

**CHECKLIST FOR UNOPPOSED SECTION 25 AND SECTION 26 NOTICES
PURSUANT TO THE LANDLORD AND TENANT ACT 1954 (“54 Act”)**

- *This checklist is intended to assist members of the PLA in preparing unopposed section 25 notices and section 26 requests under the 54 Act.*
- *This checklist only applies where the parties are seeking to bring the tenancy to an end at or after expiry of the contractual term. It does not deal with the situation where a party is seeking to terminate the tenancy pursuant to a break option in the lease.*
- *Please note that these notes are only to be used as a guide and practices will vary from firm to firm.*
- *This checklist should be read in accordance with leading texts as suggested at the bottom of this checklist, together with the leading cases, and is in no way intended to act as a substitute for reading these resources or the 54 Act.*
- *The timing of the services of statutory notices under the 54 Act is often a question of tactics. A client’s commercial objectives must be considered before advising to serve. This checklist is correct as at November 2017 and will be updated on a yearly basis.*

1. Do you have all tenancy documents to review?

2. Have you checked the lease to confirm tenancy is not contracted out of 54 Act?

3. Have you checked whether the tenant is in occupation for business purposes?

- If the tenant is not in occupation for business purposes on the contractual expiry date, it will not be protected (see section 23 of the 54 Act).
- If this may be an issue to consider, check the leading texts and relevant cases to confirm whether the facts mean the tenant is not in "occupation" and/or cannot go back into occupation to re-acquire the protection of the 54 Act.
- Consider serving the tenant with a notice under section 40(1) of the 54 Act to find out whether the tenant is in occupation for business purposes.

4. Have you checked and reviewed any underleases?

- If there are any underleases, check whether they are contracted out of the 54 Act.
- If there are underleases which are not contracted out, check whether the underleases relate to the whole of the premises or part.
- Consider serving the tenant with a notice under section 40(1) of the 54 Act to find out whether there are any underleases in place.

5. Have you checked who is the competent landlord?

- Check who is the competent landlord for the purpose of the 54 Act - this will determine who should serve or be served with the notice. The tenant's immediate

landlord is not necessarily the competent landlord (see section 44(1) of the 54 Act).

- If you are unsure as to who is competent landlord, consider whether a notice under section 40(2) of the 54 Act should be served requesting the relevant information.

6. Have you checked the parties' identities and addresses?

- For each party, check the relevant property documents and property management documents including, but not limited to, office copy entries, Companies House details, the lease, rent demands, assignment documents etc.
- Consider the leading texts and cases to decide who the parties to the notice should be if the lease is not registered and the identity of the parties on the lease differs from the parties cited on other relevant documents such as rent demands.

Landlord **Is the identity of the Landlord correct?**

Is the address of the Landlord correct?

Tenant **Is the identity of the Tenant correct?**

Is the address of the Tenant correct?

Notes:

- Has the lease been assigned? If so, check through all tenancy documents to confirm the chain of assignments since the lease was granted.
- Have any of the parties changed their name since the lease was granted? Check the names/company numbers of limited companies/LLPs on Companies House.
- If there are joint landlords or more than one landlord, check the leading texts and cases to confirm the approach that should be taken in relation to the notice.
- If there are joint tenants or more than one tenant, check the leading texts and cases to confirm the approach that should be taken in relation to the notice.

7. Property: Is the description of the Property correct?

Evidence Lease

Title (does this correspond with the lease)

Drafting note: Find the relevant clause within the lease defining the premises and repeat the lease description of the premises as closely and fully as possible in the notice followed by the wording below:

"... as more particularly described in the Lease [as defined]"

8. When does the contractual term expire?

Notes:

- Carefully review the description of the term in the lease and confirm the expiry date.
- Refer to leading texts to confirm the correct relevant interpretation.

9. What date is specified in the notice?

Section 25 – Lease termination date

Is it on or after contractual termination?

Is it more than six months & less than a year?

Section 26 – Lease commencement date

Is it after contractual termination?

Is it more than six months & less than a year?

Evidence:

Lease

Notes:

- The section 25/26 notice must be served **not more than 12 months, not less than 6 months** before the termination date specified in the notice.
- The notice can be served before the end of the contractual term, or after the end of the contractual term if the tenancy is continuing under the 54 Act.
- Section 25 – The proposed termination date in the notice cannot be earlier than the day of contractual expiry of the existing lease.
- Section 26 – The proposed commencement date cannot be earlier than the contractual expiry date of the existing lease

10. **Terms** **Are proposed terms included in the Notice (s26(3) 54 act)?**
 Property
 Term
 Rent
 Other terms - “As per the existing lease subject to reasonable modernisation”

11. **Method of Service** **Have you checked that the method of service is permitted under the lease?**
- Section 23 of the LTA 1927 applies to notices served under the 54 Act (s66(4) of the 54 Act)) and sets out methods of service which, if used, will mean that service is deemed to have taken place and that the risk of non-receipt of the notice is with the recipient, not the sender. It is advisable to use at least one of these methods of service.
 - Any notice provisions in the lease should also be followed as a matter of caution.
 - It is preferable and best practice to use at least one method of service where a proof of receipt can be obtained to establish that the notice was properly served.
 - Consider whether appropriate to serve copies of the notice by various methods to ensure receipt of the notice.

Confirm any relevant dates have been diarised in your diary and any central diary held by your firm

Leading Texts

- Reynolds and Clark – Renewal of Business Tenancies
- Woodfall: Landlord and Tenant