



Dilapidations Dispute Resolution Scheme [The “Dilapidations Scheme”]



Principles and objectives

Principles

After a period of nine months has elapsed following the end of the lease term, either the landlord or the tenant (jointly the “Parties”) may refer a dilapidations dispute to the final and binding decision of an Independent Expert (“the Independent Expert”), who shall proceed in accordance with the Dilapidations Scheme Rules.

Objectives

- To ensure both Parties are on an equal footing irrespective of their respective financial standing, experience of property disputes or access to advisers;
- To discourage exaggeration by either Party at any stage of the dispute;
- To keep the costs of the Dilapidations Scheme limited and proportionate;
- To avoid lengthy disputes;
- To assist the Parties in their compliance with the Dilapidations Protocols (if the Dilapidations Protocol is applicable to the dispute);
- To encourage the Parties and their advisors to achieve settlement of the dispute in advance of the Dilapidations Scheme being enforceable by either Party.



Application of the dilapidations scheme

When deciding whether or not to use the Dilapidations Scheme, landlords and tenants should bear in mind that if they do not resolve the matter by negotiation or any other form of alternative dispute resolution, they may end up in the courts, and that this may result in a more expensive procedure than envisaged under this Dilapidations Scheme.

Landlords and tenants are also reminded that (if it is applicable to the dispute) the Dilapidations Protocol anticipates that they will consider resolution of the dispute via Alternative Dispute Resolution (“ADR”) and that they should attempt to agree a suitable method of ADR. The Dilapidations Scheme is considered to be a suitable method of ADR.

Under the Dilapidations Scheme, the Independent Expert will make his or her own investigations and will rely on personal knowledge and experience to reach a decision. The Parties may feel they can rely on this expertise and not instruct their own professional representatives, which will keep their costs down. However, the Dilapidations Scheme allows them to use their own professional representatives and to submit expert opinion evidence if they wish.

Once both Parties have signed up to the Dilapidations Scheme, if one Party then fails to co-operate, the Dilapidations Scheme enables the Independent Expert to reach a decision but also ensures that he or she will have the benefit of being able to consider the representations made by the Party who does co-operate.

The procedure under which the Dilapidations Scheme will operate is set out in the Dilapidations Scheme Rules.

If the landlord and tenant cannot agree on the identity of the Independent Expert, then the Independent Expert shall be appointed by the President of the Royal Institution of Chartered Surveyors on the application of either the landlord or the tenant, or both.

Appointment of the independent expert

An application form to apply for the appointment of an Independent Expert by the President of the RICS is available to download from RICS Dispute Resolution Services www.rics.org/drs or contact drs@rics.org for an email version.

Rules for the RICS Dilapidations Dispute Resolution Scheme [The “Dilapidations Scheme Rules”]

The Independent Expert has the sole right to vary the procedures set out below but will be guided in any such decision by the principles of proportionality of costs.

Stage 1

- 1.1 The landlord and the tenant (the “Parties”) agree to be bound by this procedure as a means of resolving their dispute, after taking advice if they so wish.
- 1.2 The Parties shall attempt to agree the identity of the Independent Expert.
- 1.3 If the Parties are unable to agree the identity of the Independent Expert then one or both Parties, or their respective professional representative, must complete the standard application form and send it, with payment of the appropriate fee to RICS Dispute Resolution Services, Surveyor Court, Coventry, CV4 8JE (cheque, credit/debit card or BACS will be acceptable). The President of RICS will appoint a suitable Independent Expert who is willing to operate under the Dilapidations Scheme. Both Parties will be notified of the identity of the Independent Expert, and the Independent Expert will be instructed to contact the Parties (or their representatives if appointed). Once the President of RICS has made the appointment his jurisdiction is at an end and he may not interfere with the process thereafter.
- 1.4 Howsoever appointed, the Independent Expert will have regard to the then-current RICS Guidance Note on Conflicts of Interest. The Independent Expert must disclose all potential and perceived conflicts of interest. The Independent Expert will not accept an appointment in the event of a conflict of interest about which the Independent Expert is aware. The Parties agree to accept that the nature of an Independent Expert is such that links, contact, previous involvement and relationships with other members of the profession is inevitable but does not necessarily, of itself, constitute a conflict of interest.



