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Department of Finance and Dilapidations Claims – An Overview

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Before the Assembly's summer recess, the Committee for Finance (CfF) commissioned this briefing paper from the Assembly's Research and Information Service (RaISe). The paper is to inform the Committee's consideration of dilapidations claims made by Landlords against the Department of Finance (DoF) throughout 2016 – early September 2020. The claims were made by commercial Landlords, alleging disrepair to the given leased property during the lease term, or at the time of or after the term end; in breach of the Tenant DoF's repair and decoration obligations under the lease agreement.

For context, section 1 of this paper provides the CfF with a basic overview of dilapidations claims in NI, including relevant law and guidance. It also highlights internal DoF policies, practices and procedures that are relevant when claims like these arise against the Department. Thereafter, section 2 outlines DoF data on past and current dilapidations claims made against the Department from 2016 – early September 2020. Included in the paper are a few considerations, which the CfF may wish to ask the DoF if engaging further on this matter. Section 3 provides some key observations.

When relying on the paper, the CfF should be aware of its heavy reliance on unpublished DoF-sourced data, as that information is not readily available elsewhere.¹ The Committee also should note that the paper is not intended to address the specific circumstances of any particular individual. Moreover, the paper should not be relied upon as legal advice, or as a substitute for it.

1. Basic overview of dilapidations claims in NI

Below is a basic overview of what dilapidations claims in NI entail and how they typically are resolved in NI, using the following subsections:

- 1.1 Commercial leasing under NI property law – key introductory points
- 1.2 Dilapidations claims – how they are made
- 1.3 Resolving dilapidations claims – 3 ways
- 1.4 Key NI law and related guidance
- 1.5 DoF business area responsible for dilapidations claims
- 1.6 Applicable DoF procedures addressing dilapidations claims

1.1 Commercial leasing under NI property law – key introductory points

Under property law in NI, a Tenant (a Lessee) may lease a property – commercial or residential - from a Landlord (the Lessor). The terms of that arrangement usually are guided by a signed written agreement between the Tenant and the Landlord – a property lease – along with prevailing law and relevant guidance. Both Tenant and Landlord are to comply with the lease, law and guidance. Amongst other things, included in the lease are legal covenants to repair, maintain and decorate the leased premises, and or to remove alterations/fill out at termination of lease.

1.2 Dilapidations claims – how they are made²

In the context of leased commercial property in NI, a Landlord may allege losses due to a Tenant's failure to comply with covenants – obligations - concerning the state and condition of the leased premises. These concern the Tenant's alleged failure to repair, maintain and

¹ Department of Finance correspondence to the: Committee for Finance, dated 20 March 2020 and 15 May 2020; and, the Research and Information Service (RaISe), dated 7 July 2020 and 9 September 2020.

² Dilapidations Update. Cleaver Fulton and Rankin. 21 March 2019: <https://www.rics.org/globalassets/rics-website/media/training--events/cpd-foundation/20190321-belfast-dilapidations-the-law--the-reality-cpdf-st.pdf> (accessed 1 October 2020); and, Royal Institute of Chartered Surveyors (RICS). "Dilapidations in England and Wales (7th edition). 1 September 2016: <https://www.rics.org/uk/upholding-professional-standards/sector-standards/building-control/dilapidations-in-england-and-wales/> (accessed 1 October 2020).

decorate the leased premises, and or to remove alterations/fill out at termination of lease. They often are stated in the lease in repair and reinstatement clauses.

When the Tenant fails to comply with those clauses, the Landlord may bring a dilapidations claim against the Tenant for losses alleged, seeking compensation from the Tenant for same. Tenants often fall foul of reinstatement.³

This commonly occurs by the Landlord's solicitors serving papers on the Tenant: usually an Excel Schedule prepared by the Landlord's chartered building surveyor. The Schedule itemises each alleged breach - i.e. each breached obligation under the lease terms - specifying the items to repair or decorate and alterations to reinstate, along with the priced remedies.

