

30 March 2020

**ALEP Protocol for Service of Initial Notices and Counter-Notices During COVID-19
Pandemic**

1. Under the provisions of the Leasehold Reform Housing and Urban Development Act 1993 (“the Act”), it is a legal requirement for various notices to be served in original ‘hard copy’ format with a ‘wet’ signature. These may well include:
 - (a) Notices of claims to exercise the right to collective enfranchisement under s.13.
 - (b) Initial Notices under s.42 of the Act.
 - (c) Counter Notices under ss.21 and 45 of the Act.

2. There has been a great deal of litigation about these issues and disputes about the validity of addresses for service etc. Practitioners also recognise that the case law concerning service by email and other electronic means is unclear. This Protocol does not purport to resolve these issues.

3. However, during the current Coronavirus Pandemic, there is scope for greater uncertainty and risk of disputes about the effective service of notices. In particular where professional offices are closed, it may not be possible to serve personally and/or to obtain proof of service. Moreover, in responding to s.13 or s.42 notices, landlords and other parties may experience considerable difficulty preparing valuations and investigating the right to acquire the freehold or a lease extension.

4. As the leasehold enfranchisement sector’s leading body for practitioners, we feel it is appropriate to set out some agreed guidance which we would encourage practitioners to use during the current circumstances.

5. This Protocol is entirely voluntary and can only be adopted if both parties agree in writing. However, we would encourage all ALEP members to subscribe to and to use this Protocol where possible.

6. We echo the general directions given by HMCTS to postpone all leasehold enfranchisement Tribunal hearings in London until after 29 May 2020 and to seek to suspend all active steps in Directions (save where the parties can comply with these, or it is necessary to do so in the interests of justice).

The Guidance set out in this Protocol is as follows:

1. Wherever possible, members should seek to agree, on behalf of their clients, a reasonable extension of time for the service of any Counter Notice under s.21 and 45 of the Act. The length of the extension should recognise the difficulties experienced with gaining access to properties for valuers, preparing valuations, and the delays in investigating the tenant(s) right to acquire the freehold or a lease extension.
2. Where applicable, the parties should endeavour to agree that service of an Initial Notice by electronic means will be sufficient service for the purposes of s.13 and 42 of the Act. Service by electronic means will usually involve an email sent to the email address of the ALEP member (as agent for the recipient) with a PDF of the signed Initial Notice.
3. Where applicable, the parties should endeavour to agree that service of a Counter Notice by electronic means will be sufficient service for the purposes of s.21 and 45 of the Act. Service by electronic means will usually involve an email sent to the email address of the ALEP member (as agent for the recipient) with a PDF of the signed Counter-Notice.
4. ALEP does not purport to give advice on the form and effect of any such agreements. However, the agreements should generally be accompanied by a statement that (save as agreed), the parties waive (i) the requirements as to service of s.13, 21, 42 and 45 notices (as the case may be) (ii) the time periods specified by s.21(1) or 45(1) of the Act and/or (ii).
5. This Protocol will expire on the same day that section 55 of the Coronavirus Act 2020 expires.