
Pre-Action Protocol for Housing Disrepair Cases

[Prepared by the Housing Disrepair Protocol Working Party]

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1 Introduction

Following a review of the problems of civil housing disrepair claims, Lord Woolf recommended in his final Access to Justice Report in July 1996 that there should be a Pre-action Protocol. The Protocol, which covers claims in England and Wales, is intended to encourage the exchange of information between parties at an early stage and to provide a clear framework within which parties in a housing disrepair claim can attempt to achieve an early and appropriate resolution of the issues. An attempt has been made to draft the Protocol in plain English and to keep the contents straightforward in order to make the Protocol accessible and easy to use by all, including those representing themselves.

The Protocol embraces the spirit of the Woolf Reforms to the Civil Justice System. As Lord Woolf noted, landlords and tenants have a common interest in maintaining housing stock in good condition. It is generally common ground that in principle court action should be treated as a last resort, and it is hoped that the Protocol will lead to the avoidance of unnecessary litigation. Before using the Protocol tenants should therefore ensure that the landlord is aware of the disrepair. Tenants should also consider whether other options for having repairs carried out and/or obtaining compensation are more appropriate. Examples of other options are set out in paragraph 4.1(b).

Should a claim proceed to litigation, the court will expect all parties to have complied with the Protocol as far as possible. The court has the power to order parties who have unreasonably failed to comply with the Protocol to pay costs or be subject to other sanctions.

2 Aims of the protocol

The Practice Direction on Protocols in the Civil Procedure Rules provides that the objectives of pre-action Protocols, are:

- (1) *to encourage the exchange of early and full information about the prospective legal claim,*
- (2) *to enable parties to avoid litigation by agreeing a settlement of the claim before the commencement of proceedings,*
- (3) *to support the efficient management of proceedings where litigation cannot be avoided.*

The specific aims of this Protocol are:–

- To avoid unnecessary litigation
- To promote the speedy and appropriate carrying out of any repairs which are the landlord's responsibility
- To ensure that tenants receive any compensation to which they are entitled as speedily as possible
- To promote good pre-litigation practice, including the early exchange of information and to give guidance about the instruction of experts
- To keep the costs of resolving disputes down.

3 Protocol

When using this Protocol, please refer to the **Guidance Notes** in paragraph 4.

Definitions

3.1 For the purposes of this Protocol:

- (a) A disrepair claim is a civil claim arising from the condition of residential premises and may include a related personal injury claim. (See paragraphs 4.4 (c), (d) and (e) of the Guidance Notes.) It does not include disrepair claims which originate as counterclaims or set-offs in other proceedings.
- (b) The types of claim which this Protocol is intended to cover include those brought under Section 11 of the Landlord and Tenant Act 1985, Section 4 of the Defective Premises Act 1972, common law nuisance and negligence, and those brought under the express terms of a tenancy agreement or lease. It does not cover claims brought under Section 82 of the Environmental Protection Act 1990 (which are heard in the Magistrates' Court).
- (c) This protocol covers claims by any person with a disrepair claim as referred to in paragraphs (a) and (b) above, including tenants, lessees and members of the tenant's family. The use of the term 'tenant' in this protocol is intended to cover all such people. (See also paragraph 4.4(e).)

Early Notification Letter

3.2

- (a) Notice of the claim should be given to the landlord as soon as possible. In order to avoid delay in notifying the landlord it may be appropriate to send a letter notifying the landlord of the claim (Early Notification Letter) before sending a letter setting out the full details of the claim (Letter of Claim). An Early Notification letter is intended to be a helpful tool, but it will not be necessary in every case. It might be appropriate where, for example, a repair is urgent or there is likely to be some delay before enough details are available to make a claim. The Early Notification Letter to the landlord should give the following information:
- (i) tenant's name, the address of the property, tenant's address if different, tenant's telephone number and when access is available
 - (ii) details of the defects, including any defects outstanding, in the form of a schedule, if appropriate. Attached at Annex G of paragraph 5 is a specimen schedule which can be used to inform the landlord of the disrepair
 - (iii) details of any notification previously given to the landlord of the need for repair or information as to why the tenant believes that the landlord has knowledge of the need for repair
 - (iv) proposed expert (see paragraph 3.6)
 - (v) proposed letter of instruction to expert (see Annex C of paragraph 5)
 - (vi) tenant's disclosure of such relevant documents as are readily available.
- (b) The Early Notification Letter should also request the following disclosure from the landlord:—
All relevant records or documents including:—
- (i) copy of tenancy agreement including tenancy conditions
 - (ii) documents or computerised records relating to notice given, disrepair reported, inspection reports or repair works to the property.
- (c) The Early Notification Letter should include the authorisation for release of the information (except in a case where the tenant is acting in person).
- (d) Specimen Early Notification Letters are attached at Annex A of paragraph 5. They may be suitably adapted as appropriate.

Letter of Claim

3.3

- (a) The tenant should send to the landlord a Letter of Claim at the earliest reasonable opportunity. The Letter of Claim should contain the following details (if they have not already been provided in an Early Notification Letter):—
- (i) tenant's name, the address of the property, tenant's address if different, the tenant's telephone number and when access is available
 - (ii) details of the defects, including any defects outstanding, in the form of a schedule, if appropriate. Attached at Annex G of paragraph 5 is a specimen schedule which can be used to inform the landlord of the disrepair
 - (iii) history of the defects, including attempts to rectify them
 - (iv) details of any notification previously given to the landlord of the need for repair or information as to why the tenant believes that the landlord has knowledge of the need for repair
 - (v) the effect of the defects on the tenant (see paragraphs 4.4 (c), (d) and (e) regarding personal injury claims)
 - (vi) details of any special damages (see form attached at Annex E of paragraph 5 and definition of 'special damages' at paragraph 4.10)

- (vii) proposed expert (see paragraph 3.6)
 - (viii) proposed letter of instruction to the expert (See Annex C of paragraph 5)
 - (ix) tenant's disclosure of relevant documents.
- (b) If not already requested in an Early Notification Letter, the Letter of Claim should also request the following disclosure from the landlord:–
- All relevant records or documents including:–
- (i) copy of tenancy agreement including tenancy conditions
 - (ii) tenancy file
 - (iii) documents relating to notice given, disrepair reported, inspection reports or requirements to the property
 - (iv) computerised records.
- (c) If not requested in an Early Notification Letter, the Letter of Claim should also include the authorisation for release of the information (except in a case where the tenant is acting in person).
- (d) Specimen Letters of Claim are attached at Annex B of paragraph 5. It will be seen that there are different versions depending on whether or not an Early Notification Letter has been sent. The letters may be suitably adapted as appropriate.

