my year in office, it feels appropriate that my final two SPF Webinar events have focussed on social inclusion and the shift towards a net-zero carbon economy.

When I set my agenda 51 weeks ago the central thread was based on inclusive economic growth as we move towards a carbon neutral economy, highlighting social and environmental sustainability as consistent reference points.

By the time we reached early March I had hosted interesting and engaging debates in Glasgow, Aberdeen, Inverness, and Dundee (twice!), and we had presented a very successful conference in Edinburgh with two excellent keynote speakers giving a fresh perspective on both issues.

Just as we were due to head to the sunny shores of Cannes to continue discussions in an exciting programme at MIPIM, everything changed.

As the COVID-19 crisis tightened its grip, I was fearful that we may abandon these aims and revert to a model of economic-stability-at-any-cost. But that didn't materialise. Quite the opposite.

Aside from those chaotic and confused days of late March into April, the discussions around social inclusion and a net-zero carbon economy remained consistent. The term 'Build Back Better' is frequently referenced as shorthand for inclusive economic growth as we move towards a carbon neutral economy, and business, government and society are more committed to this cause than ever.

As I project forward for what this might mean for our industry and the opportunities it may present, I do so with a sense of optimism that the way we do business – and the way we measure the success of our businesses – will be better for it.

If our industry can genuinely and sincerely embrace the challenges of social inclusion whilst working towards a carbon neutral economy, we will find ourselves more frequently aligned with the aims of local and national governments, and less frequently in conflict with the communities in which we serve.

It's time for Scooby-Doo to find a different bad guy.

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POLICY INSIGHTS

CHIEF PLANNER GIVES UPDATE ON PLANNING REFORM AGENDA

This month the SPF met with the Chief Planner and other Scottish Government officials to discuss the ongoing planning reform agenda. The working groups set up early in the year, which includes SPF representation, have now resumed.

Work is underway on development planning and engagement, with mediation guidance expected by July 2021. Work on the infrastructure levy has stalled pending the output of research on s75 and land value capture.

NPF4 is still a work in progress and work is currently underway on supporting spatial strategies and thoughts are turning to the national developments. The timetable for this has moved to September 2021 with a position statement expected in November.

The SPP Technical Amendments Paper also featured in the discussion and the SPF has since responded to the consultation. It is hoped that the position should be clearer by the end of the year.

SEPA CONSULTATION ON ITS FLOODING SERVICES STRATEGY

The Scottish Environmental Protection Agency (SEPA) has launched a consultation on its flooding services strategy. One Planet Prosperity: Our Flooding Services Strategy sets out how SEPA will refocus its flooding services in response to the climate emergency and how it will be ready to tackle the challenges of future flood risk.

The Strategy aims help Scotland to prepare more powerfully for future increased flooding. It sets out how SEPA will refocus its flooding services in response to the climate emergency and how it will be ready to tackle the challenges of future flood risk.

The consultation is open until 4 December 2020 and members views and comments on the strategy, and the direction SEPA has set out for the future, would be very welcome.

WHAT'S NEXT FOR THE PRIVATE RENTED SECTOR

Surprisingly, October saw the Scottish Parliament's Local Government and Communities Committee return to considering the Fair Rents (Scotland) Bill or 'Mary Barbour Bill' with a call for views by 7 December.

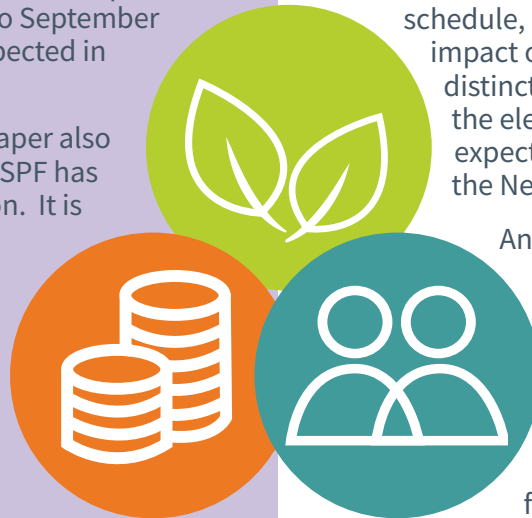
Members may recall that this Bill was introduced in the Scottish Parliament by Pauline McNeill MSP, on 1 June 2020 and was subsequently 'parked' due to insufficient space on the legislative timetable, and a heavy workload.

So why the change of heart? Not much has changed in the interim, and between now and the election next spring, the Committee and the Scottish Parliament continue to have a very full work schedule, especially considering the ongoing impact of the pandemic. There is also a distinct possibility the Bill might fall before the election is called and the Committee is expected to decide on next steps early in the New Year.

