

Feedback / Feedforward

Dilapidations

Dilapidations Overview

It should be remembered, that Chartered Surveyors need to follow the RICS Guidance Notes on dilapidations, ensuring that they keep up to date. A very good source of information and discussion is the RICS Dilapidations Forum, or Iserve. There are various dilaps help websites, together with the dilaps help book that you should have received, which we recommend you read and work through.

Remember that whilst some principles apply and knowing relevant dilapidations court cases help it is often the negotiation skill and the way information is presented through a thorough understanding of dilapidations that gets best results.

The following are answers to the Feedback / Feedforward questions that have been worked through and the nature of dilapidations. In some instances, these may not be the only answers and there may be options available for how you deal with a specific issue. Very much as with dilapidations case law, other dilapidations cases give you an indication and guidance on how to deal with these issues, but it is very much termed specifically on the backs of your court case.

More Questions for You

We have added additional questions in the Feedback / Feedforward sheets for you to work through.

Remember all this information is available by accessing www.1stAssociated.co.uk website, right hand side.

Good luck with your studies.

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Dilapidations Feedback / Feedforward Sheets

Feedback / Feedforward Sheet One

Dilaps

Question 1:

Explain why a Landlord serves a Schedule of Dilaps in about 20 words.

Answer 1:

To record the condition of the property as it relates to the lease covenants and bring the property back up to this standard or get monetary settlements, or it can be served as a tactic.

Question 2:

Explain why Tenants have Schedules of Conditions carried out in about 10 words.

Answer 2:

Schedules of Condition record the condition of the property and protect the Tenants, particularly if appended to the Lease.

New Question 1:

What should be included in a well prepared Schedule of Dilapidations? Is there any guidance on this? Answer in about 50 words.

Dilapidations Feedback / Feedforward Sheets

Feedback / Feedforward Sheet Two

Dilaps Industrial Units

Question 1:

Can a Schedule of Dilaps be issued after the end of the Lease? Y/N

Answer 1:

Yes, up to six years, although the RICS Guidance Notes recommend much less than this. In some instance it can be up to 12 years, but it would be considered as bad practice and looked on poorly in the courts.

Question 2:

What is a Scott's Schedule, about 15 words

Answer 2:

A negotiation document that lists defects and costs to aid the Landlord and Tenant to come to agreement.

Question 3:

A Schedule of Dilaps has the following column headings across the top:

Location/Element | Clause No. | Defect/Nature of Breach | Remedy | Quantity of Work | Cost

What additional/different columns does a Scott's Schedule have?

Answer 3:

Costs become Landlord's Costs and there is a column for Landlord's Comments and Tenant's Comments.

Question 4:

How is a Section 18 valuation carried out?

Answer 4:

Known as the diminution in value, it's the difference between the property has it is and as it would have been if the lease covenants had been completed. Specialist valuers are normally required for this when it goes to court.

New Question 1:

What does the RICS GN say about timescales generally? Answer in about 25 words.

New Question 2:

Draw a Scott's Schedule and fill out five things you typically expect to see on a 1960's industrial unit Scott's Schedule and typical comments you would expect to see by the landlord and the tenant.

New Question 3:

Name three classic dilaps case laws.

New Question 4:

Advise in 25 words the type of things that need to be taken into consideration when carrying out a Section 18 valuation.

Dilapidations Feedback / Feedforward Sheets

Feedback / Feedforward Sheet Three

Scenario:

Your client has rented an industrial unit for ten years at a rent of £5,000 per year. The tenant has recently purchased a new property and wishes to leave. They give the landlord 6 months notice and leave.

The landlord serves a Schedule of Dilapidations (in paper format) on them the week after the company has left the premises, priced at £70,000. Your client, the original leaseholder/tenant is particularly annoyed as he had been promised the Schedule of Dilapidations many months prior to the lease coming to an end, but never received one.

You (the chartered surveyor) view the property with a builder and ask them to price the Schedule of Dilaps. The builder's quote is for £20,000.

The landlord wishes to have a monetary solution.

Question 1:

How would you advise your client, the ex-leaseholder/tenant with regard to the following matters:

Has the landlord's surveyor met the provisions of the RICS Guidance Notes?

Answer 1:

The Guidance Notes recommend that an electronic copy is served, which is not. There is no requirement for a Schedule of Dilaps to be served prior to leaving. In fact, some dilapidation surveying practices recommend serving at the end of a lease, thereby meaning a monetary settlement only is applicable.

Question 2:

Advise your client/the tenant how to proceed.