Limitation Period

- 3.4** The procedures in this Protocol do not extend statutory limitation periods. If a limitation period is about to expire, the tenant may need to issue proceedings immediately unless the landlord confirms that they will not rely on limitation as a defence in subsequent proceedings. (See paragraph 4.8 for guidance about the limitation period, and paragraph 4.10 for a definition of 'limitation period'.) Alternatively the tenant can ask the landlord to agree to extend the limitation period.

Landlord's Response

3.5

3.5.1 *Response to First Letter*

The landlord should normally reply within 20 working days of the date of receipt of the first letter from the tenant i.e the Early Notification Letter or the Letter of Claim if no Early Notification Letter is sent. (See paragraph 4.10 for a definition of 'working days'). The Landlord's response to the first letter, whether an Early Notification letter or a Letter of Claim, should include the following:–

Disclosure

- (a) All relevant records or documents including:–
- (i) copy of tenancy agreement including tenancy conditions
 - (ii) documents or computerised records relating to notice given, disrepair reported, inspection reports or requirements to the property.

Expert

- (b) A response to the tenant's proposals for instructing an expert including:–
- (i) whether or not the proposed single joint expert is agreed
 - (ii) whether the letter of instruction is agreed
 - (iii) if the single joint expert is agreed but with separate instructions, a copy of the letter of instruction

- (iv) if the appointment of a single joint expert is not agreed, whether the landlord agrees to a joint inspection.

3.5.2 Response to Letter of Claim

- (a) The landlord's response to the tenant's Letter of Claim should include:
 - (i) whether liability is admitted and if so, in respect of which defects. If liability is disputed in respect of some or all of the defects, the reasons for this
 - (ii) any point which the landlord wishes to make regarding lack of notice of the repair or regarding any difficulty in gaining access
 - (iii) a full schedule of intended works including anticipated start and completion dates and a timetable for the works
 - (iv) any offer of compensation
 - (v) any offer in respect of costs
 - (vi) the information set out at 3.5.1(a) and (b), if it has not already been provided.
- (b) On receipt of the Letter of Claim (whether or not an Early Notification Letter was sent), the landlord may provide a response to the issues set out at paragraph (a) above either:
 - (i) within 20 working days of the date of receipt of the Letter of Claim (see paragraph 4.10 for a definition of 'working days') or
 - (ii) within 20 working days of the date of receipt of the report of the single joint expert (see paragraph 3.6(h)) or date of receipt of the experts' agreed schedule following a joint inspection (see paragraph 3.6(g)).

3.5.3 If Landlord does not Respond

- (a) If no response is received from the landlord to the Early Notification Letter within 20 working days, the tenant should send a Letter of Claim giving as many of the details outlined at paragraph 3.3 as possible, on the basis of the information the tenant has to hand.
- (b) Failure to respond within the time limits set out in paragraphs 3.5.1 and 3.5.2, or at all, to the Early Notification Letter or the Letter of Claim will be a breach of the Protocol. (See paragraphs 4.7(a) and (b) regarding time limits and the power of the court if the Protocol is breached).

Experts

3.6 General

See Paragraph 4.6 for guidance regarding the use of experts.

- (a) Tenants should remember that in some cases it might not be necessary to instruct an expert to provide evidence of disrepair, for example, if the only issue relates to the level of any damages claimed. It may be advisable to take photographs of any defects before and after works, and consideration should be given to the use of video footage, particularly if an expert has not been instructed.
- (b) The expert should be instructed to report on all items of disrepair which the landlord ought reasonably to know about, or which the expert ought reasonably to report on. The expert should be asked to provide a schedule of works, an estimate of the costs of repair, and to list any urgent works.
- (c) Information is given at paragraph 4.6(a) about obtaining lists of independent experts who can be instructed in disrepair cases.

Single Joint Expert

- (d) If the landlord does not raise an objection to the proposed expert or letter of instruction within 20 working days of the date of receipt of the Early Notification Letter or Letter of

Claim, the expert should be instructed as a single joint expert, using the tenant's proposed letter of instruction. Attached at Annex C of paragraph 5 are specimen letters of instruction to an expert. Alternatively, if the parties cannot agree joint instructions, the landlord and tenant should send their own separate instructions to the single joint expert. If sending separate instructions, the landlord should send the tenant a copy of the landlord's letter of instruction with their response to the first letter. (The tenant has already forwarded the proposed letter of instruction to the landlord).

Joint Inspection

- (e) If it is not possible to reach agreement to instruct a single joint expert, even with separate instructions, the parties should attempt to arrange a joint inspection, i.e. an inspection by different experts instructed by each party to take place at the same time. If the landlord wishes to send their own expert to a joint inspection, they should inform both the tenant's expert and the tenant's solicitor. If the landlord instructs their own expert to inspect then the tenant can also instruct their own expert. It will be for the court to decide subsequently, if proceedings are issued, whether or not either party has acted reasonably.

Time Limits

- (f) Whether a single joint expert or a joint inspection is used, the property should be inspected within 20 working days of the date that the landlord responds to the tenant's first letter.
- (g) If there is a joint inspection, the experts should produce an agreed schedule of works detailing:-
- (i) the defects and required works which are agreed and a timetable for the agreed works
 - (ii) the areas of disagreement and the reasons for disagreement.
- The agreed schedule should be sent to both the landlord and the tenant within 10 working days of the joint inspection.
- (h) If there is a single joint expert, a copy of the report should be sent to both the landlord and the tenant within 10 working days of the inspection. Either party can ask relevant questions of the expert.
- (i) At Annex D of paragraph 5 are flowcharts showing the time limits in the Protocol.

Urgent Cases

- (j) The Protocol does not prevent a tenant from instructing an expert at an earlier stage if this is considered necessary for reasons of urgency, and the landlord should give access in such cases. Appropriate cases may include:-
- (i) where the tenant reasonably considers that there is a significant risk to health and safety
 - (ii) where the tenant is seeking an interim injunction
 - (iii) where it is necessary to preserve evidence.

Access

- (k) Tenants must give reasonable access to the landlord for inspection and repair in line with the tenancy agreement. The landlord should give reasonable notice of the need for access, except in the case of an emergency. The landlord must give access to common parts as appropriate, eg. for the inspection of a shared heating system.

