



The Dilapidations Protocol – Time to comply!

The days of inflated claims, ‘golden handshakes’ for Landlords at Lease expiry, and ‘horse-traded’ dilapidations settlements bearing no resemblance to actual loss are over!

After 10 years since initial conception and a number of revised draft versions, the Property Litigation Associations’ Dilapidations Protocol has finally been formally adopted and came into force on **1 January 2012**. The Protocol has been endorsed by the RICS and incorporated into the latest Guidance note for ‘best practice’.

The Protocol applies to Terminal Dilapidations claims for damages on expiry of Leases for commercial properties in England and Wales. Its aim is to reduce litigation by preventing exaggerated claims and by requiring both Landlords and Tenants to act within a procedural framework promoting co-operation and the disclosure of information.

Key Requirements

The Protocol provides a framework for the respective parties to follow which includes key requirements which are summarised as follows:

Schedule of Dilapidations – This should be prepared in an approved format and issued usually within 56 days of Lease expiry

Landlord’s Endorsement - The Schedule must include an endorsement by the Landlord or Landlord’s Surveyor confirming that the works set out within the Schedule are reasonably required to remedy the breaches claimed; that full account has been taken of the Landlord’s intentions for the property; and that the costs claimed are reasonable

Quantified Demand – This should be prepared and issued usually within 56 days of Lease expiry (this may or may not be enclosed with the Schedule of Dilapidations) and should set out the Landlord’s likely loss (which may not be the same as the cost of the works) and be supported by a quotation or invoices of actual expenditure incurred or by a diminution valuation (or both)

Diminution Valuations – The default position regarding diminution valuations is (1) If the landlord has done the works the starting point is that a valuation is not required;

(2) If the landlord has not done any works the starting point is that a valuation is required;

(3) If the landlord has done some but not all of the works or intends to do all, the starting point is that a valuation is required and also that the landlord provides information as to what works are going to be done, when they are going to be done, and that they provide estimates/tenders etc.

Tenant’s Response – This should be given within a reasonable time, usually within 56 days of receipt of the Schedule

Tenant’s Endorsement - The Response must include an endorsement by the Tenant or Tenant’s Surveyor confirming that the works detailed in the Response are all that are reasonable required to remedy the breaches; that the costs given in the Response are reasonable; and that the response takes into consideration the Tenant’s (or Tenant’s Surveyors) beliefs regarding the Landlord’s intentions

Diminution Defence - If the Tenant relies on a diminution defence there is an obligation to disclose this and to provide a diminution valuation to the Landlord, usually within 56 days of receipt of the Quantified Demand. The default position regarding diminution

Negotiation - The protocol requires that the respective Surveyors meet, usually with 28 days of the Response having been issued, in order to narrow the issues which may be in dispute and to gain a full understanding of the respective positions

ADR – The Protocol requires both parties to consider Alternative Dispute Resolution as an alternative to litigation

Can we help you?

Bradley Mason takes a proactive and commercial approach to Dilapidations, offering best practice and enhanced value to both Landlord and Tenant Clients. Our aim is to provide early, realistic advice to clients in order to manage expectations and minimize the risks associated with non-compliance with the Protocol.

We have a proven track record in providing strategic advice to both Landlords and Tenants regarding Terminal Dilapidations issues, reducing exposure to unnecessary costs and reaching early settlements

Please contact Bradley Mason, your ‘Dilaps Doctor’, today to see how we can help you.

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