

CONSUMER GUIDE



Dilapidations in England and Wales

A clear, impartial guide

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Introduction

Dilapidations refers to breaches of lease covenants that relate to the condition of a property during the term of the tenancy or when the lease ends.

This guide provides information for tenants and landlords on things to consider when dealing with a dilapidations claim made by a landlord at or near the end of the lease term. It focuses on the basics of the dilapidations process only and does not deal specifically with leases that end because of the exercising of a break clause.

This guide relates to the law and procedures for commercial property in England and Wales, other parts of the UK have their own law and processes, which can be different to the information in this guide. While the Dilapidations Protocol only applies to commercial disputes it is likely that its procedures will also be regarded as best practice in residential disputes.

Whether you are a tenant or landlord, using the services of a chartered surveyor during a dilapidations claim will prove invaluable. They will offer clear and concise information and advice to help you through a claim.

Definitions

The following definitions are commonly used when dealing with dilapidations.

A **Schedule of Dilapidations** is the document prepared by the landlord (or their surveyor) listing outstanding reinstatement, repair, legal compliance and decoration items to the property, suggesting remedial works and, in some cases, estimating the cost of the remedial works.

A **Quantified Demand** is a document setting out further details of the allegations. It is prepared by, or on behalf of, the landlord and is issued after the end of the lease. It will include details of what the landlord considers to be its likely loss as a consequence of the alleged breaches. The loss may be different to the cost of the works that will be in the Schedule of Dilapidations.

A **Response** is the reply from the tenant (or their surveyor) to the Quantified Demand and/or the Schedule of Dilapidations. This is usually a letter/email and a Scott Schedule.

A **Scott Schedule** is an extended version of the Schedule of Dilapidations that enables the tenant (or their surveyor) to respond to the content of the Quantified Demand and/or the Schedule of Dilapidations.

The **Dilapidations Protocol** is a document published by the Ministry of Justice setting out the courts' expectations of the landlord and tenant about lease-end dilapidations. The protocol is available on the Ministry of Justice website.

The **lease** is the legal contract. It sets out the rights and responsibilities of the parties and contains specifics that must be followed to ensure legal compliance in any dilapidations claims. Always refer back to the lease.



Things a tenant should consider

Before signing a lease

You should familiarise yourself with the terms of the lease and its dilapidations implications before signing the contract. A chartered building surveyor can advise you on the implications of the clauses you are signing up to, i.e. advising on, depending on the specific lease clauses, carrying out a Photographic Schedule of Condition to record the condition of the premises prior to signing the lease, potentially limiting the repairing liability. Any records of building condition must be appended to the lease prior to signing to ensure they form part of the legal contract.

During the lease term

You should consider the potential of future dilapidations liability during the term of your lease and budget for it. If you carry out alteration works to the premises, it is likely that your landlord may require to you reinstate those alterations before the lease ends.

Near the end of the lease

You should be aware of the extent of dilapidations work you have committed to

complete. This can be a complicated assessment and it would be normal for you to engage a chartered building surveyor who is experienced in dilapidations to advise you.

Unless you have completed all the building work that the lease you signed and any licences for alterations required you to carry out, you should expect to receive a Schedule of Dilapidations from your landlord. If you have made any alterations to the property during your lease, your landlord may serve you with a notice to reinstate the alterations you have made.

This notice can be included in the Schedule of Dilapidations or sent separately.

If dilapidations works are not complete before the end of the lease term, your landlord can claim damages from you to recompense them for the adverse financial position they may find themselves in.

Landlords should not profit from dilapidations payments so the amount set out in the Quantified Demand may be less than the one in the Schedule of Dilapidations. This could be for a number of reasons including the landlord planning to redevelop or upgrade the property, or a new tenant wants the premises left as they are. For this reason, it may be difficult to decide whether to complete the work before the end of the lease or to wait for the landlord to send a Quantified Demand.

The Quantified Demand could include additional costs, if the landlord can show that they suffered a loss due to you not completing the works before the end of the lease, such as loss of rent and service charge.

The Schedule of Dilapidations and Quantified Demand might also include an allowance for irrecoverable VAT.

After the end of the lease

You should have received a Schedule of Dilapidations and, within 56 days after the end of the lease, a Quantified Demand. You will be expected to respond to the Schedule of Dilapidations and/or Quantified Demand within 56 days of receiving them. Your response will need to be endorsed by you or your surveyor.

Normally your surveyor and the landlord's surveyor will meet to narrow the differences to recommend a settlement figure to you and the landlord. If a settlement is not possible then you may be faced with potential litigation from your former landlord. The Dilapidations Protocol states that parties in dilapidations cases should consider alternative dispute resolution (ADR) before going through the courts.

Where a Schedule of Dilapidations is not sent

Even if your landlord does not send you a Schedule of Dilapidations you may still have potential dilapidations obligations. A chartered building surveyor can give you advice on any potential cost of these obligations.

Things a landlord should consider

Timing is important. Before the end of the lease you may need to serve Notices on your tenant so that they reinstate alterations made to the property during the lease. Then, as a general rule, you should issue a Schedule of Dilapidations and a Quantified Demand within 56 days after the end of the lease term.