Costs

- (l) Terms of appointment should be agreed at the outset and should include:
- (i) the basis of the expert's charges (either daily or hourly rates and an estimate of the time likely to be required, or a fee for the services);
 - (ii) any travelling expenses and other relevant expenses;
 - (iii) rates for attendance at court should this become necessary, and provisions for payment on late notice of cancellation of a court hearing;
 - (iv) time for delivery of report;
 - (v) time for making payment;
 - (vi) whether fees are to be paid by a third party; and

- (vii) arrangements for dealing with questions for experts and discussions between experts and for providing for the cost involved.
- (m) If a single joint expert is instructed, each party will pay one half of the cost of the report. If a joint inspection is carried out, each party will pay the full cost of the report from their own expert. (See paragraph 3.7).
- (n) The expert should send separately and directly to both parties answers to any questions asked.

Costs

3.7

- (a) If the tenant's claim is settled without litigation on terms which justify bringing it, the landlord will pay the tenant's reasonable costs or out of pocket expenses. (See paragraph 4.10 for a definition of 'costs' and 'out of pocket expenses'.)
- (b) Attached at Annex F of paragraph 5 is a Statement of Costs Form which can be used to inform the landlord of the costs of the claim.

4 Guidance notes

Alternative Dispute Resolution

4.1

- (a) The parties should consider whether some form of alternative dispute resolution procedure (see paragraph 4.10 for a definition of alternative dispute resolution) would be more suitable than litigation, and if so, endeavour to agree which form to adopt. Both the Claimant and Defendant may be required by the Court to provide evidence that alternative means of resolving their dispute were considered. The Courts take the view that litigation should be a last resort, and that claims should not be issued prematurely when a settlement is still actively being explored. Parties are warned that if the protocol is not followed (including this paragraph) then the Court must have regard to such conduct when determining costs.
- (b) It is not practicable in this protocol to address in detail how the parties might decide which method to adopt to resolve their particular dispute. However, summarised below are some of the options for resolving disputes without litigation:
- Discussion and negotiation.
 - Early neutral evaluation by an independent third party (for example, a lawyer experienced in the field of housing disrepair or an individual experienced in the subject matter of the claim).
 - Mediation – a form of facilitated negotiation assisted by an independent neutral party.
 - Other options in respect of the following specific categories:
 - (i) For council tenants:-
 - local authority repairs, complaints and/or arbitration procedures.
 - the Right to Repair Scheme. The scheme is only suitable for small, urgent repairs of less than £250 in value.Information and leaflets about the scheme in England can be obtained from the Department for Communities and Local Government, Eland House, Bressenden Place, London SW1E 5DU. Tel: 020 7944 3672 (<http://www.communities.gov.uk/index.asp?id=1152130>).
 - Information about the scheme in Wales can be obtained from the National Assembly for Wales, Cathays Park, Cardiff, CF10 3NQ. Tel. 029 2082 5111.

- Commission for Local Administration in England. Tel. 0845 602 1983.
 - the Local Government Ombudsman for Wales. Tel. 01656 661325.
- (ii) For tenants of social landlords who are not council tenants, and for tenants of qualifying private landlords:-
- In England, the Independent Housing Ombudsman. 3rd Floor, Norman House, 105-109 Strand, London WC2R 0AA. Tel 020 7836 3630.
 - In Wales, the National Assembly for Wales, Cathays Park, Cardiff CF10 3NQ. Tel. 029 2082 5111.
 - Local authority environmental health officers.
- (iii) For private tenants:-
- Local authority environmental health officers.
- (c) The Legal Services Commission has published a booklet on 'Alternatives to Court', CLS Direct Information Leaflet 23 (www.clsdirect.org.uk/legalhelp/leaflet23.jsp), which lists a number of organisations that provide alternative dispute resolution services.
- (d) *It is expressly recognised that no party can or should be forced to mediate or enter into any form of ADR.*
- (e) *Information about repair rights generally is available free of charge from the following web pages: www.shelter.org.uk/housingadvice/index.asp and www.legalservices.gov.uk/leaflets/cls/index.htm.*
- (f) *The former Department for Transport, Local Government and the Regions issued Good Practice Guidance on Housing Disrepair Legal Obligations in January 2002. Copies of the Guidance (ISBN 185112523X) can be obtained from Communities and Local Government Publications, PO Box 236, Wetherby LS23 7NB. Tel: 0870 1226 236. Fax: 0870 1226 237. Textphone: 0870 1207 405. E-mail: communities@twoten.com. (free to download from the Communities and Local Government website at <http://www.communities.gov.uk/index.asp?id=1502470>). A summary, Housing Research Summary No. 154, is available free on the Communities and Local Government website at the following link <http://www.communities.gov.uk/index.asp?id=1155697>. Hard copies are no longer available. The Communities and Local Government website <http://www.communities.gov.uk/index.asp?id=1150232> is a general source of information for landlords and tenants.*

Scope of the Protocol

4.2

- (a) This Protocol is intended to apply to all civil law claims which include a claim for disrepair, but not to counterclaims or set-offs in disrepair claims, which originate as other proceedings. (See paragraph 4.10 for an explanation of 'counterclaim' and 'set-off'.) In cases which involve a counterclaim or set-off, the landlord and tenant will still be expected to act reasonably in exchanging information and trying to settle the case at an early stage.
- (b) In practice, most disrepair cases will have a value of more than £1,000 but less than £15,000 and so are likely to be allocated to the fast track if they come to court. (See paragraph 4.10 for an explanation of 'the fast track'.) The Protocol is aimed at this type of case. The need to keep costs down is especially important in claims of lower value. The approach of the Protocol is however, equally appropriate to all claims and the Protocol should also be followed in small track and multi-track claims. (See paragraph 4.10 for an explanation of 'small claims track' and 'multi-track'.) The court will expect to see reasonable pre-action behaviour applied in all cases.

Early Notification Letter

4.3

- (a) The Early Notification Letter is not intended to replace the direct reporting of defects to the landlord at an early stage, using any procedure the landlord may have established. The Protocol

is for use in those cases where, despite the landlord's knowledge of the disrepair, the matter remains unresolved.

- (b) It is recognised that disrepair cases can range from straightforward to highly complex, and that it is not always possible to obtain detailed information at an early stage. In order to avoid unnecessary delay and to ensure that notice of the claim is given to the landlord at the earliest possible opportunity, the Protocol suggests the use of two letters in some cases; an Early Notification Letter and a later Letter of Claim. (See paragraph 3.2(a) and Annexes A & B of paragraph 5.)
- (c) A copy of the Protocol need only be sent to the landlord if the tenant has reason to believe that the landlord will not have access to the Protocol e.g. because the landlord is an individual or small organisation. If in doubt, a copy should be sent.

