Risk Assessments: A Legal Duty, Not a Discretionary Choice

A Briefing Note for Commercial Property Landlords

1. Purpose of This Briefing

This briefing is prepared for commercial property landlords, freeholders, and managing agents responsible for let commercial premises. It sets out, in plain terms, why carrying out and maintaining risk assessments across a property portfolio is a legal duty rather than a matter of good practice, and what the consequences have been for other property owners who treated it as optional.

2. Who Holds the Duty in a Let Building

Under most commercial leases, the landlord retains responsibility for the structure, common parts, and shared plant and services — lifts, fire alarm systems, shared water systems, and electrical risers — even where tenants hold full repairing obligations for their own demise. UK health and safety law attaches risk assessment duties to whoever has control of the relevant premises or activity. In practice, this makes the landlord (or their managing agent) the "Responsible Person" for fire safety in common parts, the duty holder for asbestos in areas under their control, and the duty holder for Legionella risk in centrally managed water systems. Appointing a letting or facilities agent to handle day-to-day management does not transfer this legal responsibility — it remains with the landlord unless it has been formally delegated to a demonstrably competent party.

3. The Legal Position at a Glance

The table below summarises the core statutory duties that typically fall on a commercial landlord, independent of what a lease says about repairing obligations.

Legislation	What It Requires	Typical Duty Holder in a Let Commercial Building
HSWA 1974, ss.2 & 3	General duty to assess and manage risk to employees and others, including tenants, visitors and contractors.	Landlord (common parts / shared plant); tenant (within their own demise).
Regulatory Reform (Fire Safety) Order 2005	Fire risk assessment for the building, kept current and acted upon.	Landlord / managing agent, as "Responsible Person" for common parts and shared means of escape.
Control of Asbestos Regulations 2012, reg. 4	Duty to manage asbestos in non-domestic premises.	Whoever holds the maintenance / repairing obligation — usually the landlord under a commercial lease.
COSHH 2002; HSE ACOP L8	Legionella risk assessment and control for water systems.	Landlord / managing agent for centrally controlled or shared water systems.
LOLER 1998	Thorough examination of lifts and lifting equipment.	Landlord, as owner/operator of shared lifts and lifting plant.

4. What Happens When This Duty Is Ignored — Two Case Studies

Cambridgeshire County Council — £6,000,000 fine plus £292,000 in costs (2025). This is the largest fine the HSE has ever secured, arising from multiple safety failures on the council's Guided Busway, linked to three deaths and several serious injuries. Critically for landlords, the root failure was a risk assessment failure: despite a fatality in 2015, the council delayed carrying out a risk assessment until 2016, and even then overlooked key dangers. Rather than act on HSE enforcement notices, the council appealed them, and further incidents occurred while the appeal was live. The HSE described the outcome as "completely preventable."

Sanctuary Housing — £900,000 fine plus costs (2024). A large residential and commercial property provider was prosecuted under section 3(1) of the Health and Safety at Work etc. Act 1974 after a Legionella outbreak at a managed building. Water samples tested positive for Legionella on two occasions; staff were inadequately trained and failed to respond promptly, and residents were not properly warned before the building was evacuated. The case is directly instructive for any landlord who manages a shared water system: the duty to assess and control Legionella risk sits with the party who controls the system, and inadequate training or a slow response after a positive result is treated as seriously as never assessing the risk at all.

5. "No Assessment" and "Poor Assessment" Are Treated the Same

A recurring theme in both cases above is that the assessment existed on paper, or was eventually done, but was not suitable, sufficient, or acted upon in time. Courts and the HSE do not distinguish between a landlord who never commissioned a risk assessment and one who commissioned a substandard assessment, delayed it, or failed to act on its findings. Both are prosecuted as a breach of the underlying statutory duty.

6. Practical Steps for Commercial Landlords

- Maintain a written risk assessment schedule covering fire, Legionella, asbestos, electrical safety, and lifts for every building in the portfolio, with clear review dates.
- Use competent, appropriately accredited assessors — accreditation bodies and minimum qualifications vary by risk area (for example, LCA registration for Legionella, UKAS P402 for asbestos surveys).
- Never delay a risk assessment after an incident, complaint, or enforcement notice — a delayed assessment following an earlier fatality was central to the record HSE fine described above.
- Keep dated, retrievable records. Poor record-keeping is treated by courts as evidence of poor risk management, not a paperwork technicality.
- Trigger a fresh review after any change of tenant, refurbishment, change of building use, or a positive test result (for example, a Legionella sample).

7. The Cost of Inaction Beyond the Headline Fine

- Personal liability for directors and officers under section 37 of the HSWA 1974, where the offence is proven to have occurred with their consent, connivance, or neglect.
- Unlimited fines in the Crown Court, and in the most serious cases, imprisonment.
- Buildings insurance that can be challenged or invalidated where a known, assessable risk was left unassessed.
- Tenant and third-party compensation claims, and lasting reputational damage that affects future lettings.

8. Conclusion

A risk assessment is not overhead, and it is not a discretionary courtesy to tenants. It is the primary legal defence available to a landlord if something goes wrong, and its absence — or its poor quality — is now punished at a scale that dwarfs the cost of doing it properly. The cases above show that regulators treat delay and inadequate assessment exactly as harshly as never assessing the risk at all.

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Note: This briefing is for general education and does not constitute legal advice. Landlords should confirm duties for a specific building and lease structure with a qualified health and safety adviser or solicitor.