Answer 2:

He has an obligation under his lease covenants to repair the property as per the lease. He has now left the property. Assuming that six months notice is the correct time of liability for the lease covenant, using a Scott's Schedule to negotiate, identify there is a considerable difference between £70,000 from the Landlord and £20,000 from the builders quoted. Application needs to be sought on this, possibly in the form of tendering the work with jointly agreed builders, although usually negotiation will take place. With regard to price you will need to check that the builder has the price for all the items under the Schedule of Dilaps that you consider are breaches of the covenant.

Assuming they have them, with this sort of difference it would be worth taking this to ADR.

New Question 1:

Can a Schedule of Dilapidations be served by a Chartered Surveyor and do they normally get served by a Chartered Surveyor?

New Question 2:

Give some typical examples of repair clauses that you are likely to see in a modern lease.

Dilapidations Feedback / Feedforward Sheets

Feedback / Feedforward Sheet Four

Dilapidations Retail *You are a Chartered Surveyor working to the RICS Guidance Notes*

Your client has a 300sq m retail unit with a rent review and break clause coming up to the sixth year stage of a nine year lease. The lease is FRI but has a schedule of condition attached with a rent of £20,000.

The landlord has issued an interim Schedule of Dilaps at £120,000. Your client, the original leaseholder/tenant is very concerned as business is very poor.

Question 1:

Advise your client (the tenant) how to proceed if they wish to go (in about 20 words)

Answer 1:

We need to advise your client that break clauses can be difficult to meet all the requirements. You do have to meet all the requirements to force a break clause. My initial thoughts are £120,000 schedule of dilaps on a 300 metre sq retail unit seems high. I propose that you negotiate using a Scott's Schedule and also advise the client of the works that we would recommend are carried out to enable them to enforce the break clause. The difficulty can be with retail units that carrying out the work may affect trade (even further) although they have identified that business is very poor, so they may be willing to accept the benefits of carrying out the work as against the loss in trade.

The interim schedule may well have been served by the landlord as a tactical measure with the rent review coming up.

How would you say this in about 20 words?

Question 2:

Advise your client (the tenant) how to proceed if they decide to stay (in about 20 words)

Answer 2:

We would recommend that they put in action a course of work to carry out anything where they have breached the lease covenants. We would recommend they start with wind and watertight items first, such as roof repairs, etc, to ensure that any problems don't get any worse.

New Question 1:

Thinking about the retail sector, think about the type of structure you would have for older type smaller shops and for more modern newer shops, and list five typical defects that may be highlighted in a Schedule of Dilapidations from these two types of retail properties.

New Answer 2:

Have the length of leases changed over the years and what was the typical length of lease after the war compared with today?

Dilapidations Feedback / Feedforward Sheets

Feedback / Feedforward Sheet Five

Dilapidations Offices *You are a Chartered Surveyor working to the RICS Guidance Notes*

Your client is the landlord

The tenant has recently relocated from the top floor of a four floor shared use office block. The office space was let on a 10 year FRI Lease which has ended. The tenant had a schedule of condition carried out at the start of the lease.

You have prepared Schedule of Dilaps on the whole building and priced it from a price book at £170,000. The tenant believes this to be high and has had two builders price the work, both at around £100,000.

The landlord wishes to start the refurbishment immediately (next week) using his regular builder, as they need the rental income. The ex-tenant says they can't start until the Schedule of Dilaps is agreed.

Question 1:

Advise your client (the landlord) how to proceed (in about 20 words)

Answer 1:

We would advise the landlord that he can proceed with the works as soon as he wishes. However, it would be wise to obtain builders quotes prior to commencing the work (we normally recommend three builders quotes) based on the schedule of dilapidations. We would also advise that pricing books may show higher or lower prices as they, with the best will in the world, are out of date when published, It has been argued that even on-line equivalents are not as accurate as tendering to the market at a particular time.

To alleviate the ex-tenant's concerns we would suggest that you meet the surveyor at the property to discuss the answers and take

- a) photographic record, particularly of any issues
- b) comment on the difference and the cost of the works.

As mentioned above, pricing books, on-line pricing systems do not cover all situations, everything from the macro and micro-economics of an area to the ease of the work that the builders are carrying out. Simple factors such as indoor work being more popular with builders during the winter months therefore often getting better prices during the winter months. Suffice to say to your client (the landlord), that prices do vary and a builder's quote is the best way to move forward, making sure that the builders are quoting like for like quantity and quality.

How would you say this in about 20 words?

Question 2:

Comment on the difference in the costs of the works

Answer 2:

It should be noted that the work is on the top floor of a four floored shared use office and therefore there maybe extra costs incurred for gaining access to this area. We would also respectfully comment to the landlord that is he sure refurbishment work really needs to start next week, as office space is normally a relatively slow market, particularly at high levels. This, of course, depends on other factors, such as air conditioning, lift access, car parking, location, location, location!