Letters of Claim and landlord's response

4.4

- (a) Letters of Claim and a landlord's response are not intended to have the same status as a statement of case in court proceedings. Matters may come to light after the Letter of Claim has been sent, or after the landlord has responded, which could mean that the case of one or both parties is presented slightly differently than in the Letters of Claim or in the landlord's response. It would be inconsistent with the spirit of the Protocol to seek to capitalise on this in the proceedings, provided that there was no intention to mislead. In particular, advantage should not be taken regarding discrepancies relating to the general details of notice given in the Early Notification Letter.
- (b) See paragraph 4.3(c) regarding the sending of a copy of the Protocol by the tenant to the landlord.

Cases with a Personal Injury Element

- (c) Housing disrepair claims may contain a personal injury element. This should be set out in the Letter of Claim, as should a clear indication of the identities of all persons who plan to make a personal injury claim.
- (d) There is also a Personal Injury Protocol. This Protocol should be followed for that part of the disrepair claim which forms a personal injury claim, unless it is insufficient to warrant separate procedures and would therefore be dealt with only as part of the disrepair claim and evidenced by a General Practitioner's letter. The Personal Injury Protocol should be followed for any claim which requires expert evidence other than a General Practitioner's letter. If the disrepair claim is urgent, it would be reasonable to pursue separate disrepair and personal injury claims, which could then be case managed or consolidated at a later date.
- (e) Paragraph 3.3(a)(v) refers to the effect of the defects on 'the tenant'. This should be taken to include all persons who have a personal injury claim. The details of any such claim and of all likely claimants should be set out in the Letter of Claim.

Disclosure of documents

4.5

- (a) When giving disclosure, the landlord should copy all relevant documents. In housing disrepair claims, this includes any and all documents relating in particular to the disrepair and to notice given by the tenant to the landlord of the disrepair. Notice is often given by personal attendance at the landlord's office, and copies of any notes of meetings and oral discussions should also be copied, along with other relevant documents. Documents regarding rent arrears or tenants' disputes will not normally be relevant.

- (b) The aim of the early disclosure of documents by the landlord is not to encourage ‘fishing expeditions’ by the tenant, but to promote an early exchange of relevant information to help in clarifying or resolving issues in dispute. The tenant should assist by identifying the particular categories of documents, which they consider relevant.
- (c) The 20 working days time limit specified in paragraph 3.5 runs from the date of receipt of either letter. Receipt of the letter is deemed to have taken place two days after the date of the letter. If necessary, a written request for extra time should be made by the landlord to the tenant. Should a case come to court, the court will decide whether the parties have acted reasonably, and whether any sanctions, including costs orders, are appropriate. The principles regarding time limits are referred to again at paragraph 4.7.
- (d) Nothing in the Protocol restricts the right of the tenant to look personally at their file or to request a copy of the whole file. Neither is the landlord prevented from sending to the tenant a copy of the whole file, should the landlord wish.

Experts

4.6

- (a) ● Information about independent experts can be obtained from:
 - (i) The Chartered Institute of Environmental Health, Chadwick Court, 15 Hatfields, London SE1 8DJ Tel: 020 7928 6006. Ask for a copy of the Consultants and Trainers Directory;
 - (ii) The Law Society, 113 Chancery Lane, London WC2A 1PL, Tel: 020 7831 0344. Refer to the Society’s Expert Witness Directory; and
 - (iii) The Royal Institution of Chartered Surveyors, 12 Great George Street, Parliament Square, London SW1P 3AD, Tel: 0845 304 4111. Ask for a copy of the relevant regional directory.
- (b) The Protocol encourages the use of a single joint expert. In order to make it less likely that a second expert will be necessary, the Protocol provides for the landlord to forward their own instructions directly to the single joint expert if they cannot agree joint instructions. Both parties can ask relevant questions of the expert. If the parties cannot agree on a single joint expert, either with joint or separate instructions, the Protocol suggests a joint inspection by each party’s expert.
- (c) The specimen letters at Annexes A and B of paragraph 5 ask for reasons to be given as to why the landlord objects to the expert proposed by the tenant. Should a case come to court, it will be for the court to decide whether the parties have acted reasonably and whether the costs of more than one expert should be recoverable.
- (d) Parties should bear in mind that it may not always be necessary to obtain expert evidence of disrepair, and in view of this, the Protocol encourages the use of photos before and after works, and if appropriate, video evidence.
- (e) Parties are reminded that the Civil Procedure Rules provide that expert evidence should be restricted to that which is necessary and that the court’s permission is required to use an expert’s report. The court may limit the amount of experts’ fees and expenses recoverable from another party.
- (f) When instructing an expert, regard should be had to any approved Code of Guidance for Experts and whether a copy of the Protocol should be sent to the expert.

Time limits

4.7

- (a) The time scales given in the Protocol are long stops and every attempt should be made to comply with the Protocol as soon as possible. If parties are able to comply earlier than the time scales provided, they should do so.

- (b) Time limits in the Protocol may be changed by agreement. However, it should always be borne in mind that the court will expect an explanation as to why the Protocol has not been followed or has been varied and breaches of the Protocol may lead to costs or other orders being made by the court.

Limitation period

4.8

- (a) In cases where the limitation period will shortly expire, the tenant should ask in the first letter for an extension of the limitation period. The extension requested should be only so long as is necessary to avoid the cost of starting court proceedings.
- (b) It will be for the court to decide whether refusal to grant the request is reasonable and whether any sanctions, including costs orders, are appropriate.

Contact point

- 4.9** Where a landlord is not an individual, a person should be designated to act as a point of contact for the tenant as soon as possible after the landlord receives the first letter from the tenant and (if one is involved) their solicitor. The appointee's name and contact details should be sent to the tenant and their solicitor as soon as possible after the appointment is made.

Glossary

4.10 Alternative Dispute Resolution

Mediation, or other dispute resolution method, which seeks to settle disputes without the need for court proceedings.

Costs

Legal fees or, in a small track claim, out of pocket expenses incurred as a result of a claim. (See Out of Pocket Expenses below.)

Counterclaim

A claim that either party makes in response to an initial claim by the other.

Damages

Money obtained as the result of a claim to compensate for inconvenience and/or distress suffered because of the condition of the property. (See also Special Damages below.)

Defect/Disrepair

A fault or problem with a property, for which the landlord is responsible.

Disclosure

The making available by one party to the other of documentation relevant to the claim.

Fast Track/Multi Track/Small Claims Track

Cases which proceed to court will be allocated to separate tracks depending on their value. The separate tracks have different rules and procedures. Housing cases worth between £1,000 – £15,000 where there is a claim for works to be done will usually be allocated to the fast track. Housing cases where the costs of the repairs and/or the damages do not exceed £1,000 will usually be dealt with on the small claims track. Cases over £15,000 will usually be allocated to the multi track.