1.3 Resolving dilapidations claims – 3 ways⁴

Generally speaking, a dilapidations claim in this context is resolved *via* one of the following three scenarios:

1. Liability is not disputed by either the Landlord or the Tenant; and a provisional agreement for an amount to settle the claim is negotiated and agreed by the professional surveyors individually appointed by the Landlord and the Tenant to represent them.
2. Liability is not disputed; but a provisional agreement for an amount cannot be agreed by the professional surveyors appointed by both parties to represent them, despite their negotiation.

Legal advice then is sought by both, and relevant experts potentially secured and their opinions exchanged between the parties, followed by efforts undertaken by each to reach an agreed amount. All this aims to settle the claim, instead of the Landlord issuing legal proceedings to resolve it.

³ Dilapidations Update. Cleaver Fulton and Rankin. 21 March 2019: <https://www.rics.org/globalassets/rics-website/media/training--events/cpd-foundation/20190321-belfast-dilapidations-the-law--the-reality-cpdf-st.pdf> (accessed 1 October 2020);

⁴ DoF correspondence to the CfF, dated 20 March 2020, at page 2. Supplemented by: Dilapidations Update. Cleaver Fulton and Rankin. 21 March 2019: <https://www.rics.org/globalassets/rics-website/media/training--events/cpd-foundation/20190321-belfast-dilapidations-the-law--the-reality-cpdf-st.pdf> (accessed 1 October 2020); Royal Institute of Chartered Surveyors (RICS). "Dilapidations in England and Wales (7th edition). 1 September 2016: <https://www.rics.org/uk/upholding-professional-standards/sector-standards/building-control/dilapidations-in-england-and-wales/> (accessed 1 October 2020); Gilbert, Neil. "How Dilapidations Differ Across the UK: An Outline of the Regional Variations". TFT Consultants. July 2013: <https://www.tftconsultants.com/app/uploads/2018/03/How-Dilapidations-differ-across-the-UK-TFT-WHITE-PAPER.pdf> (accessed 1 October 2020).

3. Liability is denied by the Tenant. This could be done either: in part, based on legal advice received by the Tenant regarding its obligations under the lease; or, in whole, where evidence shows the Landlord did not suffer the alleged loss due to the Tenant's alleged breach of covenants under the lease.

Legal advice then is sought by the Tenant and or the Landlord to resolve the Landlord's lodged legal claim. Once lodged, the claim may resolve between the parties before or while it is heard by the court; or, it may be heard in full and decided upon by the court, in accordance with prevailing law and related guidance.

The CfF may wish to note that resolving such claims can be fraught with complexity, given their nature and limited legislative provision in NI.⁵ It seems few are litigated; and those that cannot be agreed usually are resolved at mediation.⁶

Mediation is a confidential, without prejudice, process called "Alternative Dispute Resolution" (ADR). It allows for a neutral third party to spend approximately a day with the parties, to facilitate a settlement and resolve the dispute. ***There appears to be a trend in the NI civil courts to suggest the parties in dilapidations claims, that they resolve the claim through ADR, not litigation.*** In such cases, a mediator may be asked to evaluate the claim or issue, and the strengths and weaknesses of a particular case – "evaluative mediation".⁷

1.4 Key NI law and Related guidance⁸

Key sources governing dilapidations claims in NI are: legislation; court decisions establishing precedents; and, Royal Institute of Chartered Surveyors (RICS) guidance (the protocol).

1.4.1 Key NI law – Legislation and Court decisions

Legislation

⁵ Royal Institute of Chartered Surveyors (RICS). "Dilapidations in England and Wales (7th edition). 1 September 2016: <https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/building-surveying/dilapidations-7th-edition-rics.pdf> (accessed 1 October 2020).