New Question 1:

Offices have changed a lot over the years, from the smaller traditional built properties to more modern concrete frame and steel frame buildings with small offices, to recent open plan style offices.

Advise five typical Schedule of Dilapidations clauses.

New Question 2:

Exaggerated claims have been common in Schedules of Dilapidations for many years. How do the RICS Guidance Notes and the Protocol help to reduce this tradition?

Answer in about 50 words.

Dilapidations Feedback / Feedforward Sheets

Feedback / Feedforward Sheet Six

Dilapidations *You are a Chartered Surveyor, advise within the RICS GN and PS*

You are acting for the tenants who have left the property, in March of this year, at the end of a 20 year FRI lease, with a rent of £40,000 pa

The landlord's surveyor has issued a Schedule of Dilaps, priced, she advises, from a pricing book, and past projects she has worked on, at an estimate of £70,000. You have had a builder price the work at £20,000, based on the Schedule of Dilaps; this takes two weeks. You have met the landlord's surveyor (after waiting for four weeks due to her being busy) at the property and she agrees to amend some of the items in the Schedule based on evidence you have provided, that the office and mezzanine floor were in place at the start of the lease. You agree to these amendments to be made within two weeks – after three weeks you ring to be advised

The landlord's surveyor has decided to go to tender (without discussing this with you) and has started to prepare a schedule of work, which takes a further two weeks. She then advises her client needs to approve the schedule of work, which takes a further two weeks and the tender process takes a further four weeks.

When tenders are returned the builders quotes range from £40,000 to £50,000. The landlord's surveyor wishes to use these figures and also includes a claim for loss of rent and starts the work. Your builder is still happy to do the work for £20,000.

Question 1:

Advise your client

Party Wall Act (all in about 20 words)

Answer 1:

The Landlord's surveyor has advised they have used a pricing book on past projects to get an estimate of £70,000. We have come across this quite a lot, unfortunately it means there is little way of asking the landlord's surveyor to prove their estimate (which can be checked if pricing books have been used). There is a vast difference between the landlord's estimate and your builder's price of £20,000. You need to double check that your builder has quoted on the correct work and fully understands it. If you still have access to the property, meet him at the property and also obtain two more quotes (we normally recommend at least three quotes). This way you will establish the cost. Don't forget to include the amendments that the landlord's surveyor has now agreed.

The landlord's surveyor has been particularly slow in answering your various queries. This may well be because they are busy and whilst you could point out they haven't met the RICS Guidance Notes in relation to this it may not put you on a good standing with them. We therefore recommend that you look at this in two stages. First of all, one where you agree the building works; close to the £20,000 as you can (assuming that the other builders come in around the same price). Mention ADR as a way of sorting out this dispute, as we have had clients decide to pay rather than go to court where "only" £20,000 or £30,000 was involved.

We would then address the issue of lost rent in two ways. First of all see if the market really was that active in the office section; you can talk to local agents and see if there are any To Let boards up nearby and see how long they were on the market, and hopefully gain evidence in this manner. If not, you will then need to broach the subject of the length of time it's taking to come back to you on the various issues.

How would you say this in about 20 words?

New Question 1:

Whilst the vast majority of dilapidations claims do not get to court, and indeed, and we are advised the court wants this type of work sorted out by the professionals involved, what are the ADR alternatives and what would you recommend in the example?

Advise in about 50 words.

Dilapidations Feedback / Feedforward Sheets

Feedback / Feedforward Sheet Seven

Dilapidations *You are a Chartered Surveyor working to the RICS Guidance Notes*

Your client is the landlord

You are managing a dilaps claim for the landlord and have prepared a Scott's Schedule and have been unable to agree anything!

Question 1:

Draw a Scott's Schedule

Answer 1:

Property:					Date of inspection :				
						Landlord's item		Tenant's item	
Item No.	Clause No.	Breach complained of	Remedial works required	Tenant's comments	Landlord's comments	Landlord's costing	Tenant's costing	Landlord's costing	Tenant's costing
1		External							
1.1	3.10	Tenant's signage remains at high level.	Remove tenant's signage.			£168.00			
1.2	3.6	The mastic sealant has failed at the junction of the cladding panels and the columns.	Rake out existing mastic and re-form with new.			£750.00			
1.3	3.7	External previously decorated surfaces have not been redecorate in accordance with the lease term.	Redecorate previously decorated surfaces. Including the roller shutter door which was originally not painted but has been painted during the term of years			£1,350.00			

1.4	3.7	There is graffiti to the rear elevation.	Clean down graffiti.			£252.00			
1.5	3.7	The lightweight concrete wall to the rear elevation has not been decorated in accordance with the lease terms.	Redecorate wall.			£1,150.00			
1.6	3.6	The lightweight concrete panels to the rear have eroded or are damaged at low level.	Re-form eroded or damaged edges to lightweight concrete panels.			£552.00			
2.0		Internal							
		First Floor							
2.1	3.6	Ceiling tiles are soiled.	Clean down ceiling tiles.			£150.00			
2.2	3.6	The broadloom carpet to the offices is heavily soiled.	Replace soiled carpet.			£2,100.00			

Question 2:

What different types of ADR may be of use to resolve the dilaps claim?