Joint Inspection

An inspection of a property carried out at the same time by one expert instructed by the tenant and by one expert instructed by the landlord.

Limitation Period

The time limit after which a legal action cannot be started. In most housing cases it is six years. In personal injury cases it is three years.

Litigation

A court case or court proceedings. The taking of legal action by someone.

Notice

Notification of a disrepair, either directly by the tenant in writing or orally to the landlord or his employee, or indirectly, by inspection of the property by the landlord or his employee.

Out of Pocket Expenses

Expenses incurred in a small track claims as a result of the claim, such as loss of earnings and experts' fees.

Protocol

A code or procedure – in this case for dealing with housing disrepair.

Set-off

Where one party agrees with the other's claim or part of it, but sets up one which counterbalances it.

Single Joint Expert

An expert who is instructed by both the tenant and the landlord, either with joint or separate instructions.

Special Damages

Compensation for loss of or damage to specific items e.g. clothes, carpets, curtains, wallpaper, bedding or extra electricity costs.

Tenant

Someone who rents land (including property) owned by another. (See also the definition at paragraph 3.1(c).)

Third Party

Someone other than the landlord or tenant.

Working Days

All days other than Saturdays, Sundays and bank holidays.

5 Annexes

SPECIMEN LETTERS

It will be noted that the attached specimen letters are in pairs for use by solicitors and by tenants acting in person respectively.

It is emphasised that they may be suitably adapted as appropriate.

The letters, with the paragraph of the Protocol to which each one relates, are as follows:–

Annex A

Early Notification Letter (see paragraph 3.2.)

Annex B

Letter of Claim (see paragraph 3.3.)

Note: There are two versions of this:–

- (a) for use where an Early Notification Letter has been sent;
- (b) for other cases.

Annex C

Letter of Instruction to Expert (see paragraph 3.6.)

Annex D

Early Notification Letter Flowchart

Annex E
Special Damages Form
Annex F
Statement of Costs
Annex G
Schedule

A Early notification letter

EARLY NOTIFICATION LETTER

(i) LETTER FROM SOLICITOR

To Landlord

Dear Sirs,

RE: TENANT'S NAME AND ADDRESS OF PROPERTY

We are instructed by your above named tenant. *(Include a sentence stating how the case is being funded.)* We are using the Housing Disrepair Protocol. We enclose a copy of the Protocol for your information.*

Repairs

Your tenant complains of the following defects at the property *(set out nature of defects)*.

*We enclose a schedule, which sets out the disrepair in each room.**

You received notice of the defects as follows: *(list details of notice relied on)*.

Please arrange to inspect the property as soon as possible. Access will be available on the following dates and times:- *(list dates and times as appropriate)*

Please let us know what repairs you propose to carry out and the anticipated date for completion of the works.

Disclosure

Please also provide within 20 working days of receipt of this letter, the following: -

All relevant records or documents including:-

- (i) copy of tenancy agreement including tenancy conditions
- (ii) documents or computerised records relating to notice given, disrepair reported, inspection reports or repair works to the property.

We enclose a signed authority from our clients for you to release this information to ourselves.

We also enclose copies of the following relevant documents from our client:-

Expert

If agreement is not reached about the carrying out of repairs within 20 working days of this letter, we propose to jointly instruct a single joint expert (*insert expert's name and address*) to carry out an inspection of the property and provide a report. We enclose a copy of their CV, plus a draft letter of instruction. Please let us know if you agree to his/her appointment. If you object, please let us know your reasons within 20 working days.

If you do not object to the expert being instructed as a single joint expert, but wish to provide your own instructions, you should send those directly to (*insert expert's name*) within 20 working days of this letter. Please send to ourselves a copy of your letter of instruction. If you do not agree to a single joint expert, we will instruct (*insert expert's name*) to inspect the property in any event. In those circumstances, if you wish to instruct your expert to attend at the same time, please let ourselves and (*insert expert's name*) know within 20 working days of this letter.

Claim

Our client's disrepair claim requires further investigation. We will write to you as soon as possible with further details of the history of the defects and of notice relied on, along with details of our client's claim for general and special damages.

Yours faithfully,

** Delete as appropriate*

(ii) LETTER FROM TENANT

To Landlord

Dear

RE: YOUR NAME AND ADDRESS OF PROPERTY

I write regarding disrepair at the above address. I am using the Housing Disrepair Protocol. *I enclose a copy of the Protocol for your information.**

Repairs

The following defects exist at the property (*set out nature of defects*).

*I enclose a schedule which sets out the disrepair in each room.**

Please arrange to inspect the property as soon as possible. Access will be available on the following dates and times:- (*list dates and time as appropriate*)

You received notice of the defects as follows: (*list details of notice relied on*).

Please let me know what repairs you propose to carry out and the anticipated date for completion of the works.

Disclosure

Please also provide within 20 working days of receipt of this letter, the following: -

All relevant records or documents including:-

- (i) copy of tenancy agreement including tenancy conditions
- (ii) documents or computerised records relating to notice given, disrepair reported, inspection reports or repair works to the property.

I also enclose copies of the following relevant documents:- (*list documents enclosed*)

Expert

If agreement is not reached about the carrying out of repairs within 20 working days, I propose that we jointly instruct a single joint expert (*insert expert's name and address*) to carry out an inspection of the property and provide a report. I enclose a copy of their CV, plus a draft letter of instruction. Please let me know if you agree to his/her appointment. If you object, please let me know your reasons within 20 working days.

If you do not object to the expert being appointed as a single joint expert but wish to provide your own instructions, you should send those directly to (*insert expert's*

name) within 20 working days. Please send a copy of your letter of instruction to me. If you do not agree to a single joint expert I will instruct (*insert expert's name*) to inspect the property in any event. In those circumstances if you wish your expert to attend at the same time, please let me and (*insert expert's name*) know within 20 working days.

Claim

I will write to you as soon as possible with further details of the history of the defects and of notice relied on, along with details of my claim for general and special damages.

Yours sincerely,

** Delete as appropriate*

B Letter of claim

LETTER OF CLAIM

(a) *For use where an Early Notification Letter has been sent (as set out in Annex A).*

(i) LETTER FROM SOLICITOR

To Landlord

Dear Sirs,

RE: TENANT'S NAME AND ADDRESS OF PROPERTY

We write further to our letter of *(insert date)* regarding our client's housing disrepair claim. We have now taken full instructions from our client.

Repairs

The history of the disrepair is as follows:-*(set out history of defects)*.

*I enclose a schedule which sets out the disrepair in each room.**

You received notice of the defects as follows *(list details of notice relied on)*.

