

**DILAPIDATIONS: Are the tensions
understood by stakeholders ?**

CHRIS MAHONY

A thesis submitted in partial fulfilment of the
requirements of Nottingham Trent University
for the Professional Doctorate

February 2024

The copyright in this work is held by the author. You may copy up to 5% of this work for private study, or personal, non-commercial research. Any re-use of the information contained within this document should be fully referenced, quoting the author, title, university, degree level and pagination. Queries or requests for any other use, or if a more substantial copy is required, should be directed to the author.

CONTENTS

	Page
ABSTRACT	i
ACKNOWLEDGEMENTS	iv
LIST OF TABLES	v
LIST OF FIGURES	vi
CHAPTER 1 - INTRODUCTION	
1.0 Background	1
1.1 Rationale for the Research	2
1.2 Aim and Objectives	3
1.2.1 Aim	3
1.2.2 Objectives	3
1.3 Research Methodology	3
1.3.1 Overview	3
1.3.2 Phase 1 – Literature Review	4
1.3.3 Phase 2 – Focus Group	4
1.3.4 Phase 3 – Questionnaire	4
1.3.5 Phase 4 – Semi-Structured Interview	5
1.4 Organisation of the Thesis	5
CHAPTER 2 - A CRITICAL REVIEW OF DILAPIDATIONS AND THE SCHEDULE OF DILAPIDATIONS	
2.0 Introduction	7
2.1 The Lease Cycle	7
2.2 The Timing of the Dispute	8
2.2.1 Prior to the Lease Being Signed	8
2.2.2 During the Lease Being Signed	9
2.2.3 At or After Lease End	9
2.3 The Development of Dilapidations	9
2.4 The Catalyst to the Dispute	9
2.5 Historical and Current Significant	10
2.6 Statutory	11
2.7 Regulatory	12
2.8 Literature	14
2.9 Disparity and Bias	18
2.10 Ethical and Professional	19
2.11 Observational	20
2.12 External Influences	21

2.13	The Tensions	22
2.14	The Schedule of Dilapidations	24
2.15	Summary	29
2.16	Reflective Comments	29

CHAPTER 3 - A CRITICAL REVIEW OF BUSINESS RISK AND ORGANISATIONAL CULTURE

3.0	Introduction	30
3.1	Surveyors' Perception of Risk	30
3.2	Organisational Risk	31
	3.2.1 Company Strength	31
	3.2.2 Company Policy	32
3.3	Organisational Barriers	32
	3.3.1 External Influences	32
	3.3.2 Internal Influences	32
3.4	Balanced Scorecard	38
3.5	Summary	38
3.6	Reflective Comments	39

CHAPTER 4 - RESEARCH METHODOLOGY

4.0	Introduction	41
4.1	Methodology	41
4.2	Research Methodologies	42
	4.2.1 Worldview Paradigms	42
	4.2.2 Methods of Enquiry	44
4.3	Rationale for the Research Methodology and Design	45
4.4	Research Challenges	46
4.5	My Adopted Approach	47
	4.5.1 Literature Review	47
	4.5.2 Focus Group	47
	4.5.3 Pilot Study	47
	4.5.4 Questionnaire	47
	4.5.5 Major Study – Interviews Using Repertory Grid	48
4.6	Repertory Grid	50
	4.6.1 Constructs	50
	4.6.2 Elements	50
	4.6.3 Rating	51
4.7	Pilot Study	51

4.8	Decision Tree Analysis	53
4.9	The R Project for Statistical Computing: rpart	54
4.10	Statistical Correlation Analysis	54
4.11	Criticisms of the Methodology/Correlation Results	55
4.12	Reflection	56
4.13	Discussion	58
4.14	Reflective Summary	58

CHAPTER 5 - DATA ANALYSIS AND DISCUSSION

5.0	Introduction	59
5.1	Background to the Focus Group	59
5.2	Focus Group Outcomes	60
	5.2.1 Categorisation of Tensions	62
	5.2.2 External Influences	63
	5.2.3 Internal Influences	64
	5.2.4 Capacity to Control Tensions	65
5.3	Focus Group Summary	66
5.4	Questionnaire	66
5.5	Second Focus Group Meeting and Questionnaire Design	67
5.6	Format of the Questions and Data Analysis	68
	5.6.1 Background Information to the Respondents	68
5.7	How do Surveyors Rank Tensions?	70
	5.7.1 Dilapidations Issues	70
5.8	Category 1 Technical Responses	71
5.9	Category 1 Participant Information	71
5.10	Category 2 Influential Responses	72
5.11	Category 2 Participant Information	72
5.12	Category 3 Behavioural Responses	72
5.13	Category 3 Participant Information	73
5.14	Summary of Responses	73
5.15	Summary of Participant Information	73
5.16	Frequency the Issues Occur	74
	5.16.1 How Often Do the Issues Arise?	74
5.17	Frequency of Responses	74
5.18	Participant Information	74
5.19	How Difficult are Tensions to Deal With?	75
5.20	Difficulty of Responses	75
5.21	Participant Information	75

5.22	What Do Surveyors Think about Dilapidations?	76
5.23	Participant Information	76
5.24	How Do Surveyors Rank the Categories?	77
5.25	Participant Information	77
5.26	Discussion	78
5.27	Summary	83

CHAPTER 6 - MAJOR STUDY AND ANALYSIS

6.0	Introduction	84
6.1	The Pilot Research	85
6.2	Final Repertory Grid Interviews and Results	85
6.3	Findings of Repertory Grid Interviews	85
6.4	What the Respondents Thought of the Interview	86
6.5	Overall Assessment	88
6.6	Eyeball Analysis	88
6.7	The Emergent and Implicit Pole Analysis	98
	6.7.1 The Tenant's Surveyor	98
	6.7.2 The Landlord's Surveyor	98
6.8	What Does This Tell Us?	99
6.9	Participant Information	99
6.10	Statistical Correlation Analysis	100
6.11	Tenant's Surveyor Correlation	100
	6.11.1 Tenant's Surveyor Analysis	102
	6.11.2 Tenant's Surveyors Scatter Diagram Matrix	103
6.12	Landlord's Surveyor Correlation	106
	6.12.1 Landlord's Surveyor Analysis	108
	6.12.2 Landlord's Surveyors Scatter Diagram Matrix	110
6.13	Comparison Between Surveyors' Correlation	112
6.14	Discussion	113
6.15	Decision Tree Analysis	114
	6.15.1 Analysis 1 – Identifying Ratings from Questions and Who the Answer Was About	114
	6.15.2 The Outcomes	115
	6.15.3 Analysis 2 – Identify Surveyor Type from Rating	115
	6.15.4 The Outcomes	116
6.16	Discussion of Decision Tree Analysis	116
6.17	Synthesis	117
6.18	Discussion	117

6.19	Summary	121
------	---------	-----

CHAPTER 7 - CONCLUSIONS

7.0	Introduction	127
7.1	Summary of Research Objectives	127
7.1.1	Critically Examine and Review the Literature on Dilapidations and its Importance in Today's Business Environment	127
7.1.2	Understand the Current Practices and the Surveyor's Cognition, Knowledge of Dilapidations and Decision Making	128
7.1.3	Evaluate Knowledge Gaps and Improve Surveyors Awareness of Critical Factors Impacting on Decision Making	128
7.1.4	Develop a Framework for Lifelong Learning to Assist Surveyors in a Deeper Understanding of Business Approaches	128
7.2	Key Findings	128
7.3	Practical Implications	129
7.4	Academic Implications	132
7.5	Originality and Contribution to Knowledge	132
7.6	Limitations	133
7.7	Further Research	133
7.8	Summary	133

REFERENCES	136
-------------------	------------

APPENDICES

Appendix 1	Questionnaire	148
Appendix 2	First Pilot Study Repertory Grid	160
Appendix 3	Second Pilot Study Repertory Grid	165

ABSTRACT

Purpose

Dilapidations continues to attract interest amongst professionals in the built environment. Guidance for Chartered Surveyors is provided in the Royal Institution of Chartered Surveyors Dilapidations Guidance Note (2016), and the Dilapidations Protocol (2012) describes the way in which the parties to a dispute should conduct themselves and present the claim and response. Section 18 (1) of the Landlord and Tenant Act 1927 sets out the way in which damages (the landlord's actual loss) is measured both during and at lease end. Since then, no further statutory intervention to define or refine the measure of damages has been enacted. Despite this, dilapidations continue to be challenging, sometimes leading to lengthy delays and increased cost to both parties to the dispute before a claim is resolved.