⁶ Raeburn, Paul. "Calculating cost and value in dilapidations claims". 14 December 2019, page 66, at: <https://www.dilapsolutions.com/wp-content/uploads/2020/04/Dilapidations.pdf> (accessed 1 October 2020).

⁷ Dilapidations Update. Cleaver Fulton and Rankin. 21 March 2019: <https://www.rics.org/globalassets/rics-website/media/training--events/cpd-foundation/20190321-belfast-dilapidations-the-law--the-reality-cpdf-st.pdf> (accessed 1 October 2020).

⁸ Dilapidations Update. Cleaver Fulton and Rankin. 21 March 2019: <https://www.rics.org/globalassets/rics-website/media/training--events/cpd-foundation/20190321-belfast-dilapidations-the-law--the-reality-cpdf-st.pdf> (accessed 1 October 2020).

In NI, the Conveyancing Act 1881 and the Business Tenancies (NI) Order 1996 set out the fundamentals governing dilapidations claims.⁹ There, however, is no statutory cap in NI limiting Landlord damages in these cases, as there is in England and Wales. Nonetheless, similar principles apply at common law to limit breaches of clauses to redecorate and to reinstate tenant's alterations.¹⁰

Typically, total incurred damages alleged by the Landlord include:¹¹

- Total amount of those items specified in the Schedule (see above);
- Fees (e.g. legal, surveyor); and,
- Consequential losses (e.g. rent, rates, insurance, etc).

Court decisions

There is a lack of NI case law in this area, establishing precedents. This absence places greater reliance in NI on court decisions in English dilapidations cases. While not binding precedents in NI, those English decisions are persuasive and NI courts can rely on them when taking decisions in the area.¹²

On the point of limited legislation and case law in the context of determining damages in dilapidations claims, the DoF advises:¹³

...In the absence of ... legislation, the position in NI remains subject to the rule established in the decision of the Court of Appeal in Joyner v Weeks that the measure of damages is based on the cost of the works, irrespective of the intention to carry out the works. As it stands, the law at the moment could result in "windfall" payments for Landlords where damages are claimed for wants of repair at lease end, but where the Landlord has sustained no loss as there is no intention to carry out the works. There have been no decisions on this issue in the NI Courts and, although the

⁹ Gilbert, Neil. "How Dilapidations Differ Across the UK: An Outline of the Regional Variations". TFT Consultants. July 2013: <https://www.tftconsultants.com/app/uploads/2018/03/How-Dilapidations-differ-across-the-UK-TFT-WHITE-PAPER.pdf> (accessed 1 October 2020).

¹⁰ <https://www.legislation.gov.uk/ukpga/Geo5/17-18/36/section/18>; and, Gilbert, Neil. "How Dilapidations Differ Across the UK: An Outline of the Regional Variations". TFT Consultants. July 2013: <https://www.tftconsultants.com/app/uploads/2018/03/How-Dilapidations-differ-across-the-UK-TFT-WHITE-PAPER.pdf> (accessed 1 October 2020).

¹¹ Raeburn, Paul. "Calculating cost and value in dilapidations claims". 14 December 2019, page 66, at: <https://www.dilapsolutions.com/wp-content/uploads/2020/04/Dilapidations.pdf> (accessed 1 October 2020).

¹² Gilbert, Neil. "How Dilapidations Differ Across the UK: An Outline of the Regional Variations". TFT Consultants. July 2013: <https://www.tftconsultants.com/app/uploads/2018/03/How-Dilapidations-differ-across-the-UK-TFT-WHITE-PAPER.pdf> (accessed 1 October 2020).

¹³ DoF correspondence dated 20 March 2020 and 15 May 2020.

recent decisions of the Court of Appeal and the House of Lords support the argument that the damages which can be recovered in respect of a dilapidations claim must be reasonable and proportionate to loss, having regard to the decision of the House of Lords in Ruxley Electronics Limited v Forsythe [1996] AC 344, these arguments have not been tested, but are being argued more and more in dilapidations disputes; the law is developing in this area and Landlords will be aware that the position is open to argument.