The defects at the property are causing *(set out the effects of the disrepair on the client and their family, including any personal injury element. Specify if there will be any other additional claimant)*.

Please forward to us within 20 working days of receipt of this letter a full schedule of works together with the anticipated date for completion of the works proposed.

Claim

We take the view that you are in breach of your repairing obligations. Please provide us with your proposals for compensation. *(Alternatively, set out suggestions for general damages i.e. £x for x years). Our client also requires compensation for special damages, and we attach a schedule of the special damages claimed.**

Yours faithfully,

** Delete as appropriate*

(ii) LETTER FROM TENANT

To Landlord

Dear

RE: YOUR NAME AND ADDRESS OF PROPERTY

I write further to my letter of *(insert date)* regarding my housing disrepair claim. I am now able to provide you with further details.

Repairs

The history of the disrepair is as follows:-*(set out history of defects)*.

You received notice of the defects as follows *(list details of notice relied on)*.

The defects at the property are causing *(set out the effects of the disrepair on you and your family, including any personal injury element. Specify if there will be any other additional claimant)*.

Please forward to me within 20 working days of receipt of this letter a full schedule of works together with the anticipated date for completion of the works proposed.

Claim

I take the view that you are in breach of your repairing obligations. Please provide me with your proposals for compensation. *(Alternatively, set out suggestions for general damages i.e. £x for x years). I also require compensation for special damages, and I attach a schedule of the special damages claimed. **

Yours sincerely,

** Delete as appropriate*

(b) *For use where an Early Notification Letter has NOT been sent.*

(i) **LETTER FROM SOLICITOR**

To Landlord

Dear Sirs,

RE: TENANT'S NAME AND ADDRESS OF PROPERTY

We are instructed by your above named tenant. *(Insert a sentence stating how the case is being funded.)* We are using the Housing Disrepair Protocol. We enclose a copy of the Protocol for your information. *

Repairs

Your tenant complains of the following defects at the property *(set out nature and history of defects)*.

*We enclose a schedule which sets out the disrepair in each room.**

You received notice of the defects as follows *(list details of notice relied on)*.

The defects at the property are causing *(set out the effects of the disrepair on the client and their family, including any personal injury element, specifying if there are any additional claimants)*.

Disclosure

Please provide within 20 working days of receipt of this letter a full schedule of the works you propose to carry out to remedy the above defects and the anticipated date for completion of the works.

Please also provide within 20 working days of this letter the following: -

All relevant records or documents including:-

- (i) copy of tenancy agreement including tenancy conditions
- (ii) tenancy file
- (iii) documents relating to notice given, disrepair reported, inspection reports or repair works to the property.
- (iv) computerised records

We enclose a signed authority from our clients for you to release this information to ourselves.

We also enclose copies of the following relevant documents:- *(list documents enclosed)*

Expert

If agreement is not reached about the carrying out of repairs within 20 working days of receipt of this letter, we propose to jointly instruct a single joint expert (*insert expert's name and address*) to carry out an inspection of the property and provide a report. We enclose a copy of their CV, plus a draft letter of instruction. Please let me know if you agree to his/her appointment. If you object, please let me know your reasons within 20 working days.

If you do not object to the expert being instructed a single joint expert, but wish to provide your own instructions, you should send those directly to (*insert expert's name*) within 20 working days. Please send to ourselves a copy of your letter of instruction to ourselves. If you do not agree to a single joint expert, we will instruct (*insert expert's name*) to inspect the property in any event. In those circumstances, if you wish to instruct your expert to attend at the same time please let ourselves and (*insert expert's name*) know within 20 working days.

Claim

We take the view that you are in breach of your repairing obligations. Please provide us with your proposals for compensation. (*Alternatively, set out suggestions for general damages i.e. £x for x years*). *Our client also requires compensation for the special damages, and we attach a schedule of the special damages claimed.**

Yours faithfully,

** Delete as appropriate*

(ii) LETTER FROM TENANT

To Landlord

Dear

RE: YOUR NAME AND ADDRESS OF PROPERTY

I write regarding the disrepair at the above address. I am using the Housing Disrepair Protocol. *I enclose a copy of the Protocol for your information.**

Repairs

The property has the following defects (*set out nature and history of defects*).

*I enclose a schedule which sets out the disrepair in each room.**

You received notice of the defects as follows (*list details of notice relied on*).

The defects at the property are causing (*set out the effects of the disrepair on you and your family, including any personal injury element, specifying if there are any additional claimants*).

Please provide within 20 working days of receipt of this letter a full schedule of the works you propose to carry out to remedy the above defects and the anticipated date for completion of the works.

Disclosure

Please also provide within 20 working days of receipt of this letter the following: -

All relevant records or documents including:-

- (i) copy of tenancy agreement including tenancy conditions
- (ii) tenancy file
- (iii) documents relating to notice given, disrepair reported, inspection reports or repair works to the property
- (iv) computerised records.

I also enclose copies of the following relevant documents:- (*list documents enclosed*).

Expert

If agreement is not reached about the carrying out of repairs within 20 working days of receipt of this letter, I propose that we jointly instruct a single joint expert (*insert expert's name and address*) to carry out an inspection of the property and provide a report. I enclose a copy of their CV, plus a draft letter of instruction. Please let me know if you agree to his/her appointment. If you object, please let me know your reasons within 20 working days.

If you do not object to the expert being instructed as a single joint expert, but wish to provide your own instructions, you should send those directly to (*insert expert's name*) within 20 working days. Please also send a copy of the letter of instruction to me. If you do not agree to a single joint expert, I will instruct (*insert expert's name*) to inspect the property in any event. In those circumstances, if you wish to instruct your expert to attend at the same time please let me and (*insert expert's name*) know within 20 working days.

Claim

I take the view that you are in breach of your repairing obligations. Please provide me with your proposals for compensation. (*Alternatively, set out suggestions for general damages i.e. £x for x years*). *I also require compensation for special damages, and I attach a schedule of the special damages claimed.**

Yours sincerely,

** Delete as appropriate*

C Letter of instruction to expert

LETTER OF INSTRUCTION TO EXPERT

(i) LETTER FROM SOLICITOR

Dear

RE: TENANT'S NAME AND ADDRESS OF PROPERTY

We act for the above named in connection with a housing disrepair claim at the above property. We are using the Housing Disrepair Protocol. *We enclose a copy of the Protocol for your information.**

Please carry out an inspection of the above property by (date)** and provide a report covering the following points:-

- (a) whether you agree that the defects are as claimed
- (b) whether any of the defects is structural
- (c) the cause of the defect(s)
- (d) the age, character and prospective life of the property.

