

# An evolutionary document

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## Jon Rowling reviews the changes in the recently published 7th edition of the RICS Dilapidations in England and Wales guidance note

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The new edition of the [RICS Dilapidations guidance note](#) represents evolution rather than revolution. One notable new element, however, is the advice on diminution valuations, and other key changes include the addition of comment on supersession, a response template and the suggested text of a letter to be sent to landlord clients asking for confirmation of their intentions.

In line with the content of the 2014 Dilapidations Bulletin, the guidance note suggests that building surveyors? professional indemnity insurers are notified that dilapidations work includes the preparation of quantified demands and responses.

Building surveyors are also reminded, in light of the guidance on when market-related advice will be required by the client, that their terms and conditions should confirm that the building surveyor does not take responsibility for such advice.

### Quantified demands and responses

A new response template is included and the quantified demand template is modified slightly; both include a suggested endorsement and prompt the surveyor to have the documents endorsed by those who have provided the market-related information, such as a letting agent, valuer, or indeed the client.

Both documents also include suggested text by which the client can prove that they have considered alternative dispute resolution (ADR), and a preferred form of ADR can be indicated.

Again in accordance with the 2014 bulletin, guidance is provided on circumstances when it is considered that a building surveyor can prepare the quantified demand or response without assistance, and circumstances when the client requires additional market-related advice.

*There can be no substitute for learning, training and experience*

More detail is provided in the guidance note, but in short, if the landlord intends to carry out the remedial work and make no claim for consequential losses, the building surveyor can normally prepare the quantified demand unassisted. Similarly, the building surveyor can

prepare the response unassisted if no market-related points such as diminution are being argued.

As an attempt to minimise negotiations that may become problematic, surveyors are reminded of the obvious point that 2 people can hold different opinions even if provided with the same evidence; good negotiators can overcome most differences.

## **Fees**

Comment is made about settlement negotiation instructions based on percentage fees. The guidance note states that there is nothing wrong with them in principle, but that clients should be advised that the previous existence of the fee arrangement might be a factor taken into account by the client's legal team when selecting the most appropriate surveyor to take on the role of expert witness.

As mentioned above, there is a new chapter on diminution valuations, and valuers undertaking these should pay heed.

One suggestion made there is that they should be willing, under appropriate circumstances, to endorse their valuations.

Comment is also made on circumstances in which surveyors should be considering supersession. The note's authors were not so bold as to propose a definition of supersession, but it is hoped that this section will be of use to surveyors when trying to navigate what can, on occasion, appear an opaque concept.

A paragraph has been added to remind surveyors that a landlord who does not complete the remedial work is not barred from making a dilapidations claim by that lack of action.

A minor revision has also been made to one of the column headings in the schedule of dilapidations template and is detailed in the appendix, and alternative formats of schedule are suggested as well.

One new section, which might have been mandatory had the guidance note become a professional statement, is advice to surveyors to tell their clients that either the [Dilapidations Protocol](#) or the [Practice Direction ? Pre-Action Conduct](#) is potentially relevant to a dispute.

## **Conclusion**

Dilapidations practice moves on gradually. While there is nothing revolutionary in the new guidance note, it is hoped that the developments will assist surveyors in navigating this complicated area of practice.

In relation to end-of-lease disputes, the Dilapidations Protocol attracts some criticism from the professions for being too complex, particularly for low-value disputes. If surveyors take the time to read the protocol and the guidance note and follow the suggested templates where appropriate, then it is hoped that the administrative functions associated with a dilapidations dispute can be minimised. And clients will quickly get used to hearing that market-related advice might be required at an early stage.

However, the final point to make is that the guidance note is neither a surveying nor a law textbook. There can be no substitute for learning, training and experience.

**Jon Rowling is a director of Goodrow and chaired the Dilapidations guidance note working group**

### **Further information**

- Download the full RICS guidance note on isurv: [Dilapidations in England and Wales, 7th edition](#)
- Related competencies include [Legal/regulatory compliance](#)
- This feature is taken from the RICS *Building surveying journal* (December 2016/January 2017)