It is normal to engage a chartered building surveyor to prepare a Schedule of Dilapidations on your behalf. Before they prepare the Schedule of Dilapidations the surveyor will ask you what your intentions for the property were on the date the lease ended. This is so that your surveyor can endorse the Schedule, which is a requirement of the Dilapidations Protocol. Your answer must be honest and full as it may be reviewed by a court in years to come.

When preparing the Schedule of Dilapidations, your surveyor will use an industry standard form that will be sent to the tenant. If you do send a Schedule of Dilapidations to the tenant before the end of the lease term, you are expected to update it at the end of the lease term.

The Schedule of Dilapidations will normally set out the cost of the works that the tenant should have completed. The Quantified Demand may necessarily be set at a lower figure as the amount you are claiming should not exceed your likely loss. If the tenant's breaches of the terms of the lease have not caused you to suffer a loss, you must not include these items.

The reasonable cost of works that the tenant should have carried out is likely to be the main guide to the amount of compensation you seek. However, the law does not allow this to exceed the amount by which the property had in fact been devalued by the tenant's breaches at the end of the lease.

Once your former tenant has been sent the Quantified Demand and/or Schedule of Dilapidations, they have 56 days to send you a Response that has been endorsed by the tenant or their surveyor. The Response will set out anything your former tenant is disputing.

Normally your surveyor and the tenant's surveyor will meet to narrow the differences to recommend a settlement figure to you and the tenant. If a settlement is not possible, you may be faced with potential litigation with your former tenant. The Dilapidations Protocol states that parties in dilapidations disputes should consider alternative dispute resolution (ADR) before going through the courts.



Alternative Dispute Resolution (ADR)

Alternative Dispute Resolution (ADR) is a formal setting for dispute resolution without involving the courts. ADR can take various forms and may be a cheaper option to settle a dispute .

Forms of ADR suitable for dilapidations include:

Expert determination

A single expert makes a decision on the case that is binding on both the landlord and tenant.

Mediation

The two parties, their advisers and a mediator meet and where the mediator helps to facilitate a mutually acceptable settlement.

Arbitration

A private form of dispute resolution, which is similar to litigation but is governed by the Arbitration Act. The arbitrator's decision is binding on both parties.

The negotiation that the surveyors for both parties take part in during a dilapidations dispute is a form of dispute resolution. The Dilapidations Protocol requires the landlord and tenant to consider ADR. Neither party can be forced to undertake ADR but the court, if the claim goes that far, may expect ADR to have been attempted. Any unreasonable refusal to undertake ADR may be taken into account by the courts when award of costs are considered.

Complex cases

Disputes about dilapidations can be complex and can involve a number of specialists. For example, if a landlord has not completed the dilapidations works but is proposing to litigate to recover damages from the former tenant, a specialist valuation report on the property will need to be prepared (called a diminution valuation). This is usually prepared by a chartered valuation surveyor.

Other specialists may be necessary to advise on particular aspects, such as lifts, air conditioning, cladding, land contamination, etc. If the dispute ends up in the courts, barristers will likely need to be engaged to review the case and act on behalf of the parties. Expert witnesses will also likely be required in the courts.

It is normal, but not a requirement, for the parties' surveyors to be engaged as expert witnesses. This is because of their prior involvement and knowledge of the dispute. If this does happen, the surveyors' duty will be to the courts and not the parties that originally appointed them.

How an RICS member can help

As the world's largest professional body for chartered surveyors, RICS offers clear, impartial, expert advice on the issues raised in this guide.

RICS members can help property owners in a variety of ways, so whether you want expert advice and a professional assessment of your issue, an opinion on costs, representation, or a professional to manage a project for you, visit [Find a Surveyor](#) to find an RICS member in your area.

Using the services of RICS members offers confidence because:

- they provide clear, impartial and expert advice
- they are regulated by RICS and have strict rules of conduct to protect you, as well as holding appropriate professional indemnity insurance
- they have to update their skills and knowledge throughout their careers, so you can rely on their expertise and
- you are further protected by RICS' complaints service and access to independent redress.

Surveying firms that are regulated by RICS are easy to spot as they use 'Regulated by RICS' on their stationery and promotional material.

Consumer guide A clear, impartial guide to dilapidations

Useful links

A downloadable copy of the Dilapidations Protocol can be found on the [Ministry of Justice website](#):

Visit the [RICS website](#) for more Information about the RICS Dispute Resolution Service.

Free RICS guides

RICS has a range of free guides available for the following property issues:

Development issues

- Compulsory purchase
- Home extensions

Home hazards

- Fire safety
- Dilapidations
- Flooding
- Subsidence

Neighbour issues

- Boundary disputes
- Party walls
- Right to light

Residential

- Buying a home
- Buying and selling art and antiques at auction
- Home surveys
- Letting a property
- Property auctions
- Renting a property
- Selling a home

Visit [our consumer guides website](#) or the [RICS website](#).

Find a Surveyor

[Contact us](#) if you want to find independent, impartial advice from a qualified professional with good local knowledge.

Surveying firms that are regulated by RICS are easy to spot as they use 'Regulated by RICS' on their stationery and promotional material.

Delivering confidence

We are RICS. Everything we do is designed to effect positive change in the built and natural environments. Through our respected global standards, leading professional progression and our trusted data and insight, we promote and enforce the highest professional standards in the development and management of land, real estate, construction and infrastructure. Our work with others provides a foundation for confident markets, pioneers better places to live and work and is a force for positive social impact.

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