Accordingly, the Department will consider the circumstances of each dilapidations claim, and if there is evidence to show that no loss has been suffered by the Landlord, it will seek to challenge the claim.

...There are currently two high value dilapidations claims in dispute ... and the Department is prepared to proceed to hearing in the event that proceedings are issued, in an attempt to clarify the law in this area. DSO therefore provides advice on a case by case basis as to whether proposed settlements of other dilapidations claims could be prejudicial to the Department's position in relation to those disputed claims. [Emphasis added]

1.4.2 Related guidance

In NI, the “Dilapidations Guidance Note” (Guidance) - issued by the Royal Institute of Chartered Surveyors (RICS)¹⁴ – is recognised as the good practice guide/protocol to follow when dilapidations claims arise. Key within this Guidance is the “Dilapidations Schedule”, which is served by the Landlord onto the Tenant. Amongst other things, it explains the alleged Tenant breach and related Landlord costs for remedying:¹⁵

...The Schedule of Dilapidations is simply a listing of all outstanding repair, maintenance and decoration items which a landlord (or more likely his surveyor) has

¹⁴ Royal Institute of Chartered Surveyors (RICS). “Dilapidations in England and Wales (7th edition). 1 September 2016: <https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/building-surveying/dilapidations-7th-edition-rics.pdf> (accessed 1 October 2020).

¹⁵ Royal Institute of Chartered Surveyors (RICS). “Dilapidations in England and Wales (7th edition). 1 September 2016: <https://www.rics.org/globalassets/rics-website/media/upholding-professional-standards/sector-standards/building-surveying/dilapidations-7th-edition-rics.pdf> (accessed 1 October 2020); and,

McAllister, James, revised and updated by Tom Enwistle. “When commercial tenants leave, the Dilapidations process needs careful handling”. 12 June 2020:

<https://www.landlordzone.co.uk/news/dilapidations-in-commercial-property/> (accessed 1 October 2020).

determined have arisen under the terms of the lease being the tenant's repair and maintenance obligations.

The tenant is obliged to carry out the remedial works listed in the schedule or pay to the landlord damages which equate to the cost to the landlord of carrying out the works.

A recent article observed that the:¹⁶

Schedules of Dilapidations are often the cause of disputes between landlords and tenants, the result of which may mean court action. A court will ultimately decide upon what is relevant and what is not in the Schedule of Dilapidations. It is in both party's interests to try to avoid court action.

1.5 DoF business area is responsible for dilapidations claims

Responsibility for dilapidations claims made against the DoF is located in the Estates Management Unit (EMU), located in the Properties Services Division (PSD) of the Department's Enterprise Shared Services.¹⁷ The EMU is guided by Departmental policies, procedures and practices, along with legal advice provided at the DoF's request by the Departmental Solicitors Office (DSO).

1.6 Applicable DoF procedures addressing dilapidations claims

As explained earlier, a Dilapidations Schedule states the disrepair costs incurred by the Landlord due to the Tenant, despite the Tenant having agreed to surrender the property in good repair, in line with the lease terms.

1.6.1 EMU / PSD

The DoF explains that:¹⁸

¹⁶ McAllister, James, revised and updated by Tom Enwistle. "When commercial tenants leave, the Dilapidations process needs careful handling". 12 June 2020:

<https://www.landlordzone.co.uk/news/dilapidations-in-commercial-property/> (accessed 1 October 2020).

¹⁷ <https://www.finance-ni.gov.uk/enterprise-shared-services-ess#toc-7>

¹⁸ DoF correspondence dated 20 March 2020 and 15 May 2020.

If there is sufficient available time, the DoF can arrange for works to be carried out, when it establishes this is necessary, e.g., if the lease states - usually at the “yield up” clause - that the property should be decorated in the last year of the term, a Q1A can be sent to PSD to have the work costed and executed, likewise this work could be done as a result of a “marching out” report, where the work is done as part of the planned maintenance work in a particular financial year. If sufficient time is not available, the Department can make monetary compensation for the items detailed in the schedule, with the consultation of PSD.