Stage 2

As soon as possible after his or her appointment, the Independent Expert will contact the Parties and set out the procedure for determining the dispute, anticipated to be along the following lines:

- 2.1 Unless both Parties agree otherwise the Independent Expert will determine the entirety of any dilapidations liability, save for those costs referred to at paragraph 5.21.
- 2.2 The Independent Expert will ask the Parties to confirm the identity of the Parties in dispute, the address of the premises and the date of the lease.
- 2.3 If the information has not already been provided, when appointed, the Independent Expert will confirm to the Parties his or her fee structure.
- 2.4 If one Party wishes the Independent Expert to proceed, the Independent Expert must do so but the Independent Expert will wait for confirmation from at least one of the Parties.
- 2.5 The Independent Expert will require, as a minimum, a copy of the lease, all other relevant legal documents and a copy of the schedule of dilapidations, quantified demand, response and Scott Schedule (if they exist) and details of any payments already made (such as reimbursement of the landlord's professional fees for preparing and serving a schedule of dilapidations). The parties will be required to produce all documents relevant to the dispute, even if injurious to that Party.
- 2.6 The Independent Expert will also invite the Parties to put forward in writing any evidence or opinions which they believe are relevant to the dispute, and which they believe will assist the Independent Expert. These documents are referred to as the "Parties' Representations" or the "Representation" or "Representations" as context requires. Failure to provide a Representation should not prejudice that Party's position, because the Independent Expert will apply his or her own expertise to the dispute whether or not such information is received.
- 2.7 The landlord will advise the Independent Expert of all works that have been completed to the premises since the end of the lease term, including all costs incurred.
- 2.8 The tenant will advise the Independent Expert of all works which they completed prior to the end of the lease term including all costs incurred.
- 2.9 The Parties' Representations must be sent in full both to the Independent Expert and to the other Party and shall not include anything which has been produced on a "without prejudice" basis.
- 2.10 The Landlord's Representation shall include a statement, supported by evidence, confirming the Landlord's intentions for the premises on the lease end date.
- 2.11 Each Party shall review the other Party's Representation and, if applicable, shall confirm to the Independent Expert their agreement that the other Party's Representation does not include any "without prejudice" material.
- 2.12 The Parties will be required to amend their own Representation to remove all "without prejudice" material.
- 2.13 Once both Parties have confirmed that no "without prejudice" material is included in the Representations, or after 10 working days have elapsed, whichever is the shorter, the Independent Expert will review the Parties' Representations.



Stage 3

- 3.1 The Independent Expert will invite Counter-Representations by a fixed date. The Parties should use this opportunity to comment on the other Party’s arguments or conclusions, and draw attention to any factual errors, but not to introduce new evidence. As before, no “without prejudice” content is permitted.
- 3.2 As before, the Parties will review the Counter-Representations and will confirm to the Independent Expert whether any “without prejudice” material is included.
- 3.3 The Parties will remove all “without prejudice” material.
- 3.4 The Independent Expert will review the Counter-Representations at this stage or after 10 working days has elapsed, whichever is the shorter.
- 3.5 The Parties and their advisers are expected to apply the principle of proportionality to all Representations and Counter-Representations.
- 3.6 The Parties will provide a statement of truth equivalent to that set out within part 35 of the Civil Procedure Rules with all Representations and Counter-Representations. Any Chartered Surveyor providing expert evidence as part of those Representations or Counter-Representations will comply in full with the then-current RICS Practice Statement and Guidance Note “Surveyors acting as Expert Witnesses”.