A lease is a legally binding agreement that sets out the terms and conditions under which the tenant may use the property for a pre-determined period in exchange for agreed upon payments. The tenant will keep and return the property as specified under the terms of the lease. Dilapidations form an integral part of the lease journey and forms a vehicle for both parties (landlord and tenant) to make claims during or at the end of a lease. Breaches of covenants contained in a lease are set out in a schedule of dilapidations and commonly include a failure to decorate, repair, remove alterations and comply with statutes. A dispute arises when the opposing party defends the claim.

Landlords and tenants frequently appoint surveyors to advise them and both prepare and defend the schedule of dilapidations. The parties to the dispute and their advisors work and conduct themselves within a recognised framework of guidance and procedures which are univocal to understand and achieve. However, dilapidations are often difficult, tactical, complicated and mis-understood and failings can result in serious consequences for either party. Tensions between the parties are common and manifest themselves in delays and increased cost, leading to frustration and anxiety. To date there have been no studies undertaken on dilapidations that seek to establish the reasons why dilapidations are difficult to resolve. The purpose of this study is to identify the critical factors that drive the decision-making process, how these and the behaviour of the surveyors influence the tensions and delays that lead to frustration, and how surveyors can better improve client service.

Research Methodology

Due to limited research in this subject area and non-existent data, the methodology adopted in this research combined a qualitative and quantitative approach which identified the reasons as to why dilapidations are sometimes difficult to resolve. The study comprised four phases

which reflected the objectives of the research. The first phase included a review of the literature in the field of dilapidations. This identified the chronology of dilapidations, the regulatory and statutory frameworks, ethical and professional issues, disparity and bias, external influences and business and organisational risk. Collectively they were categorised into a number of tensions. The second phase consisted of a two stage Focus Group which assisted with the scoping of the research and elicited factors driving decision making which categorised the tensions into three clusters; Technical, Influential and Behavioural issues. The outputs from the Focus Group provided the key data for the third phase, the structured questionnaire. Surveyors ranked the difficulties by which they comprehend dilapidations, revealing that they had little control over behavioural issues which were the most difficult to manage. The results of the questionnaire were analysed further leading to the fourth stage, semi-structured interviews. These exposed further issues concerning cognition, meta-cognition, self-awareness, problem solving, communicating and reflection. The application of Repertory Grid techniques and analysis using Decision Tree and Statistical Correlation Analysis, revealed the way in which surveyors compare their experiences. Themes common to disputes are comprehensive and the skills required to resolve them include understanding emotional intelligence and negotiation.

Findings

The key findings arising from this research reveal that dilapidations are difficult to resolve because of an inability to perceive, understand and control human behaviour which goes beyond misunderstandings and lack of knowledge of technical issues. There is a strong correlation between settlement outcomes and complexity, and the management of complicated issues varies according to experience. This lack of experience contributes to the way in which the parties behave, resulting in tactical intervention which may lead to delays.

This research reveals 7 stages to a dispute through which the parties move unconsciously away from contractual matters to areas concerning negotiation, tactical approach, resilience, reasoning, emotional intelligence and the approach to dealing with others. When questioned, surveyors rated themselves closer to best practice than their opposing surveyor but acknowledged areas of uncertainty. However, the burden to produce and defend a schedule of dilapidations rests with the landlord's surveyor.

This research significantly impacts the practitioner and academia. In practice, it should be recognised that a formulaic procedural approach to the presentation of dilapidations may not bring about a swift conclusion. Organisations require a greater understanding of the way in which the schedule is created to bring about a reduction in the number of criticisms it receives. Monitoring is required of both performance and emotional intelligence to bring about an

understanding of how organisations reflect on their abilities to manage disputes. Specialised training should be provided to include negotiation and human behaviour in disputes, and mentoring is required to encourage and guide professionals throughout their careers with an increasing encouragement towards lifelong learning.

In academia, a reverse approach to understanding dilapidations is required, so that the importance of the concept of damages and loss is understood first followed by the technical aspects of inspection and report writing. The complexities of dilapidations, which deal with the surveying, legal and regulatory elements require separate detailed investigation following which the way in which they influence each other should be understood.

Keywords

Dilapidations, Lease, Landlord and Tenant, Landlord's Surveyor, Tenant's Surveyor, Landlord and Tenant Act 1927, Tensions, Dispute, Repertory Grid

ACKNOWLEDGMENTS

The author wishes to thank and acknowledge the following.

Dr Amrit Sagoo

Chris Coffee

Dr Laurence Shaw

The staff of Nottingham Trent University

The respondents to this research

Nottingham Trent University Library

The British Library

The House of Commons Library

The Royal Institution of Chartered Surveyors Library

LIST OF TABLES

LIST OF TABLES		Page
Table 2.1	Development of the Literature	17
Table 2.2	An Extract from the RICS Dilapidations Guidance Note, 7 th Ed. 2016	24
Table 2.3	Analogy of the Schedule	25
Table 2.4	The Analysis of Aesthetics, Negative Truths and Breach of Contract	26
Table 3.1	Landlord and Tenants' Perception of Business Risk Through The Surveyor's Lens	31
Table 3.2	Landlord and Tenants' Attitudes to Property as an Investment	31
Table 3.3	Surveyors' Approach to Business and Organisational Risk	36
Table 4.1	Philosophical World Views	43
Table 4.2	Summary of Alternative Methods of Enquiry	44
Table 4.3	Qualitative Research Tools Compared to Actual Outcomes	53
Table 5.1	Summary of Additional Tensions	61
Table 5.2	Categorisation of Tensions	63
Table 5.3	Tabular Presentation of Responses to Technical, Influential and Behavioural Scoring	82
Table 5.4	Summary of the Focus Group and Questionnaire Findings	83
Table 6.1	Summary of Respondents' Replies to Each Construct	88
Table 6.2	Tenant Surveyors' Correlation in Descending Order	105
Table 6.3	Landlord Surveyors' Correlation in Descending Order	111
Table 6.4	Comparison of Surveyors' Correlation in Descending Order	112
Table 6.5	Comparison of Surveyors' Correlation by Element	113

LIST OF FIGURES

LIST OF FIGURES		Page
Figure 1.1	Research Overview	4
Figure 1.2	Aim, Objectives and Organisation of Thesis	6
Figure 2.1	Typical 5 Year Lease Cycle	8
Figure 2.2	Relationship between Surveying, Law and Regulation	15
Figure 2.3	Literature Review Tensions	24
Figure 2.4	The Cumulative Proposition of Truth	27
Figure 2.5	Alternative Meanings Given to Resources and Knowledge	28
Figure 3.1	Balanced Scorecard for Disputes	38
Figure 4.1	Research Approach	49
Figure 5.1	Summary of Focus Group Tensions	62
Figure 5.2	Summary of All Tensions	68
Figure 5.3	Technical Responses	71
Figure 5.4	Influential Responses	72
Figure 5.5	Behavioural Responses	72
Figure 5.6	Summary of Responses	73
Figure 5.7	Chart of Summary of Responses	73
Figure 5.8	Frequency of Responses	74
Figure 5.9	Difficulty of Responses	75
Figure 5.10	Surveyors' Thoughts on Dilapidations	76
Figure 5.11	Surveyors' Ranking of Categories	77
Figure 5.12	The Cone	78
Figure 5.13	Summary of All Responses	81
Figure 6.1	The Repertory Grid	87
Figure 6.2	Sum of Surveyor's Constructs Ranked in Order	99
Figure 6.3	Mean of Sum of Tenant Surveyor's Repertory Grid	101
Figure 6.4	Tenant Surveyors' Scatter Diagram Matrix	104
Figure 6.5	Mean of Sum of Landlord Surveyors' Repertory Grid	107
Figure 6.6	Landlord Surveyors' Scatter Diagram Matrix	110
Figure 6.7	Identify Ratings from Questions	114
Figure 6.8	Identify Surveyor Type From Ratings	115
Figure 6.9	The Stages and Effects of a Dispute	120
Figure 6.10	The Root Causes of Tensions in Dilapidations	121

CHAPTER ONE

INTRODUCTION

1.0 Background

Dilapidations are widely documented (RICS 2016, Dowding, Reynolds and Oakes 2022) discussed in practice (Shaw and Poole 2023, Lemmon 2023) and through CPD seminars and conferences (RICS Dilapidations Annual Conference).

The terms of an agreement between the landlord and tenant are composed in a lease and should either party breach the terms during or at lease end (Eden 2010) either party can bring about a claim for damages against the other party (Regan 2020). This is known as dilapidations. Typical breaches include a failure to decorate or repair the property or a failure to remove a tenant's alterations (Tanney and Taskis 2019).

