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# THE PLA DILAPIDATIONS PROTOCOL COMES INTO FORCE



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On 1 January 2012 the Dilapidations Protocol was adopted as a formal pre-action protocol under the Civil Procedure Rules. From this date onwards all dilapidations surveyors must adhere to its principles and requirements, and a failure to do so will result in cost sanctions.

The Dilapidations Protocol, a pre-action protocol by the Property Litigation Association (PLA), relating to dilapidations claims for damages against tenants at the termination of a tenancy was first published in 2002, with the aim of preventing landlords exaggerating claims and to lead the way for early settlements without involvement of the courts. The second edition, issued in 2006, aimed to reduce costs by recommending diminution valuations were considered just before the issue of proceedings. The third edition, issued in May 2008, required the landlord's surveyor to sign an endorsement confirming, amongst other things, they had followed the protocol. Since then the PLA and the Royal Institution of Chartered Surveyors (RICS) have worked with the Civil Justice Council to refine the wording of the protocol ready for its adoption.

As of 1 January 2012, the methods of conduct that the court would expect prospective parties to follow prior to commencement of proceedings, is to be updated and the protocol will finally be enforceable. The new protocol is much shorter due to many of the sections being summarised. However, the essence of the protocol's objectives has not changed.

The text in the protocol has been redefined and is now more appropriate for its use. 'Serve' has been substituted with 'send' because of its additional utilisation in The Civil Procedure Rules (CPR). 'Quantified demand' is now used instead of the term 'claim' to distinguish it from a formal claim under the Civil Procedure Rules (CPR). Definitions of dilapidations, terms (repair, reinstatement and redecoration) have been removed and it is now the lease terms and other relevant documentation which defines the work to property. Similarly, the protocol makes reference to the 'surveyor' being "any other suitably qualified person".

A key change to the latest protocol is the introduction of the tenant's endorsement of their response to the schedule. This is designed to ensure that tenants do not propose a lower cost than they believe to be reasonable or omit items of work considered to be necessary. This has been introduced to stop tenants from deliberately underestimating claims and to avoid unreasonable responses and offers.

Interestingly, the wording of the landlord's endorsement has also changed to reflect their intentions at the end of the term, thus reflecting the fact that the surveyor must identify and rely on the information provided by the landlord. This change has been made to reflect the case of *PGF II SA v Royal & Sun Alliance Insurance* [2010].

The diminution valuation requirements are unaltered but have been simplified; the basic position regarding the need for a valuation remains the same. It warns parties that non-compliance of the protocol, without good reason, will be taken into account when imposing sanctions, although "it is not likely to be concerned with minor or technical shortcomings".

### SUMMARY

Adoption will finally give the protocol weight. Surveyors must read and adhere to the new protocol as non-compliance, without good reason, may lead to possible future court sanctions.

The key change is the tenant's endorsement which will avoid deliberate underestimation.

The updated wording to the landlord's endorsement will reiterate that the protocol is concerned with the landlord's intention at lease end.