Any Bills not passed before the Parliament is dissolved will fall, and if reintroduced in the next Parliamentary session, would go back to the start of the legislative process. With that in mind, and the continued lobbying and legal action by others to bring the Bill forward for consideration in this Parliamentary session aside, the timing of this seems to place unwarranted pressure on the Parliament.

In the meantime, the Scottish Government has published guidance to support private landlords to meet the requirements of the Rent Arrears Pre-Action Requirements (Coronavirus) (Scotland) Regulations 2020, which came into force on 30 September 2020.

There are a number of provisions in place to protect tenants during the COVID-19 emergency and we continue to advocate that any form of rent control is unnecessary, not justified by data on rent increases in Scotland, and would have negative consequences for both landlords and tenants. The only stable long-term solution to control rent levels is an increase in the supply of properties in the marketplace.



REGIONAL SPOTLIGHT



Aberdeen

On Thursday 29 October, the SPF hosted a virtual working lunch in Aberdeen where members were joined by Peter Reekie, CEO of Scottish Futures Trust, and Richard Sweetnam, Chief Officer of City Growth for Aberdeen City Council. In a discussion that largely focussed on the infrastructure investment plan, key issues included inclusive economic growth, the move towards a net-zero carbon economy, and the aim to build resilient and sustainable places.

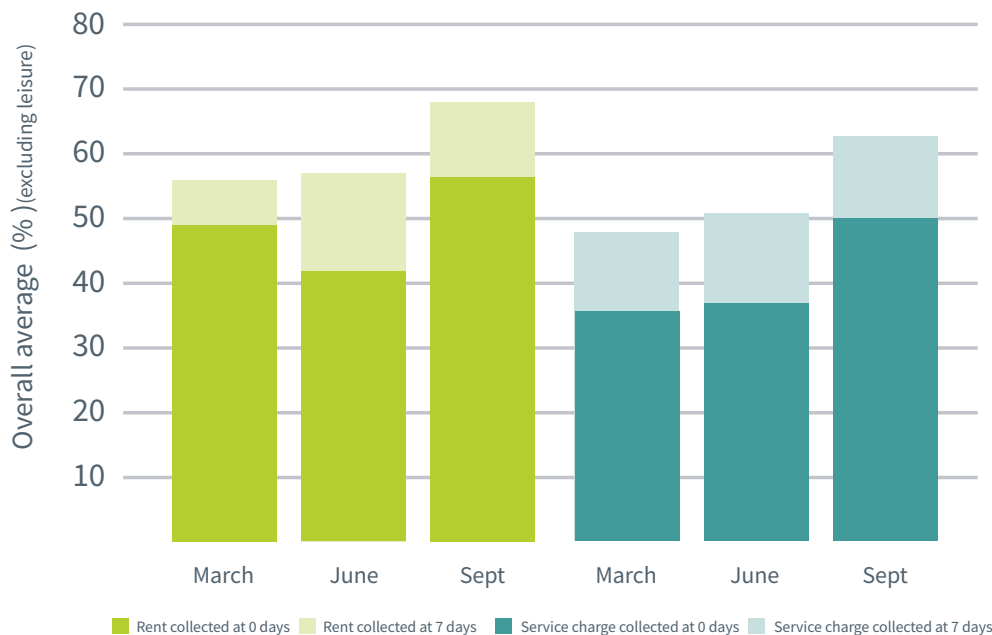
Dundee

The Scottish Government recently announced that Social Security Scotland has agreed a 20-year lease on the Earl Grey Building, known as Site Six, on the Dundee waterfront. It is estimated that the public body's presence in Dundee could contribute up to £100m to the wider Scottish economy. Fit out of the building is expected to begin in October and will take approximately seven months.

Edinburgh

The City of Edinburgh's draft City Mobility Plan was published for consultation in January alongside Choices for City Plan 2030. The council analysed responses to the consultation and ideas on the draft plan. The work culminated in a report to the Transport and Environment Committee on 1 October. It is anticipated that the finalised City Mobility Plan will be presented to the Transport and Environment Committee in Spring 2021.