This research investigates dilapidations in the context of business leases in England and Wales. Prior to 1927, damages, which compensate the successful party to a claim, were based on the cost of the repairs--(Rosenthal and Ollech 2011, Tanney 2014) *Joyner v Weeks* [1891] 2 Q.B. 31 had previously stated that the landlord was entitled to the cost of the repairs despite the landlord altering and repairing parts of the property or in other cases pulling the property down (Hansard House of Lords Debate 29 November 1927). This injustice (Towns and The Land, Liberal Land Committee 1923-1925, Report from the Select Committee on Business Premises 1920) was widely commented upon at the time and led to the important trigger of statutory intervention by way of Section 18 (1) of the Landlord and Tenant Act 1927 which sought to cap the amount of damages paid to the landlord during and at the end of the lease, by making general amendments to the law of landlord and tenant (Arnold 1929). Its effect, to restrict a landlord's claim to the actual loss (The Law Commission 1996) continues to limit the amount of damages to the lower of either the cost of the works, or the difference in value of the property in and out of repair whether or not the landlord undertakes the works or not (Roscoe 2017, Shelton 2022).

Legal cases, which form the body of common law as distinguished from statutes (Holland and Webb 2016), interpret and apply the statute, and facilitate a structure to which the chronology of decision making can be mapped, making possible the collation of primary arguments, such as those pertaining to the nature of the dispute, the type of property, its location and age, the breaches and its historic nature (Fetherstonhaugh 2015, Helmholz 2021). Such characteristics, which evolve over time, create precedents cited in subsequent rulings and make significant

contributions to the way in which statutes are interpreted (Holland and Webb 2016). However, dilapidations are complex and comprise multiple finer points that converge to form the subject matter. Further, issues such as consequential loss (Taggart 2015, Collingwood 2017, Shaw and Poole 2023), diminution (Gilbert 2013, Beckett 2014), the effects of break clauses (Laurie 2012), reinstatement (Fetherstonhaugh 2012), supersession (Rowling 2013) and interim repairs (Duncan 2021), convene to form the substance of a claim. Although there has been no further statutory intervention regarding the assessment of damages, and despite the case of *Ruxley Electronics and Construction Ltd v Forsyth* [1996] AC 344 which decided that costs are recoverable only when they are proportionate to the benefit obtained and reasonable, it has not been enough to ease the tensions that arise. Further, the interpretation of case law makes significant changes to the way in which the law is interpreted which adds to the complexities of each dispute (Fetherstonhaugh 2015).

Communities of practise play an essential role in regulation; examples include the Royal Institution of Chartered Surveyors Dilapidations Guidance Note (2016) and the Dilapidations Protocol (2012). The RICS writes in its consumer guide “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” (RICS Consumer Guide 2022) and it is this definition that continues to be widely understood.

Whilst legal advancements in dilapidations are dilatory, possibly because dilapidations are rarely resolved in court, by contrast the broader purpose and approach to undertaking dilapidations continues to attract attention in academic and professional practice space, and the obscurity surrounding its actual meaning remains evident.

1.1 Rationale for the Research

The background to dilapidations is found in common law prior to and following statutory intervention by way of Section 18 (1) of the Landlord and Tenant Act 1927. Regulatory frameworks by way of the 7th edition of the Royal Institution of Chartered Surveyors (RICS) Dilapidations Guidance Note and the Dilapidations Protocol (2012) also seek to guide practice. The current literature in the field of dilapidations however provides only a technical insight into the contractual arrangements and understanding of dilapidations in an informal and often anecdotal way. It does not reveal the root causes of why dilapidations are difficult to resolve often leading to tension, frustration and delay. It does not reveal cognition or the interaction between the parties which is challenging to manage. Although surveyor variability (Kempton 2033) reveals why surveyors make different subjective judgements when considering the same issue, there are gaps in our knowledge as to why surveyor’s opinions differ in the environment

of a dispute and if there is a correlation between surveyors understanding of the same issues. Further there are gaps in our knowledge as to how the characteristics of a dispute can be categorised, and if for example resolving technical issues are more of a barrier to resolution than understanding behavioural issues, or if the parties to the dispute can themselves be a contributing factor to the resolution of the dispute. This study bridges the current knowledge gaps and unpacks the complexities of dilapidations to reveal why they are difficult to resolve, to demonstrate how frictions created by divergent viewpoints affects the conflict settlement procedure, and whether such differences are fundamental or simpler to reconcile.

1.2 Aim and Objectives

1.2.1 Aim

The aim of this enquiry is to understand why dilapidations are difficult to resolve. The building blocks that cause delay and frustration arise from the tensions that occur during a dispute. An understanding of this makes a significant contribution to our knowledge of how we comprehend and behave in disputes.

1.2.2 Objectives

The objectives of this study are to:

- Critically examine and review the literature on dilapidations and its importance in today's business environment
- Understand the current practices and the surveyor's cognition, knowledge of dilapidations and decision making
- Evaluate knowledge gaps and improve surveyors awareness of critical factors impacting on decision making
- Develop a framework for lifelong learning to assist surveyors in a deeper understanding of business approaches

1.3 Research Methodology

1.3.1 Overview

There are gaps in our knowledge concerning the relationship between surveyors, the effects of tensions on the dispute, whether further tensions existed and what are the root causes of delays and frustrations in disputes concerning dilapidations. The research strategy therefore sought to unravel and remove these gaps by analysing each stage of the study and employing the outcomes as the foundation for the next stage. This was achieved by first by undertaking a Focus Group with practicing surveyors, then following analysis composing a questionnaire

building on the findings of the Focus Group, see Figure 1.1. The Focus Group was chosen to give assurance to the research question from practicing surveyors and to ensure that the next stage of the enquiry was based on the authentic discussion and outcomes of the Focus Group. Following analysis the questionnaire was composed. When further analysed it formed the basis for the structured interviews undertaken as part of the major study. The justification of the methodology was to ensure that each phase of the research interconnected, corresponded and overlapped with the preceding and following phase, in order to ensure that the continuous thread of the objectives could be traced at all times.

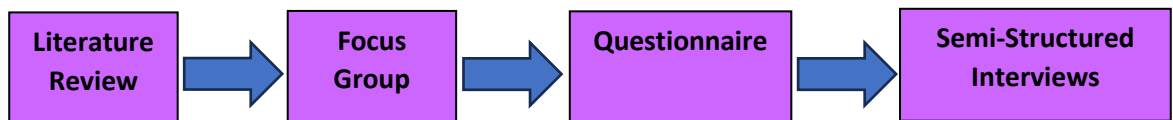


Figure 1.1 – Research Overview

1.3.2 Phase 1 – Literature Review

A critical review was undertaken of the literature surrounding dilapidations. The review included the historic and modern approach to dilapidations and business risk and organisational culture. The review of dilapidations presented itself in the context of legal, technical, anecdotal, procedural, regulatory, or reportage and business risk discussed an organisation's internal and external influences affecting decision making.

1.3.3 Phase 2 – Focus Group

The findings of the literature review had not been discussed with practicing surveyors. To give assurance to the research question, a Focus Group was therefore convened to discuss it and to ascertain if further tensions existed which the literature had not revealed. As a result of the discussion, the Focus Group altered the course of the study because for the first time it became evident that the literature within the landscape of the built environment was insufficient, and a wider field of study outside of dilapidations was required. This began to influence the research and provided the connection to literature regarding behaviour, bias and noise (Kahneman, Sibony and Sunstein 2021). As issues of difficulty of resolving disputes emerged, it confirmed that gaps in our knowledge were a reality, and that the answers as to why dilapidations are difficult to resolve could not be found in the dilapidation's literature.

1.3.4 Phase 3 – Questionnaire

The outcomes of the Focus Group were studied. Further tensions elicited during the Focus Group were added to those already revealed by the literature. What was unknown was how

surveyors would treat each of the tensions, and how they would rank them in order of the ability to control them. To understand this further, a questionnaire was used to further examine the issues revealed during the Focus Group. The questionnaire had the advantage of being able to further build on the literature review and Focus Group and would give further insight into surveyor's cognition before discussing it further in the next phase of interviews. Practicing surveyors completed a questionnaire and for the first time, themes could be codified, categorised, and graded according to their difficulty and impact. The outcomes of the questionnaire were further analysed prior to the major study and interviews. For the first time the questionnaire showed that surveyor rank the difficulty at which they can control tensions, revealing that behaviour is the most difficult to control. The outcomes from the literature review, Focus Group and questionnaire formed the basis for the major study, the semi-structured interviews.