Below outlines the DoF procedure when in receipt of a Dilapidations Schedule:¹⁹

- 1. Acknowledge receipt to the sender and advise EMU Staff Officer and Deputy Principal.*
- 2. If not part of the Planned Maintenance work, send a Q1A to PSD, along with a copy of the lease to have the schedule examined – at present PSD who will tender for a Consultant via the Consultancy Framework and they will work on behalf of the Department.*
- 3. Treat this Q1A as with all other Q1As and monitor as necessary.*
- 4. It is usual that you will liaise closely with PSD / consultant surveyor and may have to provide any old files such as the project files – which will indicate the condition that we took the property, for example, in a shell condition, and where the Department has erected partitions a cost may be applicable to remove these. If we have a condition report at the commencement of the lease this will also be useful.*
- 5. Contact DSO in writing asking for a solicitor to be appointed for the dilapidations for the particular premises. Ensure a copy of the lease agreement is provided along with the request.*
- 6. The consultant surveyor /PSD will negotiate a figure for dilapidations with the landlord or its agent and when a provisional agreement is reached they will seek the Departments acceptance.*
- 7. Pass the proposed settlement figure and supporting information to PD Gd6 who will present the proposal to the Lease Management Working Group (LMWG) for consideration.*
- 8. If the proposed dilapidations settlement figure is considered acceptable, advise the consultant surveyor of the Department’s decision by email and ask them to confirm with the other party. At this stage also ask for the landlord solicitors details. Once*

¹⁹ DoF correspondence dated 20 March 2020 and 15 May 2020.

confirmation is provided by the landlord's surveyor, setting out the agreed figure, pass this onto DSO along with the solicitor's details.

9. *If the LMWG is not content with the proposed dilapidations figure or requires further clarification, provide the LMWG's comments to the consultant surveyor for passing on to the landlord's surveyor for further consideration. Then follow points 6 – 8 above.*
10. *Once a dilapidations settlement figure has been agreed, DSO will arrange for a Deed of Release to be drafted and sent to the landlord's solicitors. The two legal teams will work together. When the Deed of Release is agreed, DSO will send the document to EMU for sealing (which is always first) and then signing by our Senior Officer (PD Grade 5). The Departmental seal is kept in Clare House. It is normal at this stage that a payable order/ cheque is requested for the payment of Dilapidations – take the lead from DSO- which will be requested by EMU through Account NI.*
11. *Return the signed and sealed Deed of Release to DSO as well as the PO/ cheque made out for the agreed dilapidations figure. When the Deed of Release is completed by both sides this completes the process.*
12. *For budgeting and monitoring purposes for EMU Budgeting, the Dilapidations tab of the relevant budgeting year must be completed /updated at:*
 - *The beginning of the financial year in which we are vacating the property – projection figure;*
 - *When the Dilapidations schedule is received – the date of receipt and the amount of the claim and what financial year that it is likely to be paid – it is usual a claim can take up to 18months;*
 - *If rental is claimed this has to be reflected in the Rent Budget, this can be found in the EMU Budgeting profile for the relevant year;*
 - *Adjust your comments on a regular basis to reflect the current position of the claim and if accrual is necessary this should also be noted;*
 - *When the claim is agreed – the agreed figures should be input and comments adjusted accordingly.*
 - *Budget implications should always be discussed with the Staff Officer and Deputy Principal in EMU.*

In relation to the last bullet point, the DoF advised that:²⁰

Each year, DoF's Finance and Properties Divisions estimate a provision for dilapidations within the Budget allocation using a "ready reckoner". In the interests of

²⁰ DoF correspondence dated 20 March 2020.

openness, we would advise that, while not strictly part of the dilapidations process, it is also used as a tool to check estimates made by the professional advisors appointed to act for the Department. This has not been provided as it is considered commercially sensitive.