Rent and service charge collected at 2020 English quarter days



£2.5BN

demanded in rent for September quarter day

£421M

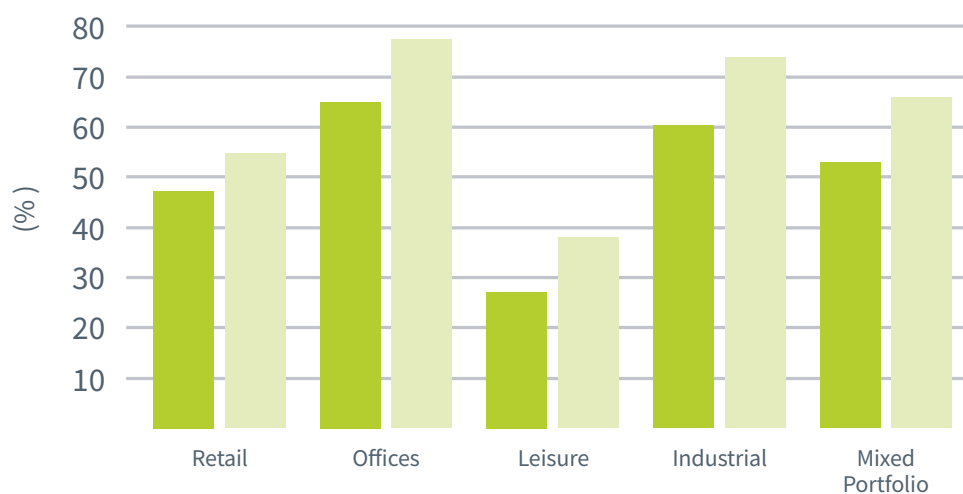
demanded in service charge for September quarter day

For the last decade, Remit Consulting has been conducting their REMark survey, a biennial property management survey collecting information on various areas of the market, including rent and service charge collection rates based on the returns on the English quarter days.

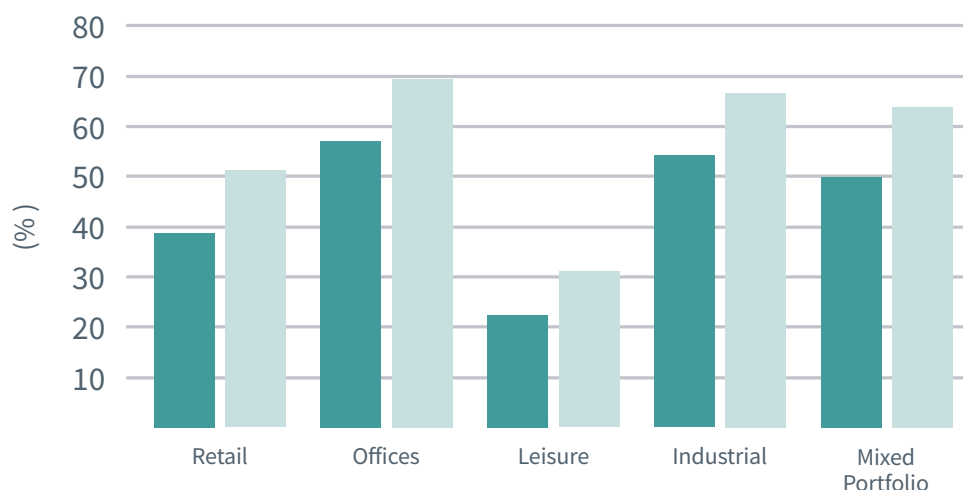
In light of the COVID-19 pandemic, Remit have been conducting a 2020 edition of the survey since the March quarter day. This is a summary of the September quarter findings. The sample covers around 125,000 leases from across the UK, for which a total of £2.5 billion was demanded in rent and £421 million was demanded in service charge. The majority of leases covered in this survey are based within England, but there is also evidence included from Scottish rental and service charges.

The survey in March did not include the Leisure sector, but this was added to the surveys in June and September. As this sector has the lowest collection rates across the UK, it significantly impacts the average collection rate and means it is very difficult to fairly compare March with other quarters. As such, the rent and service charge averages do not include Leisure, so a more direct comparison can be made with March on both rent and service charge.

Rent collected by sector (September 2020)



Service charge collected by sector (September 2020)



INDUSTRY INSIGHT



The Commercial Lease Bus Don't miss your stop

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Most commercial leases are like buses. You can only get off the bus (break the lease) at designated bus stops (fixed break dates) along the route (duration of the lease).

Alighting (ending the lease) only at the final destination (the fixed termination date contained in the lease). Just like the bus taking you where you expect to go, for the price of your ticket along the publicised route - it is a reasonable assumption that the lease will automatically end on that date, the tenant will vacate and hand back the keys, and the parties' obligations to one another will cease.

In fact, the position is not so straightforward. The bell needs to be rung to stop the bus and if the parties have not served notice or taken legal advice, they may find themselves unwittingly unable to get off the bus and somewhere they didn't expect to be: tied into the lease for a further period by the common law doctrine of tacit relocation (or "silent re-letting").

With the current economic uncertainty, shift to remote working, and the rise in online retail sales, many commercial tenants and landlords will be reviewing their buses and routes (leases and terms) with interest.

