

Checklist for terminal dilapidations claims

This checklist is intended to assist members of the PLA who are dealing with terminal dilapidations claims by providing an overview of the steps that may be taken or considered during the pre-action period. Members dealing with these issues should also refer to the relevant case law, textbooks and practice guides as set out in this checklist. In particular, members should consult Dowding & Reynolds, Dilapidations: The Modern Law and Practice. This checklist is correct as at March 2018 and will be updated on a yearly basis.

Tactics and Strategy

The checklist should be read in conjunction with the [Dilapidations Pre-Action Protocol](#) and the underlying tenancy documents and adapted as appropriate to reflect the context in which the practitioner is acting. As every tenancy situation is different, members should tailor their approach accordingly.

The objectives of the Dilapidations Pre-Actions Protocol are to:

- (a) encourage the early exchange of full information about the dispute;
- (b) enable the parties to avoid litigation by agreeing a settlement of the dispute before proceedings are started; and
- (c) support the efficient management of the proceedings where litigation cannot be avoided.

This checklist assumes that members have already taken their client's instructions and have considered any relevant tactical considerations that may apply. Such tactical considerations may include but are not limited to those highlighted by [Jonathan Ross in his Terminal Dilapidations Checklist](#) for the PLA and the [Terminal Dilapidations Guide](#) prepared by Practical Law.

*12 months before
the end of the lease* **Landlord should review lease documentation and consider lease (and any licence for alterations) notice requirements for reinstatement**

- Diarise any notice requirements to ensure compliance with the lease

*Few months
before the end
of the lease**

(*assuming that longer
notice is not required
under the lease)

Landlord should notify the tenant of any requirement to reinstate alterations and instruct a surveyor to inspect the property and prepare a schedule of dilapidations

The schedule of dilapidations prepared should:

- Illustrate the existing breaches of the tenant's covenants under the lease and/or any licences to alter
- Explain what the landlord believes is necessary to comply with the requirements of the lease or any licences to alter
- Address any licences to alter, deeds of variation and schedules of condition
- Put the breaches into relevant categories
- Include any reinstatement notices
- Detail the landlord's costs
- Contain an endorsement by the landlord/landlord's surveyor that all the works required are reasonable, take full account of the landlord's intentions for the property (if endorsed by the landlord), and that any costings are reasonable

Within a reasonable time, usually 56 days after the end of the tenancy

(assuming that no other period is required under the lease)

Landlord to send the tenant a letter serving the schedule of dilapidations and Quantified Demand

The Quantified Demand should:

- Support the sum the landlord is claiming in relation to breaches by the tenant
- Be restricted to the landlord's likely loss and not include items likely to be rendered obsolete by the landlord's intentions for the property
- If the demand is based on the cost of the works to be undertaken it must be supported by invoices or estimates for the work
- Separate out and (where known) specify professional fees (surveyors, solicitors) fees and explain the legal basis on which they are being claimed (eg whether as damages, pursuant to a tenant covenant etc)
- Show where VAT is applicable
- Include, in full, details of other losses (if applicable) and set out the legal reasoning for these claims
- Confirm the landlord and its advisors will attend a without prejudice meeting and give a date for the tenant to respond by
- Specify a date by which the tenant should respond (usually within 56 days of sending the Quantified Demand)

To avoid any issues with service of the schedule:

- Obtain copies of all deeds relating to the property
- Check Land Registry office copy entries to satisfy yourself the landlord owns the property and the tenant has leasehold title
- Perform Companies House searches on the tenant to check their identity and address for service
- Check the schedule for errors and ensure it complies with paragraph 3 of the Dilapidations Protocol
- Check whether the tenant is in occupation – if an undertenant is in occupation it is likely they will have covenanted to uphold the tenant's covenants and will be the party carrying out the works. If a Section 25 Notice has been served check the date the notice brings the lease to an end
- Check the service provisions and any contractual provisions for timing under the lease and ensure you comply with them

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- Include, in full, details of other losses (if applicable) and set out the legal reasoning for these claims
- Confirm the landlord and its advisors will attend a without prejudice meeting and give a date for the tenant to respond by
- Specify a date by which the tenant should respond (usually within 56 days of sending the Quantified Demand)

*Within 28 days of the
tenant's Response
or a reasonable time
before the tenant's
Response*

The parties should meet on a without prejudice basis wherever possible to try and resolve the dilapidations claim

- Negotiations are normally carried out by the parties' surveyors
- Parties should review the content of the schedule and agree as many items as they can
- In most cases the parties will agree to a cash settlement in lieu of the works being undertaken

*56 calendar days after
the schedule of
dilapidations and
Quantified Demand
is served*

- Parties should consider ADR at this stage and before issuing legal proceedings

Tenant's response sent to Landlord

The Response should:

- Set out the tenant's position on each item in the schedule of dilapidations
- Contain an endorsement by the tenant/tenant's surveyor that the works detailed are reasonably required for the tenant to rectify the alleged breaches of obligations that have occurred, the costs set out are reasonable and that account has been taken of what the tenant/tenant's surveyor believes the landlord's intentions for the property are
- Identify and detail any items in the schedule of dilapidations or Quantified Demand that are likely to be obsolete as a result of the landlord's works or intentions for the property

Further relevant documents to be disclosed

Formal diminution valuation and quantification of landlord's loss

- Any technical evidence should be prepared by a suitable expert
- The landlord must quantify their loss by providing a detailed breakdown of the issues and losses based on a formal diminution valuation, account of the expenditure or a combination of the two (where the landlord has undertaken some remedial work) unless unreasonable to do so
- If the landlord intends carrying out some or all of the works, it must give particulars of steps it has taken towards doing the works, as well as a timescale for and scope of the works
- Where the landlord has not carried out the works a diminution valuation should be provided regardless of whether the landlord does or does not intend to carry out the works in the future, unless it would be reasonable not to do so in the circumstances
- If the landlord has not yet carried out an works but intends to do so they must state when this work will start and the steps they have taken to get the work done

*56 days after the
landlord has sent
the tenant a detailed
breakdown of issues
and losses*

Tenant's diminution valuation

- Where the tenant relies on a defence based on diminution, it should set out its case and provide a diminution valuation to the landlord

*After the protocol has
been complied with*

Stocktake

- Parties to review their positions before litigation to see if they can narrow the issues.

Legal proceedings should be issued if the above steps have not resolved the issues between the parties

- Claim should be issued under CPR Part 7. Consider whether appropriate to issue in the TCC.
- If the Dilapidations Protocol has not/is not being complied with there may be cost consequences

Assumptions

Please note that:

- This checklist assumes a scenario where the tenant vacates without doing the works and not a scenario where the landlord serves a schedule with a view to the tenant then performing the works
- The checklist does not apply to interim dilapidations claims

Sources

Dowding & Reynolds – Dilapidations: The Modern Law and Practice

<https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-claims-for-damages-in-relation-to-the-physical-state-of-commercial-property-at-termination-of-a-tenancy-the-dilapidations-protocol>

<https://www.pla.org.uk/2013/08/terminal-dilapidations-checklist/>

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