Access will be available on the following dates and times:- (list dates and times as appropriate)

*You are instructed as a single joint expert / The landlord is (landlord's name and details) / The landlord will be providing you with their own instructions direct / The landlord will contact you to confirm that their expert will attend at the same time as you to carry out a joint inspection.**

Please provide the report within 10 working days of the inspection. Please contact us immediately if there are any works which require an interim injunction.

If the case proceeds to court, the report may be used in evidence. In order to comply with court rules we would be grateful if you would insert above your signature a statement that the contents are true to the best of your knowledge and belief. We refer you to part 35 of the Civil Procedure Rules which specifies experts' responsibilities, the contents of any report, and the statements experts must sign.

Insert details as to cost and payment.

Yours sincerely,

* *Delete as appropriate*

** *The date to be inserted should be 20 working days from the date of the letter, in accordance with paragraph 3.6(f) of the Protocol.*

(ii) **LETTER FROM TENANT**

Dear

RE: YOUR NAME AND ADDRESS OF PROPERTY

I am currently in dispute with my landlord about disrepair at the above property. I am using the Housing Disrepair Protocol. *I enclose a copy of the Protocol for your information.**

Please carry out an inspection of the above property by (date)** and provide a report covering the following points:-

- (a) whether you agree that the defects are as claimed
- (b) whether any of the defects is structural
- (c) the cause of the defect(s)
- (d) the age, character and prospective life of the property.

Access will be available on the following dates and times:- (list dates and times as appropriate)

*You are instructed as a single joint expert / The landlord is (landlord's name and details) / The landlord will be providing you with their own instructions direct / The landlord will contact you to confirm that their expert will attend at the same time as you to carry out a joint inspection.**

Please provide the report within 10 working days of the inspection. Please contact me immediately if there are any works which require an interim injunction.

If the case proceeds to court, the report may be used in evidence. In order to comply with court rules I would be grateful if you would insert above your signature a statement that the contents are true to the best of your knowledge and belief. I refer you to part 35 of the Civil Procedure Rules which specifies experts' responsibilities, the contents of any report, and the statements experts must sign.

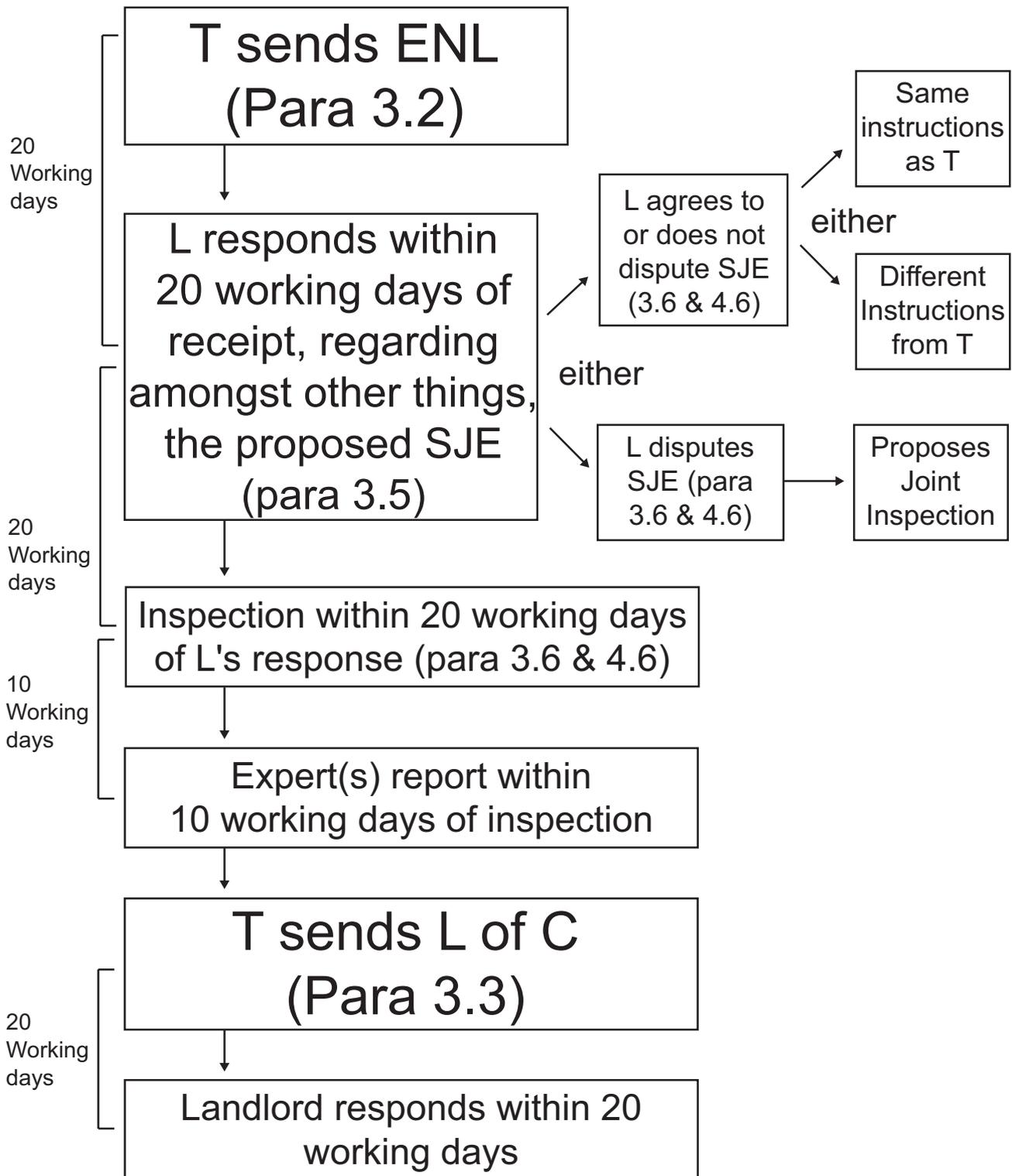
Insert details as to cost and payment.