1.3.5 Phase 4 – Semi-Structured Interview

The outputs from the questionnaire were refined and a Repertory Grid was created using pre-determined questions founded on the findings to date. The findings of the study so far had revealed that technical issues could be resolved by further study, research or assistance and were not a core issue as to the main reasons why dilapidations are difficult to resolve. Technical issues were therefore removed from the study. The Repertory Grid technique asked practicing surveyors to rank a series of polar constructs, the basis of which had developed from the previous phases. They were not given the results of the previous investigation but were allowed to speak openly and honestly about their experience. A mixed methods approach to analysis was used, so that the findings of the interviews were discussed and the data from the Repertory Grid analysed using Decision Tree Analysis and Statistical Correlation Analysis. The flow of enquiry, from the Focus Group to questionnaire to semi-structured interviews ensured that any bias from the author was removed, as only the outcomes from each phase were used to form the basis of the next phase.

1.4 Organisation of the Thesis

This thesis is organised as follows (see Figure 1.2)

Chapter 1	Introduction
Chapter 2	A critical review of dilapidations, and the Schedule of Dilapidations
Chapter 3	A critical review of business risk and organisational culture
Chapter 4	Research methodology
Chapter 5	Data analysis and discussion – Focus Group and Questionnaire

Chapter 6 Major study and analysis
Chapter 7 Conclusions

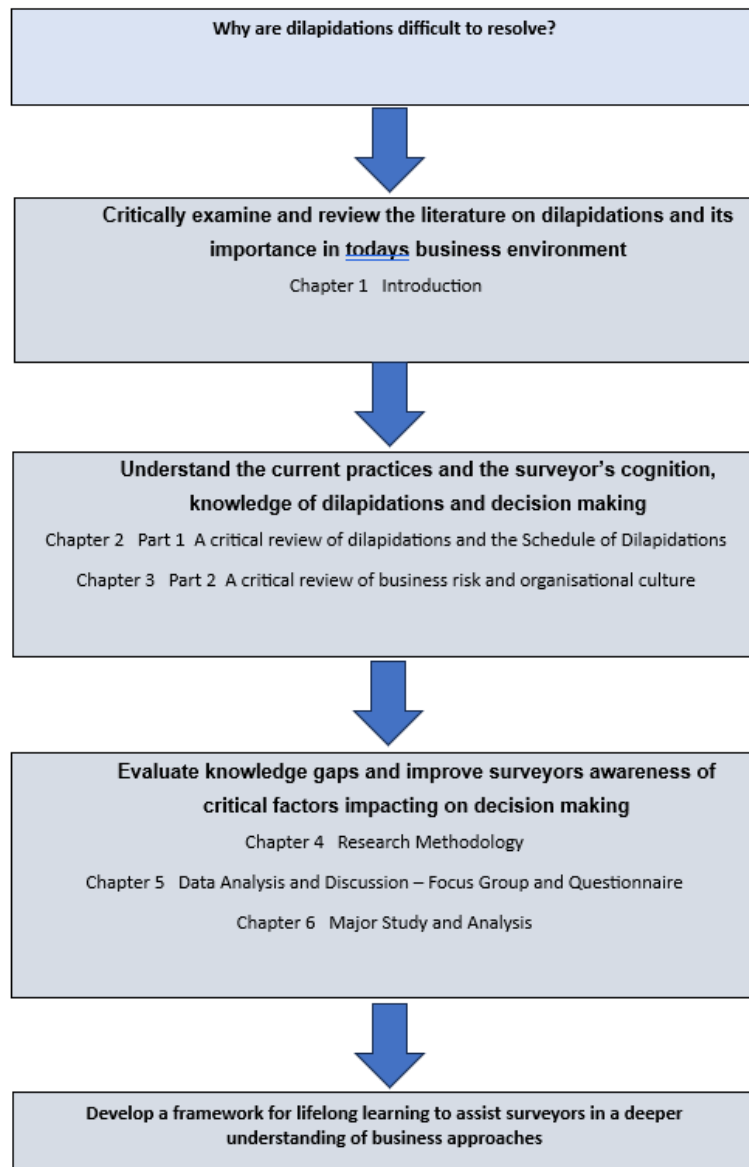


Figure 1.2 – Aim, Objectives and Organisation of the Thesis

CHAPTER TWO

A CRITICAL REVIEW OF DILAPIDATIONS AND THE SCHEDULE OF DILAPIDATIONS

2.0 Introduction

This chapter reviews theory and knowledge within the field of dilapidations. Its purpose is to critique our contemporary understanding from published literature. Literature reviews take different forms (Creswell 2014) including bringing together what others have said in published and unpublished form, critique the works of others, or create links between topics by identifying central issues. It provides a comprehensive framework and identifies gaps in the literature. Whilst themes may emerge it is important to remain open minded (Ritchie, Lewis, Nicholls and Ormston 2013). Literature reviews draw on a number of sources including peer reviewed journals and previous academic research in order to bring about an “effective, analytical, original assessment of previously published information” (Jesson and Lacey 2006). Technical aspects of disputes are widely reported and discussed and can be clustered within the fields of surveying and law, whilst the business risks associated with providing professional services are observed within a wider field of business and risk management literature.

2.1 The Lease Cycle

When let from new, the property is in repair. During the term, the landlord may send an interim schedule of dilapidations in order to prompt the tenant into complying with the terms of the lease, or to record the condition of the lease. At lease end, if the property is in disrepair the landlord will send a terminal schedule of dilapidations. After lease end, the landlord and tenant will negotiate and settle the claim. This may take weeks or months to resolve. The landlord may undertake repairs, decorate and reinstate the premises. If not, the next tenant may ask for a schedule of condition to be prepared to record the condition of the premises prior to their occupation. The purpose of the schedule of condition is to assist both the landlord and tenant, or their surveyors, at the end of the lease so that the condition of the property at lease end can be compared to the condition prior to the lease and therefore taken into account when the terms of the lease are reflected upon. The period of time between lease end and the cycle commencing again is likely to be months. It can be seen that unless the landlord inspects during the term, claims are only triggered at lease end. For longer leases, landlords are unlikely to be aware of the condition of their property for longer periods, see Figure 2.1.

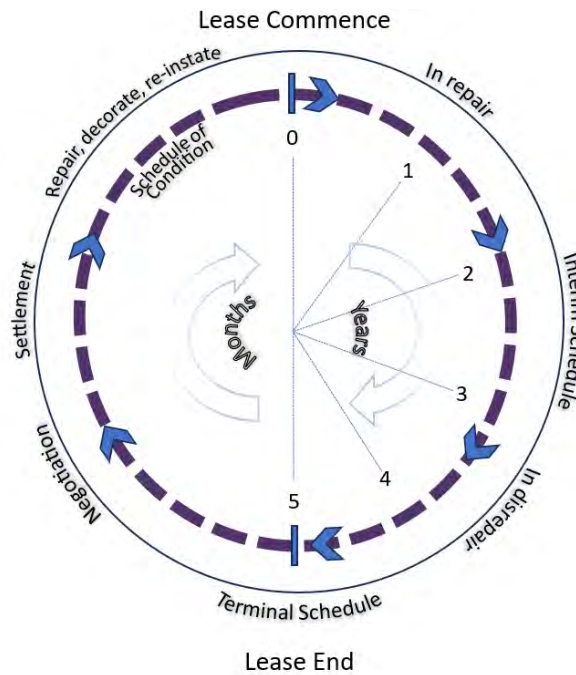


Figure 2.1 – Typical 5 Year Lease Cycle
 Source : The Author

2.2 The Timing of the Dispute

Dilapidations are closely related to the transaction of the property. They are important to both the landlord and tenant prior to signing a lease, to landlord during the lease, and to the landlord and tenant at or after lease end.

2.2.1 Prior to the lease being signed

The outcomes of the interviews confirm that landlords consult professionals for guidance but prefer to invest their resources in regional and national commercial market rental reports, economic reviews, legal advice on lease structuring and risk. Tenants consult professions primarily on rental and lease structuring and to a lesser extent schedules of condition, maintenance planning and costs, repairing covenant risk, the condition of services and reinstatement provisions. Prior to lease tenants take greater risks with the terms of the lease than the landlord, who is familiar with the property. Under hardened market conditions, landlords may take greater risk if the prospect of not finding a tenant and paying business rates becomes more certain, and tenants who have experience of dilapidations may take pre-lease advice for tactical and negotiation purposes.

2.2.2 During the lease

The frequency of claims made during the lease is low. This may be due to landlords not inspecting their properties or concluding that issues can be addressed at lease end. Landlords may be unaware of the benefits of making claims during the term or may be risk-averse with regards to their complexities (Duncan 2021).

2.2.3 At or after lease end

Most claims are made upon lease termination, either immediately before or shortly after the end of the term. A building surveyor may be consulted by the landlord to prepare the schedule. Tenants will consult building surveyors for tactical and strategic guidance and to defend the claim.

