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# DILAPIDATIONS

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# When is a property in disrepair?



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# Covenants dealing with Liability to remedy defects



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- Covenant to repair the demise
- Covenant to yield up at the end of the term
- Covenants to repair on notice and in default to pay the cost incurred by the Landlord in carrying out the works;
- Covenants to decorate;



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- Covenants to reinstate alterations;
- Covenants to comply with statutes;
- Covenants to rebuild or reinstate following a fire or other disaster;
- Covenants to comply with the head lease;
- Covenants relating to fixtures.

# Five Stage Approach



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- *What is the physical subject-matter of the covenant?*
- *Is the subject matter of the covenants in a damaged or deteriorated state?*
- *Is the nature of the damage such as to bring the condition of the subject-matter below the standard contemplated by the repairing covenant?*



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- *What work is required in order to put the subject-matter of the repairing covenant back into the contemplated condition?*
- *Is that work nonetheless of such a nature that the parties did not contemplate it would be the liability of the covenanting party?*

# Schedule of Dilapidations were prepared by a Surveyor



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Pre-Action Protocol for Claims for Damages in Relation to the Physical State of Commercial Property at Termination of a Tenancy (The "Dilapidations Protocol")

Annex B

## Schedule of Dilapidations where prepared by a surveyor

This schedule has been prepared by [name, individual and firm], upon the instructions of [name the landlord]. It was prepared following [name i.e. same name as above]'s inspection of the property known as [property] on [date].

It records the works required to be done to the property in order that the property is put into the physical state in which it would have been if the tenant [name] had complied with its covenants or obligations contained within its lease of the property dated [ ].

The covenants or obligations of the said lease with which the tenant should have complied are as follows:—

[Set out clause number of the lease and quote the clause verbatim].

The following schedule contains:

- reference to the specific clause (quoted above) under which the obligation arises,
- the breach complained of,
- the remedial works suggested by the landlord's surveyor [name i.e. same name as above] as suitable for remedying the breach complained of,
- the landlord's view on the cost of the works.

The schedule contains the true views of [name, i.e. the same name as above] being the surveyor appointed/employed by the landlord to prepare the schedule.

Upon receipt of this schedule the tenant should respond using this schedule in the relevant column below to enable the landlord to understand clearly the tenant's views on each item of claim.

1 Item No.	2 Clause No.	3 Breach complained of	4 Remedial works required	5 Landlord's costings

### ENDORSEMENT

I [name, i.e. the same name as above] confirm that in my opinion:

- all the works set out in the schedule are reasonably required to remedy breaches complained of;
- full account has been taken of the landlord's intentions for the property, as advised by the landlord; and
- the costings, if any, are reasonable

DATED [.....]

SIGNED [.....]

[Name and address of surveyor appointed by landlord]

# Schedule of Dilapidations where prepared by the Landlord



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## Annex C

### Schedule of Dilapidations where prepared by the landlord

This schedule has been prepared by [name of landlord][[name of person preparing schedule if landlord is not an individual] on behalf of the landlord]. It was prepared following [name i.e. same name as above]'s inspection of the property known as [property] on [date].

It records the works required to be done to the property in order that the property is put into the physical state in which it would have been if the tenant [name] had complied with its covenants or obligations contained within its lease of the property dated [ ].

The covenants or obligations of the said lease with which the tenant should have complied are as follows:—

[Set out clause number of the lease and quote the clause verbatim].

The following schedule contains:

- reference to the specific clause (quoted above) under which the obligation arises,
- the breach complained of,
- the remedial works suggested by the landlord as suitable for remedying the breach complained of,
- the landlord's view on the cost of the works.

The schedule contains the true views of the landlord.

Upon receipt of this schedule the tenant should respond using this schedule in the relevant column below to enable the landlord to understand clearly the tenant's views on each item of claim.

1 Item No.	2 Clause No.	3 Breach complained of	4 Remedial works required	5 Landlord's costings

#### ENDORSEMENT

I [name, i.e. the same name as above] confirm that in my opinion:

- all the works set out in the schedule are reasonably required to remedy breaches complained of;
- full account has been taken of [my] [the landlord's] intentions for the property; and
- the costings, if any, are reasonable

DATED [.....]

SIGNED [.....]

[Name of the person signing and address of landlord]



# Pre-Action Protocol Annex A



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