Tenants will need to consider their lease commitments and future requirements for business space. Landlords may be seeking to recover property from tenants who are in rent arrears, or to re-develop their property to maximise its potential in the current market.

Getting off the bus along the route – Break Options

Many commercial leases contain an option for one or both of the parties to terminate (or "break") the lease before the expiration of the term by service of a notice.

The party exercising the break option may be required to comply with additional conditions, for example payment of all rent and other sums due, or payment of an extra sum on top of the rent due to the exercise of the break.

It is vital that the break notice is served timeously, in the correct manner and all other conditions are complied with. Otherwise, the break notice may be invalid, you will have missed the bus stop and be required to continue until the end of the route (the termination date).

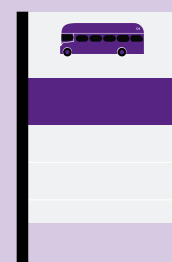
Missing the last stop - Tacit Relocation

In order to end a commercial lease at the date stated in the lease document, either the landlord or the tenant must give advance notice to the other by serving a notice to quit.

If you miss this last stop and notice is not given, you may be surprised to know that the lease will continue at the same rent for a further period. Leases for one year or longer are extended for a further one year period. Leases of less



Break Options: Getting off the bus along the route



Tacit Relocation: Missing the last stop



Notices to Quit: Ringing the bell to get off the bus



Route changes: Time for Reform?

INDUSTRY INSIGHT

The Commercial Lease Bus - Don't miss your stop continued

than one year will continue for the same period.

For example, a lease of three months will continue for a further three months. There are separate statutory rules for residential and agricultural leases, which we do not consider here.

The general rule is that all of the terms of the original lease will continue to apply for the period of extension, except the duration. But if a particular provision of a lease is inconsistent with the extended period, it will cease to apply.

For example, a Court has held that a clause giving the tenant the option to extend the lease for a period of 20 years no longer applied when the lease continued by tacit relocation. The rationale was that after the expiry of the original lease period, it became a yearly lease terminable at the end of each year with requisite notice. An option to extend was considered to be inconsistent with that.

Depending on the circumstances, if a formal notice to quit was not served but the parties acted and corresponded in a manner that is consistent with the lease ending on the termination date, it could be argued that tacit relocation did not operate and the lease terminated. However that would be a last resort and a notice to quit should always be issued.

Opinion is divided as to whether it is competent in Scots law to stipulate in a lease that tacit relocation will not operate. It is safer to assume it is not.

Ringling the bell to get off the bus - Notices to Quit

The law relating to notices to quit is complex - with traps for the unwary.

Some of the law is statutory. The lease document may set out the period of notice required and detail the mechanics of delivery and service. The party issuing the notice must strictly adhere to the terms of the lease.

In most cases, for a lease of four months or longer, the required period of notice is 40 days. If the term is less than four months, the notice period is usually one third of the duration, but no less than 28 days.

If the property exceeds two acres, the notice period may be longer (a year or more), depending on the original term, although there is some ambiguity regarding the application of that statutory provision as discussed in Andrew Smith's previous blog [here](#).

It is also necessary to allow additional time on top of the notice period for service and receipt by the other party. Knowing when to ring the bell so as not to miss the stop, that is calculating the last date for valid service, can be complicated.

Any failure to comply with the lease and any applicable statutory provision may mean you miss your stop, the notice being invalid, in which case the lease will continue.

The validity of notices to quit has often been the subject of litigation, with courts having to decide whether errors in the content of the notice or the method of service were fatal. Due to the complexities, we would always advise that any party issuing one should obtain legal advice.

Route changes - Time for Reform?

In some cases, the continuation of a lease by tacit relocation will be a simple way to extend a lease that the parties are happy to run on for longer, with no requirement to formally document the extension and no cost.

However, as with most bus timetables, the current law relating to the termination of commercial leases in Scotland is complex and confusing in some respects. A tenant unaware of tacit relocation may enter into a binding lease of new premises, without realising that they are committed to paying the rent for their current premises for a further year, because they failed to serve a notice to quit.

It can be burdensome for landlords with large property portfolios to continually monitor the expiry dates and deadlines for service of notices to quit. Clarification and simplification of the process in the future would be welcome.

Reform is expected. The Scottish Law Commission carried out a consultation in 2018 regarding the possible reform of the law relating to the termination of leases, including tacit relocation and notices to quit.

Until the Commission report we do not know what any changes will be, but it is likely that aspects of tacit relocation, service of notice and notice periods will be impacted.

If you are keen to make sure you don't miss the bus or your stop, be a prudent landlord or tenant and review the terms of your current leases. Failure to do so may mean that you are caught out, and committed to the lease for a longer period than you expected.