2.3 The Development of Dilapidations

Dilapidations developed in its significance as a professional service in the built environment, attracting increasing attention and discussion concerning technical issues and process. It had become of great importance for chartered surveyors (Lewis 1994, foreword to the First Edition of *Dilapidations the Modern Law and Practice*. Dowding, Reynolds and Oakes 2022). The law of dilapidations had evolved into an enterprise to which surveyors became accustomed, but it was not necessarily a new area of law for solicitors who considered the subject matter to be part of landlord and tenant law (West 1997). However, Lewis (1994) The President of the Royal Institution of Chartered Surveyors (RICS) acknowledged that dilapidations was "*ancient in origin, arcane in content, and obscure in application*". (Foreword to the First Edition of *Dilapidations the Modern Law and Practice*, Dowding, Reynolds and Oakes 2022).

2.4 The Catalyst to the Dispute

The sending of a terminal schedule of dilapidations by the landlord to the tenant is significant because it:

- Records the condition of the property at the time of inspection.
- Records what the tenant has done (facts) or hasn't done (negative facts) (Blackburn 2017)
- Sets out the breaches, remedies and costs for the tenant
- Summarises the loss, known as the Quantified Demand
- Is the commencement of a claim for damages, the remedy of which is damages

2.5 Historical and Current Significance

The historical context in which dilapidations evolved since the 1820s offers a reportage of case law and its effect on claims. A summary of published cases from "the oldest authentic period" (Bridgman 1828) outlines the recognised legal principles of landlord and tenant law, including the doctrine of waste and the construction of leases. The earlier unavailable 1804 edition advanced Sir Edward Coke's initial categorisation of the law. Thomas Chambers' published works in 1845 includes a table of cases and contents covering all dilapidations related issues known at the time. There is widespread discussion of landlord's remedies, including injunctions, debt recovery and damages for breach of contract. At that time and confirmed by Chambers, damages were equal to the cost of repairs and additional losses but there is no explanation or meaning given to how the parties determined this, nor of the involvement of the professional advisor. The undeniable tensions that existed between the parties, as well as any defences or counterclaims, are not recorded, although Fletcher (1872) begins to challenge the decisions of cases while writing for the architect and surveyor. According to the seventh edition of Macer's book *The Law of Dilapidations* edited by Pocock (1924) the measure of damages at the end of the term continued to be the cost of the works plus compensation for loss of use, sometimes known as loss of rent, or consequential damages, established in *Joyner v Weeks* [1891] 2 Q.B. 31. Even if the building was demolished by the landlord or subsequent tenant, damages were recoverable. Pocock acknowledges that there must have been some unease, as he defines the situation as "*an inequitable one*" (p105). However, the rule was defended on the grounds that a tenant who repairs his building may be financially worse off than one who does not.

Prior to 1927 authorities reflected on the factual nature of cases and provided limited insight into complications or tensions that must have existed. Tenants reflected on the behaviour or of the landlord, supported by the courts, that even if the building was to be demolished, the tenant was still liable for the cost of the repairs (Townes and The Land, Liberal Land Committee 1923-1925, Report from the Select Committee on Business Premises 1920). Statutory intervention brought about by Section 18 (1) of the Landlord and Tenant Act 1927 sought to remedy this injustice (Hansard House of Lords Debate 29 November 1927), but its application, meaning and interpretation began to bring about uncertainties of its own. The eighth edition of Pocock published in 1931 contains the same passage (pp77-80) but now reflects government intervention. Pocock elaborates further on the difficulties at the time and that the rule established by *Joyner v. Weeks* [1891] 2 Q.B. 31. was a way to ensure that tenants who breach their repairing covenant are not treated more favourably than tenants who comply with their covenants. There is no commentary as to why it took so long to counter the injustices, even though they were well known (Pearce 1926), given that the landlord's claim for damages,

based on the cost of the works and regardless of his next steps, had been established from at least 1891. The interpretation of the 1927 Act continued to cause issues, as documented in 1942 (*Salisbury v Gilmour* [1942] 2 KB 38), when its language was characterised as "crabbed and illogical", a significant note made within fifteen years of its enactment. The 1979 edition of Pockock continues this theme by recognising the difficulties the act brought about when undertaking valuations.

It is clear from the above review of the historical context of dilapidations that tensions have existed for many years but are concerned the technical and valuation aspects of disputes, in particular the method by which the claim for damages was assessed. These continue today and form a considerable proportion of the literature.

2.6 Statutory

The law of dilapidations is built upon a body of common law, evolved and developed through the courts (Holland and Webb 2016) and legislation brought about by statutory intervention. Section 18 (1) of the Landlord and Tenant Act 1927, which applies to claims for dilapidations (Dowding, Reynolds and Oakes 2022) states that damages is the lesser of the cost of the repairs or the difference in value between the building being in and out of repair, a concept and method known as diminution in value (Shortall, 2009; Gilbert 2009, 2013; 2015). The trigger for statutory intervention was the injustice, felt by tenants, as a result of being forced to make payments for dilapidations, even though the landlord had no intention of undertaking the works, or was planning to demolish the building (Towns and The Land, Liberal Land Committee 1923-1925, Report from the Select Committee on Business Premises 1920).

Failures occur when concepts, rules, and principles are ignored (Holland and Webb 2016) and whereas surveying students are required to understand common law, statutory law and the law of contract (Rowling 2011) in contrast law students are required to learn how to apply the law (Holland and Webb 2016), but dilapidations requires a comprehensive understanding of primary and secondary sources of law, the ability to interpret authorities, differentiate cases, and create arguments. In this enquiry the Landlord and Tenant Act 1927, together with a number of notable cases are the basis of legal reference. The concept of diminution in value causes a significant tension giving rise to a profusion of misunderstandings that cause friction between the parties (Beckett 2016; Gilbert 2009; Reece 1997). Moreover, the process is impeded by a lack of skilled valuers to conduct the process, although it is unclear whether the complexities of conducting such valuations cause a shortage of valuers (Gilbert 2009), or whether valuers are reluctant to accept commissions due to their complexities, possibly leading to ambiguous or hypothetical outcomes (Shortall 2009; Beckett 2014).

Statutes, interpreted in the common law, are cited in papers (Jourdan 2014) and peer review journals (Cobb 2014, Craig 2017, Duncan 2021). Papers often include disclaimers reminding the reader not to rely on case law (Mahony 2013), although there is a risk that surveyors do substantiate their rationale on case law (King 2009). Consequently, tensions develop when surveyors are uncertain as to whether they can depend on cases or not, leading to lack of certainty (Holland and Webb 2016). Further different interpretation can be derived from primary documents including the lease, giving rise to the elasticity in which words and phrases are predisposed to interpretation and ambiguity.

Section 18 (1) of the Landlord and Tenant Act 1927 does not address the issues found in this research, it addresses how damages are to be calculated, and the Protocol and RICS Guidance Note provide the framework in which dilapidations are to be undertaken. Little in the form of techniques, ideas or concepts have been applied to the application of dilapidations, and our worldview of dilapidations is heavily process driven and outcome and judgment oriented. The structures that support dilapidations including the common law, statutes, the Protocol, and a regulatory framework of professional guidance influence both surveyors, companies and communities of practise (Tseng and Kuo 2010). However, the informal networks such as forums and company policies have not been examined in terms of their impact on decision making. (Kahneman, Sibony and Sunstein 2021).

Ignoring the Coronavirus Act 2020 (Sections 81-83; Schedule 29), which prohibited the enforcement of forfeiture by landlords following non-payment of rent by commercial tenants, there has been limited government intervention regarding dilapidations itself. This lack of intervention implies that the landscape of dilapidations disputes can manage itself, and the raising of awareness, lack of knowledge and training must be left to the professions. Despite on-going interest, further intervention seems unlikely.

2.7 Regulatory

Two important influences in dilapidations are the Royal Institution of Chartered Surveyors (RICS) Dilapidations Guidance Note 7th Edition 2016 (GN) and the Pre-Action Protocol for Claims for Damages in Relation to the Physical State of Commercial Property at Termination of a Tenancy (the 'Dilapidations Protocol')(2012).

The GN informs and is both educational and a point of reference. It "offers users ideas or techniques for acknowledged good practise as observed by competent and conscientious practitioners." In addition, recommendations for professional activities are intended to constitute "best practise." It discusses the concept of damages within a legal framework and

provides benchmark examples of how to present a schedule of dilapidations which this research highlights is embraced by its members. Its influence is therefore significant. The first RICS Guidance Note (1983) recommended its members avoid "obstinate intransigent" opinions suggesting that frustrations were common place. In 2000, due to consumer pressure and the Office of Fair Trading, the RICS abandoned prescribed fee scales (Hoxley 2000) in use from 1914. Despite the profession being self-regulated, there were indications that consumer confidence had declined (Hollis and Bright 1999; Schon 2003).