The EMU advises such dilapidations claims usually are paid upon the DoF's surrender of the given leased property to the Landlord.²¹

1.6.2 DSO and the Lease Management Working Group on Dilapidations Process

The DoF advises that it:²²

...generally is the policy of government that repairs will not to be undertaken during the term of the lease and that the costs of wants of repair will be dealt with at lease termination, which is why the Landlord claims can relate to damages for want of repair for the term of the lease, as opposed to for example the last year or two of the lease, if the Department as tenant had carried out repairs until that date.

It further advises that:²³

At present there is a lack of consistency across Departments and ALBs in relation to the management of dilapidations claims and the Lease Management Working Group (LMWG) has identified the need for a Dilapidations Process to provide a framework which can be followed in all cases. DSO is currently working with DoF and AMU (SIB Asset Management Unit), through the Lease Management Working Group, to devise a Dilapidations Process which can then also be adopted by other Departments and ALBs.

As a result of the ongoing, high value, DfC/DoF disputed dilapidation claims at Ferguson/Royston and Oyster House, it was identified by DSO that, as well as looking at the legal obligations contained in the lease, the Department should make enquiries in every case in an attempt to determine, before settlement is made, whether there is evidence of any obvious lack of intention on the part of the Landlord to carry out works arising from the Department's breach of its covenants in the lease,

²¹ DoF correspondence dated 20 March 2020.

²² DoF correspondence dated 20 March and 15 May 2020.

²³ DoF correspondence dated 20 March and 15 May 2020.

for example, if there is planning permission for redevelopment or demolition or it is immediately leased to another tenant. As the Dilapidations Process has not yet been finalised, DSO recommends that these checks are carried out by other Departments prior to settlement of dilapidations claims in order to promote consistency and to minimise any risk of prejudice to the Department's position in these disputed claims.

Again, in the absence of legislation, in the event that the Department wishes to dispute a Landlord's dilapidations claim, DSO will advise the Department of the legal position and (note: disputes can also arise if the legal question is particularly novel, for example, the repair covenant wording is unusual and potentially ambiguous) would recommend seeking advice from experienced panel Counsel regarding the merits of disputing the Landlord's claim in order to weigh up settling versus the legal costs/delay involved in a dispute. Once the Landlord's claim is denied, in circumstances where there is no prospect of settlement, the Department cannot take any further steps as it is for the Landlord to issue proceedings against the Department and substantiate their claim."

The CfF may wish to ask the DoF and the DSO for the precise terms of reference for the LMWG and its forward work programme, including progress made to date.

2.0 DoF Data

Tables A-C below provide an overview of dilapidations claims against the DoF in the given period, followed by a few considerations the CfF may wish to ask the DoF, along with a few observations:

- Table A - those where claim has been settled and paid (x11)
- Table B – those soon to be settled and paid (x1)
- Table C – those claims in dispute (x2)
- A further claim (x1)

Table A

	Landlord dilapidations claim against DoF for leased commercial	Date claim received	Date of "Deed of Release" and claim paid, following	Number of months

	property	Date agreed dilapidations amount*	dilapidation amounts agreed – as of 09/09/2020	from claim made, to claim payment
1	Lincoln Buildings	23/11/2016 <hr/> 28/01/2018	21/02/2018	15
2	Oxford House	27/10/2017 <hr/> 20/12/2018	17/04/2019	16
3	Gloucester House	27/10/2017 <hr/> 20/12/2018	17/04/2019	16
4	23 Upper Main Street, Strabane	28/07/2016 <hr/> 13/12/2016	20/01/2017	nearly 6
5	9 Conway Square, Newtownards	25/10/2016 <hr/> 09/05/2017	22/06/2017	8
6	5 Thomas Street, Dungannon	12/12/2017 <hr/> 12/12/2017	19/04/2018	5
7	McAuley House	16/11/2016 <hr/> 15/08/2017	09/11/2017	nearly 12
8	31 Market Street, Omagh	29/05/2018 <hr/>	04/07/2019	nearly 14