Answer 2:

Early neutral evaluation, arbitration and mediation. See the handout and the website for more information.

New Question 1:

At the end of a Scott's Schedule you would put a Heads of Claim, as can be seen below. Explain and advise what a Heads of Claim is in about 50 words.

PROPERTY
ADDRESS

HEADS OF CLAIM

(Add figures to shaded cells only)

A Building Costs				D Fees		
A.1	Building costs		£113,105.00	D.1	Preparation of schedule	£950.00
A.2	Prelims, o/head and profit	15%	£16,965.75	D.2	Service of schedule	£500.00
A.3	Health and Safety		£1,500.00	D.3	Contract administration @ 12%	£15,788.49
	Sub total		<u>£131,570.75</u>	D.4	Other fees	£0.00
	B Procurement			D.5	Solicitors	£0.00
		<i>Weeks</i>		D.6	Engineers	£0.00
B.1	Preparation of design		3	D.7	Negotiation to settlement @ 5%	£6,578.54
B.2	Tender period		3		Sub total	<u>£23,817.03</u>
B.3	Lead in period		2			
B.4	Contract period		12			
	Total procurement period		20			
	C Mesne profits				F VAT	
		<i>Weeks</i>	<i>Rate</i>	F.1	VAT on A	£23,024.88
C.1	Loss of rent	20	0	F.2	VAT on C.1, C.2, C.3.	£0.00
C.2	Loss of rates	20	0	F.3	VAT on D	£4,167.96
C.3	Loss of service charge	20	0		Sub total	<u>£27,192.86</u>
C.4	Loss of interest	20	0		TOTAL	<u>£182,580.64</u>
	Sub total					
			£0.00			

Notes :

- Loss of mesne profit to be confirmed.
- The above claim includes VAT (subject to clarification over the VAT position for the property)
- We reserve the right to add additional costs or damages to the statement of claim at a later date.

New Question 2:

Often previous dilapidations court cases are used to discuss the outcome of any problems. Advise on three dilapidations cases (that you haven't used previously in your answer) and their relevance and importance.

Dilapidations Feedback / Feedforward Sheets

Feedback / Feedforward Sheet Eight

Dilapidations Break clauses

You are a Chartered Surveyor working to the RICS Guidance Notes

Your client is the tenant

The tenant is in an office building that they have rented for 14 years of a 20 year lease. In the 15th year the lease has a break clause that the tenant wishes to use. The yield up break clause is due in six months time.

Question 1:

Advise the occupier what actions need to be taken and the possible problems in the present market (in approx 50 words)

Answer 1:

As leases are normally written by landlords solicitors they are generally weighed in the favour of landlords and this is the same with break clauses. They should be written to make them very difficult to comply with, which is why it is important when originally negotiating the lease that you help and advise the solicitor with a break clause and we would always advise that you recommend that one is included. With six months to go seems like a reasonable time to carry out any works that are needed to bring the property up to the terms set out within the lease covenants. The covenants are the four 'R's': repair, reinstatement, redecoration and statutory regulations. In addition to this you will also need to make sure that the rent is paid up to date and the building insurance is paid up to date, or you will need to make sure that someone is making sure! You will need to work with a solicitor with regard to the break clause, as one mistake can mean many years of future rent. In this instance, it would only be five more years of future rent. We say only as many break clauses are put early on in the lease.

The work of the surveyor would therefore involve establishing what work is required under the covenants within the lease, working with the solicitor to confirm these are correct, going out to tender on any work (assuming there is time) and completing the work to the standard set out within the covenants in the lease.

We would also recommend you speak to the landlord's surveyor as early as possible to build up a working relationship.

New Question 1:

Identify three newer case laws relating to dilaps that you have not already used.

Dilapidations Feedback / Feedforward Sheets

Feedback / Feedforward Sheet Nine

Dilapidations

You are a Chartered Surveyor working to the RICS Guidance Notes

Question:

Explain Dilaps (in approx 20 words)

Name and explain three cases that are classic Dilaps case law (that you have not already used)?