

PROPERTY LITIGATION ASSOCIATION

*c/o Thomas Eggar LLP
76 Shoe Lane, London EC4A 3JB*

Mrs Kitty Doherty
Civil Justice Council
Room E214
Royal Courts of Justice
STRAND
London WC2A 2LL

By Email and by Post

Our ref: LIT/2007/PJP

19 May 2008

Dear Ms Doherty,

Civil Justice Council Consultation Paper on General Pre-Action Protocol

I am the Chair of Law Reform Committee of the Property Litigation Association ("the PLA"). In 2002 the PLA introduced a protocol for dealing with dilapidations disputes i.e. disputes relating to the physical state of premises at the end of a lease ("the Dilapidations Protocol"). The Dilapidations Protocol has, since then, been followed by the industry involved in such disputes ie by lawyers, surveyors and lay clients. It is widely accepted that it has helped to reduce the number of claims going to Court, aid the negotiation progress between the parties, avoid unjust and exaggerated claims and educate the industry.

The Dilapidations Protocol has been subject to several consultations and the PLA has just released the Third Edition following a further consultation with the Royal Institution of Chartered Surveyors' Working Party on Dilapidations. We attach a copy of the revised Dilapidations Protocol for ease of reference.

We have been consulting through correspondence, for some time now, with Her Majesty's Court Service (Pat Reed and Michael Anima-Shaun), regarding having the Dilapidations Protocol adopted as a formal protocol under the Civil Procedure Rules. Several of the amendments made to the Dilapidations Protocol pick up those consultations, in particular making it more user friendly for the "man in the street" and strengthening the alternative dispute resolution requirements. We have been informed by Her Majesty's Court Service that formal adoption of any new protocols is on hold pending the outcome of the above consultation paper on a General Pre-Action Protocol.

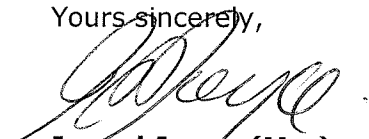
We note that one of the questions in that consultation is "Are there particular classes of cases or types of circumstances where the General Pre-Action Protocol should not apply?" We consider that this exemption would apply in the case of dilapidations disputes. The area of dilapidations is highly specialist, both in terms of the practical and legal issues involved. It is governed by both common law principles and various statutory provisions. There are a considerable volume of these disputes which can potentially arise at the end of most commercial leases. The Dilapidations Protocol is used not only by lawyers but principally by surveyors and Landlords and Tenants. Indeed, a considerable number of cases do not reach lawyers or lawyers are not involved save for the purposes of serving initial schedules of dilapidations. The Dilapidations Protocol is flexible and has been

tailored to deal with all these variations and the particular matters which affect such claims. In particular, it deals in detail with the contents of those claims both in relation to practical and legal aspects and also with the specialist expert evidence which is required and when it has to be provided. It also seeks to prevent claims being overstated (a common issue in these cases) by the requirements for specific endorsements on claims.

We consider that dilapidations disputes would not sit easily into a General Pre-Action Protocol and, indeed, that if they had to, this would undo the above safeguards and the steps which have been made by the Dilapidations Protocol in reducing the amount of Court proceedings in relation to such disputes. In short it would reverse the considerable progress made in the industry surrounding these claims.

Should you have any queries would you please contact me at the details provided below.

Yours sincerely,



Jacqui Joyce (Mrs)

Chair – Law Reform Committee Property Litigation Association

Cc Keith Conway Nabarro LLP

Michael Anima-Shaun – Her Majesty's Court Service

Direct Dial: 020 7842 3892
Email: Jacqui.joyce@thomaseggar.com