The GN provides advice for the surveyor on receiving instructions, inspecting the property, and settling disputes and although members are not required to follow the recommendations, they should be aware that by doing so may provide a partial defence against a claim of negligence. With additional information regarding the types of claim made during the lease and at lease termination, it offers a prescribed approach. The GN (2016 p.1) states "It is the member's responsibility to establish if any changes in case law or legislation after the publication date have an impact on the guidance or information in this document". Examples include energy performance certificates (EPC's) (Turley and Sayce 2015), working with asbestos (HSE 2013), zero carbon emissions (Johnstone and Holyoake 2019), reduced carbon dioxide levels via green leases (Hinnells et al 2008) and the effects of the Minimum Energy Efficiency Standard (MEES) Regulations (2015) on business leases (Lemmon 2023). Regarding fees, the GN states that there is nothing improper about contingency fees provided the surveyor is not appointed as an expert.

The GN therefore provides a framework, with examples, of how surveyors should undertake dilapidations and present their schedules. The purpose of the schedule is to set out the breaches, their suggested remedy and cost to remedy. This study shows that it is adopted and widely referred to. However, the blue print of process does not enhance or promote the language of communication or enquire if the sequential foundations of the claim are in fact correct. The resultant risk is that the meaning and presentation of the schedule can in itself cause further tensions, contrary to the original purpose of the schedule and the Protocol.

Protocols are an integral component of the Woolf Civil Litigation Reforms implemented over the previous decade and incorporated into the Civil Procedure Rules and Practice Direction (Burn 1999, Sorabji 2014). They define how parties to potential litigation inform one another of the fundamental aspects of their case prior to the issue of proceedings. The procedures are primarily intended to accomplish two objectives: (a) to ensure that litigation is conducted fairly and openly by both parties from the outset, and (b) to encourage and facilitate early settlement whenever possible.

A series of Dilapidation Protocols were published, the first in 2000. The 2006 edition asked surveyors to sign an endorsement (Jansen 2008). Property Week's unpublished research concluded that some surveyors would not sign the endorsement for fear of committing fraud (Jansen 2008). The 2012 edition, drafted by the Property Litigation Association and RICS was adopted as a pre-action procedure under the Civil Procedure Rules and does ask the surveyor, landlord or tenant to sign an endorsement confirming the landlord's intentions and tenant's response. Its full title, the Pre-Action Protocol for Claims for Damages in Relation to the Physical State of Commercial Property at the Termination of a Tenancy is known as the Dilapidations Protocol. Although the Protocol does not define dilapidations it sets out the way in which the claim should be managed and presented and sets time frames (56 days) to which the parties should attempt to adhere to although this research shows that this can be overlooked or be less important. The presentation of the schedule sets out the breach, suggested remedy and suggest cost to remedy. The Protocol also introduced the Quantified Demand (Shaw and Poole 2023), a summary of the landlord's actual loss and consequential loss and if necessary, a valuation setting out the landlord's actual loss.

Together the GN and the Protocol provide a methodology of sequential process resulting in consistency and commonality providing a benchmark for the presentation justify and defend claims as well as creating an expectation among those involved in the dispute that a claim is been prepared and submitted in accordance with the Protocol.

2.8 Literature

Due to the complex nature of dilapidations, the literature is divided into three main categories, namely; Surveying, Law and Regulations. Figure 2.2 summarises the relationship between the core skills required to survey and inspect buildings, the law and regulation within the discipline of dilapidations.

Cluster A – Surveying, is concerned with surveyors and their skills and knowledge relating to inspecting, observing, measurement and recording buildings (Hollis and Bright 1999, Hollis and Gibson 2000, Mahony 2013, Glover 2020) and building pathology (Harris 2001, Mahony 2004, 2013, Watt 2007, Rushton 2007, 2009). It is concerned primarily with the technical aspects of inspecting and recording the condition of property. These skills are required for the purposes of all inspections regardless of building sector including residential, retail, commercial, industrial, educational, leisure or ecclesiastical buildings or form of construction including framed or load bearing masonry buildings.

Cluster B – The Law, is concerned with the lease, the laws of contract and tort, breaches, remedies and statutes (Wilkie et al 2006, Garner and Frith 2016, Harpum, Bridge and Dixon 2012, Walsh 2018). The literature in this cluster is germane to understanding the law.

Cluster C – Regulation, is concerned with the RICS Dilapidations Guidance Note 7th Edition (GN) (Rowling 2017) the RICS Practice Note Surveyors Acting as Expert Witness 4th Edition, the Dilapidations Protocol (Joyce 2008) and the Civil Procedure Rules which sets out the codes of procedure to enable the courts to deal with cases justly.

The literature in this cluster provides professional guidance for members of the RICS when undertaking dilapidations. The GN refers to the Dilapidations Protocol, and the RICS Practice Statement for surveyors who are appointed as experts under the Civil Procedure Rules. The relevance of the literature within Cluster C is that it has an external influence on the surveying and legal profession. Each cluster overlaps and is linked to the adjacent cluster within which specialist and relevant skills and knowledge relating to dilapidations are required.

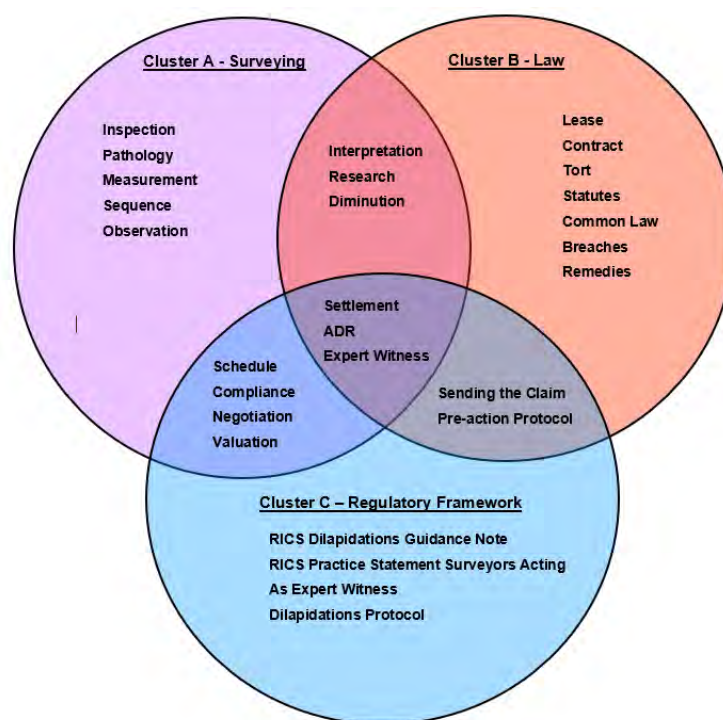


Figure 2.2 – Relationship between Surveying, Law and Regulation.
 Source: The Author

Cluster A and B overlap and share a link as surveyors undertake dilapidations (Hollis 1998, Rowling 2018, Hunter 2006, Shelton 2022, Edwards, Stell and Firm 2008) interpret leases and statutes, present arguments for their case (Melville 1998) and consider the landlord’s actual loss. Cluster A and C overlap as surveyors must consider the way in which they present or respond to a schedule of dilapidations, consider the landlord’s loss, conflicts of interest,

negotiation (Fulmer and Barry 2004, McMillan 2016, Salacuse 2016, Foo et al 2004, Schiffman 2010) and the way in which the schedule is presented.

Cluster B and C overlap as lawyers consider the law of dilapidation (Dowding, Reynolds and Oakes 2022, West 1981, Thorton 1992, Macer 1912) the Protocol, instruct experts and prepare a claim or defence. The three clusters converge to settle the dispute, to seek alternative dispute resolution (ADR) (Shaw 2014, Rowling 2017, Robertson 2020) or to commence proceedings and appoint experts (RICS Practice Statement 2023). Although Cluster A and B operate in isolation, they converge once the claim is made and may advise each other prior to the claim being made. Cluster C is an external influence on both Cluster A and B and always applies.

The literature discusses the historical nature, statutory intervention and the interpretation of case law, they key authors are set out in column one of Table 2.1.

Significant gaps in our knowledge in the field of dilapidations resulted in undertaking a broader enquiry into subject areas beyond dilapidations. Table 2.1 includes the wider search into fields which both assisted the enquiry and absorbed areas of knowledge that are not associated with dilapidations, including philosophy and human behaviour, noise and bias (Kahneman, Sibony and Sunstein 2021). The search into wider fields of practice including education, nursing, philosophy, psychology, business and construction revealed in-depth studies into super thinking (Weinberg and McCann 2019), emotional intelligence (Mo, Dainty and Proce 2007, Foo et al 2004) mentoring (Swap et al (2001), Dean 2001) truth (Blackburn 2017), negotiation (Raiffa 2003, Carmell 2003, Fisher and Ury 2012), human behaviour (Covey 2004, Webber 2014), conflict styles (Friedman (2000), Gerzon (2018), cognition (Friedenberg, Silverman and Spivey (2021) and bias (Tversky and Kahneman 1974).