Yours sincerely,

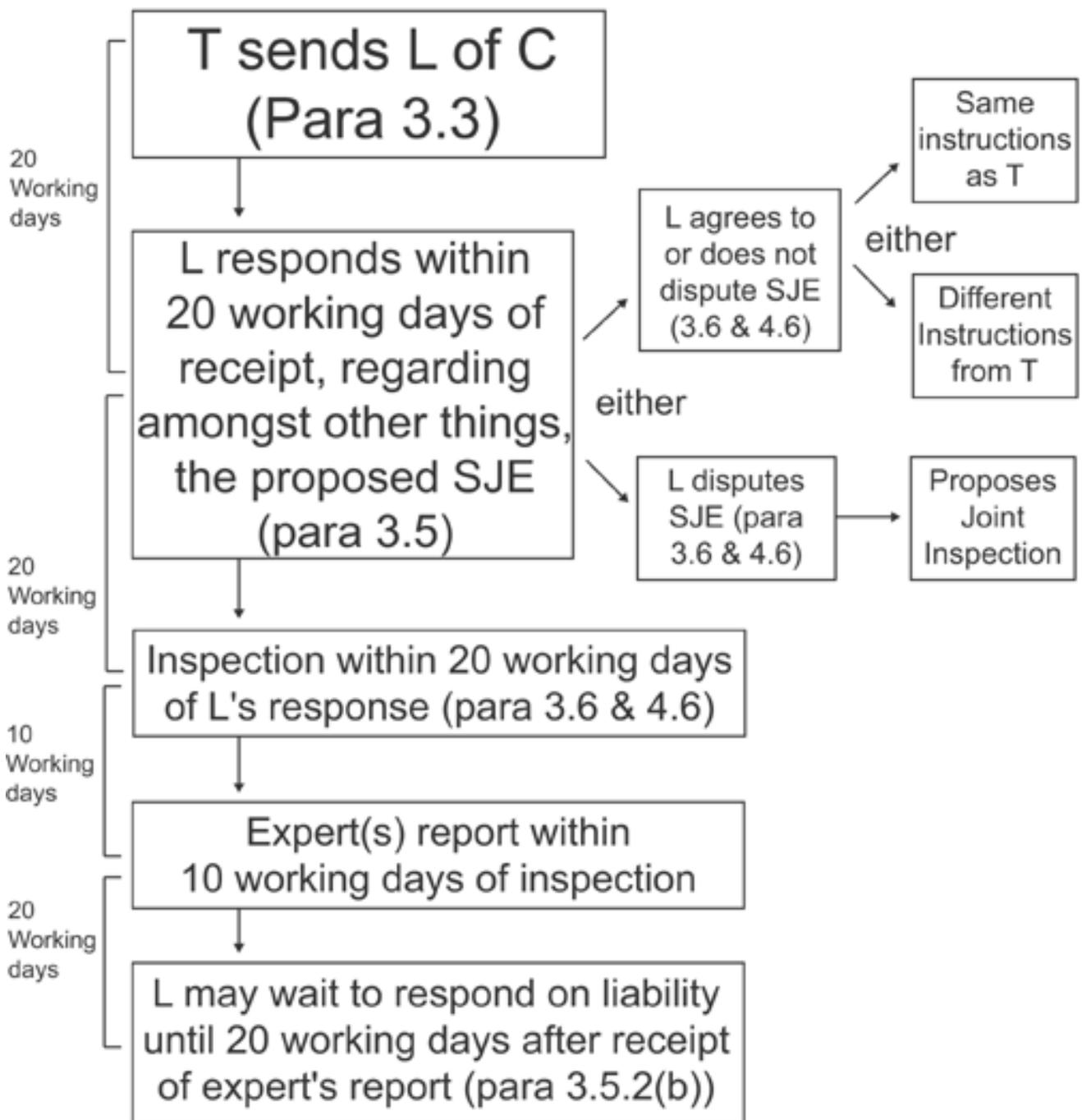
* *Delete as appropriate*

** *The date to be inserted should be 20 working days from the date of the letter, in accordance with paragraph 3.6(f) of the Protocol.*

Early Notification Letter Flowchart



Letter of Claim Flowchart



E Special damages form

	ITEM	DATE PURCHASED	WHERE PURCHASED	PRICE	RECEIPTS – YES/NO	HOW DAMAGED
1						
2						
3						
4						
5						
6						
7						
8						
9						
10						

SPECIAL DAMAGES FORM

F Statement of costs

Statement of Costs (summary assessment)

In the	
Court	
Case Reference	

Judge/Master

Case Title

[Party]'s Statement of Costs for the hearing on (date)

(interim application/fast track trial)

Description of fee earners*

(a) (name) (grade) (hourly rate claimed)	
(b) (name) (grade) (hourly rate claimed)	

Attendances on (party)

(a) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>
(b) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>

Attendances on opponents

(a) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>
(b) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>

Attendance on others

(a) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>
(b) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>

Site inspections etc

(a) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>
(b) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>

Work done on negotiations

(a) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>
(b) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>

Other work, not covered above

(a) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>
(b) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>

Work done on documents

(a) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>
(b) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>

Attendance at hearing

(a) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>
(b) (number)	<input type="text"/>	hours at £	<input type="text"/>	£	<input type="text"/>

(a) (number)	<input type="text"/>	hours travel and waiting at £	<input type="text"/>	£	<input type="text"/>
(b) (number)	<input type="text"/>	hours travel and waiting at £	<input type="text"/>	£	<input type="text"/>

Sub Total £

	Brought forward	£	
Counsel's fees <i>(name) (year of call)</i>			
Fee for [advice/conference/documents]		£	
Fee for hearing		£	
Other expenses			
[court fees]		£	
Others		£	
<i>(give brief description)</i>			
Total		£	
Amount of VAT claimed			
on solicitors and counsel's fees		£	
on other expenses		£	
Grand Total		£	

The costs estimated above do not exceed the costs which the *(party)* is liable to pay in respect of the work which this estimate covers.

Dated Signed

Name of firm of solicitors
[partner] for the *(party)*

* 4 grades of fee earner are suggested:

(A) Solicitors with over eight years post qualification experience including at least eight years litigation experience.

(B) Solicitors and legal executives with over four years post qualification experience including at least four years litigation experience.

(C) Other solicitors and legal executives and fee earners of equivalent experience.

(D) Trainee solicitors, para legals and other fee earners.

"Legal Executive" means a Fellow of the Institute of Legal Executives. Those who are not Fellows of the Institute are not entitled to call themselves legal executives and in principle are therefore not entitled to the same hourly rate as a legal executive.

In respect of each fee earner communications should be treated as attendances and routine communications should be claimed at one tenth of the hourly rate.

G Schedule

**Schedule
Disrepair Protocol
TENANT**

	Item Number	Room (tick where appropriate)	Disrepair (identify briefly)	Notice given (How was the landlord made aware of the problem)	Inconvenience suffered (How has the disrepair affected you)
Exterior of premises, roof and access Comment:					
Entrance, hall and storage Comment:					
Living room (s) Comment:					
Kitchen Comment:					
Bathroom Comment:					
Bedroom 1 Comment:					
Bedroom 2 Comment:					
Bedroom 3 Comment:					
Other Comment					