Stage 4

- 4.1 The Parties are required to permit the Independent Expert to inspect the premises and may be required to assist in arranging viewings of the premises and other parts of the building, or other buildings in the vicinity. The Independent Expert will contact the Parties to tell them when he or she would like to inspect.
- 4.2 Normally the Independent Expert will inspect the premises without either Party being present.

Stage 5

- 5.1 The Independent Expert is permitted to request opinions and / or advice from other suitably qualified professionals (such as services engineers, lawyers etc). The decision whether to engage such other professional lies solely with the Independent Expert who will apply the principal of proportionality of costs to any such decision.
- 5.2 The other professionals may also require an inspection of the premises and the Parties will co-operate as set out above.
- 5.3 If the Independent Expert decides to obtain opinion or advice from other professionals, the Independent Expert will provide the Parties with details of the costs which will be incurred.
- 5.4 If required (and it is not anticipated that it will be required in the majority of disputes), a meeting between the Independent Expert and either or both of the Parties and / or their advisers may be held at this or any other stage. This decision rests solely with the Independent Expert who will apply the principles of proportionality of costs to his or her decision.
- 5.5 As soon as the Independent Expert has reached a conclusion as to the cost of works required to remedy the tenant's breaches, having taken into account the landlord's intentions, the Independent Expert will notify the parties that the figure is ready for publication.
- 5.6 The Independent Expert will issue fee accounts to each of the Parties, the costs being split equally at this stage.
- 5.7 All invoices issued by the Independent Expert are payable in full on receipt and the Parties are jointly and severally liable for these.
- 5.8 Once the fee accounts have been paid in full, the Independent Expert will publish the cost of works figure (having taken account of the landlord's intentions) to both parties (without reasoning) as a non-binding neutral evaluation.
- 5.9 The Independent Expert will then pause for a period of 15 working days. This pause is intended to allow the parties to consider the "cost of works" figure in case its publication encourages settlement of the dispute. If both parties do not contact the Independent Expert within that 15 working day period to confirm that the dispute has been settled then, once that 15 working day period has elapsed, the Independent Expert will resume his or her work with a view to preparing a binding Determination.
- 5.10 In order to take full account of s18(1) of the Landlord and Tenant Act 1927 (applicable only in England and Wales), any other limit to the amount of damages which would otherwise be payable and any time-related losses, the Independent Expert is permitted to request opinions and / or advice from other suitably qualified professionals (such as letting agents, valuers etc). The decision whether to engage such other professional lies solely with the Independent Expert who will apply the principal of proportionality of costs to any such decision.
- 5.11 The other professionals may also require an inspection of the premises and the Parties will co-operate as set out above.
- 5.12 When the Independent Expert is satisfied that he or she has considered everything relevant to the dispute, the formal Determination will then be prepared. The Determination will state what monies (if any) are to be paid and will not contain any reasoning as to how the Independent Expert has reached his or her Determination. Reports from any other professionals will be appended to the Determination.



- 5.13 The Independent Expert will notify the Parties that the Determination is ready for publication.
- 5.14 At this point the procedure is completed and no further correspondence will be entered into by the Independent Expert.
- 5.15 The Independent Expert will issue fee accounts to each of the Parties, the costs being split equally at this stage.
- 5.16 All invoices issued by the Independent Expert are payable in full on receipt and the Parties are jointly and severally liable for these.
- 5.17 Once the Independent Expert's fees have been paid in full the Determination will be published. Reports from other professionals will be appended to the Determination.
- 5.18 The Determination will be binding on both Parties.
- 5.19 Within the Determination the Independent Expert will decide the level of professional fees (if any) that should reasonably be recovered by the landlord from the tenant in respect of the preparation and service of a schedule of dilapidations. Such a sum may already have been paid in part or in full by the tenant, in which case a suitable deduction in sums due will be set out in the Determination.
- 5.20 The Determination will include an apportionment of the professional fees charged (including expenses and disbursements incurred) by the Independent Expert in preparing the neutral evaluation and the Determination, attributable to each Party.
- 5.21 The Determination will not consider professional costs incurred by the Parties in advance of the determination process (except professional fees for the preparation and service of a schedule of dilapidations as set out above at paragraph 5.19) or incurred in connection with the Scheme. The Parties may wish to resolve the question of costs liability by agreement between themselves; they might agree to be responsible for their own costs; or they may apply to another tribunal for resolution of any dispute regarding such costs.
- 5.22 The Independent Expert is permitted to issue interim invoices at any stage and this may be particularly appropriate in order to reimburse other professionals who have given opinions or advice.