Table 2.1 – Development of the Literature

Literature Review	Focus Group and Questionnaire	Interviews	Wider Community of Literature
Knowledge Bridgeman (1828) Chambers (1845) Dowding and Reynolds (2022)	Causes of Disputes Love et al (2008) Kumaraswamy (1997) Cakmak and Cakmak (2014)	Emotional Intelligence Foo et al (2004) Fulmer and Barry (2004) Mo, Dainty and Price (2007)	Mentoring Swap et al (2001) Oke and Otasowie (2020) Dean (2021) Yip and Walker (2021)
Legal Knowledge Yakub (1992) Edwards, Stell and Firn (2008) Ross (2013) Fetherstonhaugh (2015) Gilbert (2015)	Negotiation Carmeli (2003) Raiffa (2003)	Bias and Noise Kahneman, Sibony and Sunstein (2021)	Correspondence Theory of Truth Blackburn (2017)
Market Conditions Beckett (2009)	Lease Conflicts Love et al (2008)	Subjectivity Jankowicz (2001)	Pragmatists Theory of Truth Blackburn (2017)
Standard of Repair Hollis and Bright (1999) Pickrell (1999) Rosenthal and Ollech (2011) Charlesworth (2015)	Pilot Studies Holloway (1997) Brink and Wood (1998) Teijlingen and Hundley (2001) Lancaster, Dodd and Williamson (2004) Thabane et al (2010)	Construing Jankowicz (2001)	Pragmatism Creswell (2014) Ritchie et al (2014)
Bias Tversky and Kahneman (1974) Kempton (2003) Musashi (2016)	El and Dispute Resolution Barosa (2016)	Bracketing Tufford and Newman (2010)	Realism Ritchie et al (2014)
Behaviour and Blame Ross (2013) Johnson (2009) Karas and Woodman (2010) Webber (2014)	Subjective Decision Making Kempton (2003)	Interviews Brinkmann and Kvale (2015)	Balanced Scorecard Kaplan and Norton (1992)
Diminution in Value Reece (1996) Gilbert (2008) Beckett (2009) Roscoe (2012) Mahony (2013)	Conflict Behaviour Friedman (2000) Gerzon (2018)	Psychology of Conflict Menkel-Meadow (1997) Randolph (2016)	Thinking Schön (2003) Forster (2004) Thaler and Sunstein (2009) Peters (2018)
Professional and Ethics Rowling (2011) Ross (2013) Webber(2014)	Adoption Strategy Kruger and Dunning (1999)	Human Behaviour Covey (2004)	Cognitive Sciences Friedenberg, Silverman and Spivey (2021)
RICS Dilapidations Guidance Note (Rowling 2017)	Knowledge Pickrell (1999)	Repertory Grid Sampson (1972) Solas (1992) Marsden and Littler (1998) Tan and Hunter (2002) Lemke, Clarke and Wilson (2011) Klapper (2014)	Super Thinking Weinberg and McCann (2019)
Dilapidations Protocol Joyce (2008) Woodhouse (2012) Rowling (2017)	Barriers to Learning Ward (2016)	Personal Construct Theory Kelly (1955) Horley (2012) Winter (2012) Murphy, Burns and Kilbey (2017)	Proposition Blackburn (2017)
	Expertise Kelly (1955)	Decision Tree Analysis Victor (2015) Song (2015) Prajwala (2015) Toth et al (2021)	Training Toor and Ofori (2008)

Literature Review	Focus Group and Questionnaire	Interviews	Wider Community of Literature
	Receptiveness to Change Argyris (1997)	Traveller v Miner Raskin, J.D. (2002) Buestow, S (2013)	Philosophy Blackburn (1999) Grayling (2005) Grayling (2023)
	Organisational Behaviour Roberts Zeidner and Matthews (2001)	Dyadic and Triadic Relationships Shapiro (1979)	
	Institutionalism Cartwright (2002)	Negotiation Fisher and Ury (2012) McChesney (2013) Salacuse (2016) Davies (2018)	
	Effects of Compliance Turley and Sayce (2015)	Correlation Ratner (2009)	
		Mediation and Compromise Shapiro (1979)	

The search into wider fields of knowledge was necessary to fill the gaps in our knowledge identified during the literature review. as the gaps in our knowledge of dilapidations were not found in the literature. Table 2.1 contrasts to Figure 2.2, highlighting gaps in our knowledge. This is shown further at Chapter 6, Figure 6.10 which illustrates the depth of factors affecting the causes of disputes.

2.9 Disparity and Bias

Surveyors are known to arrive at different judgements about similar issues (Kempton 2003) and methods to understand why they are inaccurate in their recording have been developed. Kempton asserts that despite having different opinions, neither surveyor is in error. This research developed this further, but not by highlighting technical inconsistencies, but by uncovering cognition and differences of opinion in the contentious space of dilapidations and considers its application in the wider landscape of dispute resolution. The disposition for two surveyors to infer disparate rationales and solutions for the same issue however is comparable to the findings of this study, but there are gaps in our knowledge in understanding what the root causes are in a dispute environment.

The work of Kempton (2003) raised issues of bias in surveys, the feelings of predisposition or prejudice toward or against someone. Bias is described in many ways (Musashi 2016, Cantwell 2017). Cognitive bias is the phenomena which characterises deviation from a norm or unreasonable behaviour (Musashi 2016). It can be overlooked (Thompson, Nadler and Lount 2006) and exists in numerous forms. In this study several overlapping biases were discussed. Confirmation bias is a tendency to seek out information, patterns, or data that confirm initial ideas or assumptions, whilst giving less weight or confidence to information that could present an alternate possibility or polarised view (Rollwage and Fleming 2021). It may pertain to

situations or individuals (Musashi 2016, Kempton 2003). In this enquiry, accounts were given of advocating credible arguments whilst dismissing propositions which were less favourable.

Heuristics is a frequent unconscious process whereby critical thoughts are circumvented, and judgments made from limited but highly crucial information, a form of short-cut thinking (Tversky and Kahneman 1979, Whelehan, Conlon and Ridgway 2020). There are several causes including limited financial and time resources. Tversky and Kahneman (1979) stress that while useful, mistakes are possible. Anchoring is a tendency to fixate and concentrate excessively on initial pieces of information resulting in further judgments being biased towards the anchor (Nagtegaal et al 2020). Representativeness bias (Bilek, Nedoma and Jirasek 2018) arises when assumptions or conclusions are made following comparison to previous similar problems, despite a lack of evidence to support them.

Those involved in dispute resolution may also take an insider's approach and suffer from Optimistic Overconfidence (Kahneman and Tversky 1979). Such overconfidence is stronger when for example they have received high quality advice, have access to excellent resources all of which promote their case, but fails to consider the other sides similar advantages and overlooks what they do not know. Further, individuals involved in dispute resolution may focus too much on what they might lose, also known as loss aversion (Novemsky and Kahneman 2005) forming a barrier to making concessions and resolution. Self-serving bias occurs when people show responsibility for positive events and push back on negative events (Shepperd, Malone and Sweeny 2008). They do this to enhance and self-present themselves. As there are gaps in our knowledge as to how these overlapping biases affect dilapidations, questions were included in the Repertory Grid as part of the major study of this research.

2.10 Ethical and Professional

The issue of whether a surveyor is an expert or advocate raises tensions. Both are concomitant and result in conflict as it can be alleged that it influences the negotiation strengths of the parties (McChesney 2013). One proposition is that they are experts from the outset, (Marshal 2008; Firn, Stell and Watson 2011), cannot exaggerate claims (Webber 2014) and cannot charge on an incentivised basis i.e. their fee cannot be based on their performance or success of their client. The other proposition is that surveyors can advocate and be financially rewarded for doing so (Jansen 2008). The RICS Guidance Note states that it is a commercial matter between the surveyor and their client. Although the Civil Procedure Rules (CPR) prohibit expert witnesses engaging in financial, contingent or incentivised arrangements it remains a source of contention (Firn and Watson 2009), and the basis of fee charging divides the surveying community (Firn and Stell 2008) who state that two groups have emerged in conflict between

surveyors and lawyers known as "traditionalists" and "modernists" and "there are lawyers and surveyors on both sides," This potential tension was recognised in the House of Commons and House of Lords in 1927 (Hansard 1927) when the issue that the same profession that prepared the claim for the landlord was also attempting to resolve it was debated.