		04/09/2018		
9	Trillick House	28/08/2018	12/03/2020	nearly 7
		22/05/2019		
10	Lesley Exchange	25/03/2019	13/03/2020	nearly 12
		17/01/2020		
11	Kevlin Buildings	31/10/2018	24/07/20	nearly 21
		05/07/2019		

Source: RaiSe compiled table, relying on DoF correspondence dated 9 September 2020.

* Amount “agreed” is when the DoF has considered the surveyor’s proposed settlement and advises that its intention would be to settle. Agreement is subject to legal checks and satisfactory due diligence, which is outside the Surveyor’s remit. A Surveyor who acts for the DoF is authorised to negotiate and recommend to the Department what the proposed settlement quantum should be, but that person is not authorised to agree dilapidations.²⁴

²⁴ DoF correspondence dated 9 September 2020.

Table B

	Landlord Dilapidations Claim* against DoF for Leased Commercial Property	Date claim received	Agreed dilapidation amount, but not yet paid** - as of 09/09/2020
12	48-50 Linenhall Street, Ballymena	16/05/2018	09/2018

Source: RaiSe compiled table, relying on DoF correspondence dated 9 September 2020.

* No legal proceedings lodged against the DoF by the Landlord.

** Awaiting draft Deed of Release, and anticipated to soon complete (Deed of Release/Paid)

The DoF advised:²⁵

With regard to 48-50 Linenhall Street, Ballymena the draft deed of release was sent on 12/03/20 to the last known solicitor for the landlord of 48-50 Linenhall Street, Ballymena who responded that they did not have instructions from the Landlord to deal with this matter. The Department wrote to the landlord asking for solicitor details, which have now been provided and arrangements are being finalised to allow the matter to complete.

Table C

	Landlord Dilapidations Claim* against DoF for Leased Commercial Property	Date claim received	Disputed amount claimed - as of 09/09/2020

²⁵ DoF correspondence dated 9 September 2020.

13	Royston House	04/05/2017	£256,634.74
14	Waterford Plaza	27/03/2019	£466,691.38

Source: RaiSe compiled table, relying on DoF correspondence dated 9 September 2020.

* No legal proceedings lodged against the DoF by the Landlord.²⁶

The CfF may wish for an update from the DoF re the above.

A further claim

In addition to the above, the DoF advises of a further claim:²⁷

For completeness, following a relocation of the Arts Council NI from The Sidings, a leased property in the Lisburn area, the property was handed back to the Landlord on 12/11/2019. A Dilapidations schedule was served to the amount of £266,153 on 18/09/2019. Following negotiations by the Department's appointed professional surveyor, a settlement value of £161,251 was proposed on 24/03/2020. DSO has asked for clarification from the Department's surveyor as to the interpretation of the reinstatement obligations in the lease regarding the tenants fit-out that was used in arriving at the proposed settlement value - a response from the surveyor is awaited.

The CfF may wish for an update from the DoF re the above.

3.0 Key observations

In NI, dilapidations claims relating to commercial properties are complex and can be fraught with difficulty, taking time to resolve. The law has been found to be limited in NI. These claims often resolve through mediation; and the Civil Courts seem to encourage this. Most of the claims faced by the DoF in the given period resolved between 5-21 months, i.e. from claim receipt to claim paid. Another is soon to be paid; two other are in dispute, but no legal proceedings; and one further is in negotiation.

²⁶ DoF correspondence dated 9 September 2020.

²⁷ DoF correspondence dated 9 September 2020.

It does seem that the DoF, along with the DSO, are taking measures to examine the handling of dilapidations claims, and to agree a way forward. The CfF may wish to keep a watching brief in this area