Stage 6 (optional)

- 6.1 If, following publication of the Determination, either Party wishes to receive outline reasoning from the Independent Expert then either Party can request this and the Independent Expert will publish, to both Parties, outline reasoning on receipt of payment of such reasonable additional fees as the Independent Expert shall assess will be incurred in preparing the outline reasoning. The outline reasoning will not provide a detailed breakdown of the sum determined but should enable the Parties to understand how the Independent Expert reached his or her decision.
- 6.2 If a single Party requests the outline reasoning then that Party will pay the Independent Expert's full fees for the publication of the reasoning. If both Parties request the outline reasoning then the cost will be split equally between the Parties.



Supplementary notes

Where the dispute is settled between the Parties at any time in advance of publication of the Determination, or in the event that both Parties agree that the Independent Expert should cease work in advance of publication of the Determination, both Parties will advise the Independent Expert in writing who will cease work immediately. The Independent Expert will be reimbursed on a time incurred basis, together with all reasonable expenses and disbursements (such as third party advice), split equally between the Parties.

The Independent Expert will attempt to publish his or her Determination within twelve weeks of appointment but the Parties understand that this timetable may increase in the event of difficulty obtaining information, or difficulty in obtaining access to the premises. The Independent Expert maintains discretion to delay publication of the Determination in circumstances where it is reasonably anticipated that new evidence will be available in the near future.

In any event, the Independent Expert will proceed diligently.

Agreement

Landlord:

Tenant:

Premises:

Lease dated:

It is hereby agreed to partake in the RICS Dilapidations Dispute Resolution Scheme (the “Dilapidations Scheme”) in relation to any dilapidations liability arising in relation to the Tenant’s obligations under the Lease.

It is hereby agreed to appoint the following as the Independent Expert, subject to their availability and to any conflicts of interest:

Or, in the event that this Independent Expert is not available or is conflicted, or the Parties are unable to agree upon the identity of an Independent Expert, one or both of the Parties may ask the President of the Royal Institution of Chartered Surveyors to make the appointment.

Signed:

Dated:

Authorised signatory on behalf of the Landlord:

Signed:

Dated:

Authorised signatory on behalf of the Tenant:

For further details please contact

RICS Dispute Resolution Services

t 0207 334 3806

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Confidence through professional standards

RICS promotes and enforces the highest professional qualifications and standards in the development and management of land, real estate, construction and infrastructure. Our name promises the consistent delivery of standards – bringing confidence to the markets we serve.

We accredit 118,000 professionals and any individual or firm registered with RICS is subject to our quality assurance. Their expertise covers property, asset valuation and real estate management; the costing and leadership of construction projects; the development of infrastructure; and the management of natural resources, such as mining, farms and woodland. From environmental assessments and building controls to negotiating land rights in an emerging economy; if our members are involved the same professional standards and ethics apply.

We believe that standards underpin effective markets. With up to seventy per cent of the world's wealth bound up in land and real estate, our sector is vital to economic development, helping to support stable, sustainable investment and growth around the globe.

With offices covering the major political and financial centres of the world, our market presence means we are ideally placed to influence policy and embed professional standards. We work at a cross-governmental level, delivering international standards that will support a safe and vibrant marketplace in land, real estate, construction and infrastructure, for the benefit of all.

We are proud of our reputation and we guard it fiercely, so clients who work with an RICS professional can have confidence in the quality and ethics of the services they receive.

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