Surveyors are required to negotiate, and skilled negotiation will capture the findings of the original inspection, uncertainties that arose, items which were unclear or ambiguous, obligations imposed by statute or regulation, contractual obligations and the commercial exposure to risk landlords and tenants are prepared to consider. Untrained negotiators can however fuel the process (Salacuse 2016) so that negotiation is hampered in two ways; firstly, by the skills of the negotiator who may lack knowledge about the subject matter and substance, and secondly by the framework or process they must work within. The results of this research show that surveyors acknowledge they lack training in negotiation skills.

2.11 Observational

Ross (2013) provided several explanations for why dilapidation's tensions persist including tenants adopting a "wait and see" policy or a lack of comprehension of legal principles. This enquiry confirmed this approach, but further examples include exaggerated claims (Johnson 2009), an inconsistent approach to calculating damages (Taggart 2015), the morality of perceived injustices (Hutchings 2014), landlord's not undertaking works (Fetherstonhaugh 2011), the process of deriving diminution valuations further widening the differences (Fetherstonhaugh 2011), a lack of understanding surrounding issues of diminution in value, the timing of valuations (Gilbert 2009) and a lack of planning (Strange et al. 2017). A drop in the propensity to sign long leases and an increase in the number of long leases coming to an end have resulted in claims which are difficult to resolve due to the interpretation of ageing repairing covenants (Ross 2013). This tendency, however, is not new and was recognised prior to the passage of the 1927 Act (Pearce 1926).

Different surveyors interpret repairing covenants differently, such as the nature of repairs (Charlesworth 2015), but the definition of repair is central to the dilapidations argument (Rosenthal and Ollech 2011). In *Norwich Union Assurance Society v British Railways Board* WLUK 765 (1987), Hoffman J. described the lease drafting as having a "torrential style," and poor lease drafting and perceived ambiguities remain difficult to grasp. Ensuring lease demise plans are clearer might help (Rowling 2011) however parties may not seek professional advice prior to lease in any event (Edwards, Stell and Firn 2008). According to research conducted at the University of Reading (Larsen 2005) small businesses may not seek professional advice during the negotiation phase, exhibited less knowledge and experience, and did not express

concerns. These continue to manifest themselves in misunderstandings regarding schedules of condition (Beckett 2014, Reece 1996), the meaning of chattels (Jourdan 2014; Reece 1996), loss of rent claims, fee recovery (Stell and Tugwell 2006), and breaches of statute (King and Woodman 2009).

Other observations (Ross 2013) include acknowledging that the courts may view valuers with a “jaundiced eye” (Beckett 2009), failing to observe the Dilapidations Protocol (Ross 2013), and parties making un-truths (Ross 2013) leading to a refusal to communicate with one another (Edwards, Stell and Firn 2008). The importance of the style and manner of early communication was put to the participants of this research, who agreed that the way in which communication is exchanged at the outset is important and sets the tone for the way in which the dispute is advanced.

A further observation is that the landlord and tenant are the only two parties to the contract and dispute. In dispute resolution, the dispute resolver will form a triad (Sweet 1999), but in dilapidations this does not happen. The dyadic arrangement (Shapiro 1979) only exists between the two original contracting parties who are later joined by their surveyors, solicitors and valuers. The approach to the problem is therefore equally balanced, and unless the parties adopt an alternative form of dispute resolution, there is no other party to tip the scales. The absence of a deal making negotiator as opposed to a dispute negotiator is therefore relevant because the landlord’s surveyor can only fall back on their original schedule, but tactically could be used as a means to concede a point to aid settlement. For the landlord’s surveyor to present a new opportunity to the tenant to aid settlement, something must be lost or compromised from the schedule, otherwise why have the schedule (Brett et al. 2007). This research shows that the understanding of the art and complexities of negotiation (Raiffa 2003) are not understood in practice. The way in which the parties to a dispute evolves leads to a balance which results in stand-offs. The outcome of the Repertory Grid survey placed high reliance of the tenant’s solicitor, perhaps as a way to assist in resolution but also perhaps because the landlord may be reluctant to employ their own.

2.12 External Influences

Rising and falling market conditions generate questions requiring a more deliberate approach to the resolution of claims (Fetherstonhaugh 2011). The presumption that claims increase when market conditions harden will prompt landlords and tenants to re-evaluate and concentrate their strategies (Gilbert 2009). Tenants adopt a “wait and see” strategy prior to agreeing to settle to determine the landlord's genuine intentions, causing delays for the landlord, who may also be slow to acknowledge that they are unlikely to undertake any works,

or have a new tenant. During a recession, a tenant's indecision or unwillingness to settle can be strategic or due to financial difficulties (Yakub 1992), or they allow the property to fall into disrepair after conducting a cost/risk assessment (Edwards, Stell and Firn 2008). Other strategic and business-related reasons for vacating a property exacerbate issues for tenants. Delays in relocating may impact the efficiency of the business and result in increased costs. Typically, tenants do not account for dilapidations in annual financial statements or maintain cash reserves for them, facing multiple converging business issues at lease end. Poor forward financial planning will rapidly surface in such circumstances.

Landlords who fail to act, because of market conditions are susceptible to claims of no loss (Ross 2013). Alternatively, landlords can reflect and encourage new tenants by offering more flexible or favourable terms, an argument an outgoing tenant would propose demonstrates no loss. Such terms could include a rent free period or break options (Ross 2013) or by fitting out the premises (Rowling 2020). In contrast, a rising market may result in claims for loss of rent. Therefore, the propensity to err towards a dispute may act "inversely" to the market's reaction (Eden 2010). Landlords will carefully evaluate their strategy, which reflects market conditions (Eden 2010), to avoid being exposed to accusations of supersession based on the performance or preferences of the market (Gilbert 2015). Contextually as a result of a misunderstanding their relevance, events that occur after the lease expiration can cause tension (Reynolds and Gilbert 2011) and tenants confronted with large lease end claims will increase their efforts to investigate the landlord's actual intentions (Reynolds and Gilbert 2011).

2.13 The Tensions

A review of the literature discovered that key issues repeatedly arose, and that they could be grouped as tensions. These were concerning:

- *Legal matters* including Part 36 offers, supersession, mitigation, damages/debt, statutes. Interpretation, proceedings (Tanney 2014, Fetherstonhaugh 2015, Gilbert 2015, Yakub 1992, Edwards, Stell and Firn 2008, Ross 2013)
- *Market conditions* including rising/falling markets, rent free periods, schedules of condition, break clauses, the lease cycle/new/renew (Beckett 2009)
- *Standard of Repair* including 5 stage test, pathology, materials, schedules of condition (Rosental and Ollech 2011, Hollis and Bright 1999, Pickrell 1999, Charlesworth 2015)
- *Bias* including prejudice, heuristics, confirmation, cognition, anchoring, representation, adjustments (Kempton 2003, Tversky and Kahneman 1974, Musashi 2016, Cantwell 2017)

- *Behaviour and Blame* including tactics, wait and seem stubbornness, aggressiveness, willingness, reasonable, co-operation (Ross 2013 , Johnson 2009, Karas and Woodman 2010, Strange et al 2017)
- *Diminution in Value* including misconceptions, valuation methods, objective/subjective, Section 18 (1) meaning (Gilbert 2008, Mahony 2013, Beckett 2009, Reece 1996, Roscoe 2012)
- *PLA Dilapidations Protocol* including quantified demand, ADR, CPR, when it applies (Shaw 2014, Rowling 2017, Robertson 2020)
- *RICS Dilapidations Guidance Note* including legal concepts, fees, instructions, procedures
- *Professional and Ethics* including advocate or expert, conflicts of interest, fraud/dishonesty, excessive claims, fees basis, incentivised (Ross 2013, Rowling 2011, Webber 2014)
- *Knowledge* including historical, evolution of case law, injustices, Landlord and Tenant Act 1927 (Bridgeman 1828, Chambers 1845, Dowding and Reynolds 2022)

A summary of the above tensions found within the literature are illustrated in Figure 2.3. The literature concerning dilapidations did not reveal the root causes and focused on a combination of technical issues, market conditions, regulation, guidance and legal knowledge with an emphasis on reported cases.

The literature review identified gaps in our knowledge in understanding the root causes of delays and frustrations in dilapidations. The gaps include how human behaviour is comprehend in ourselves and in one another, our understanding of how disputes develop, and the core skills and knowledge required outside the sphere of dilapidations. Table 2.1 shows the additional fields of knowledge required to understand the root causes, and Chapter 6 Figure 6.9 illustrates how other fields of knowledge and challenges interact with the process and timing of the claim.

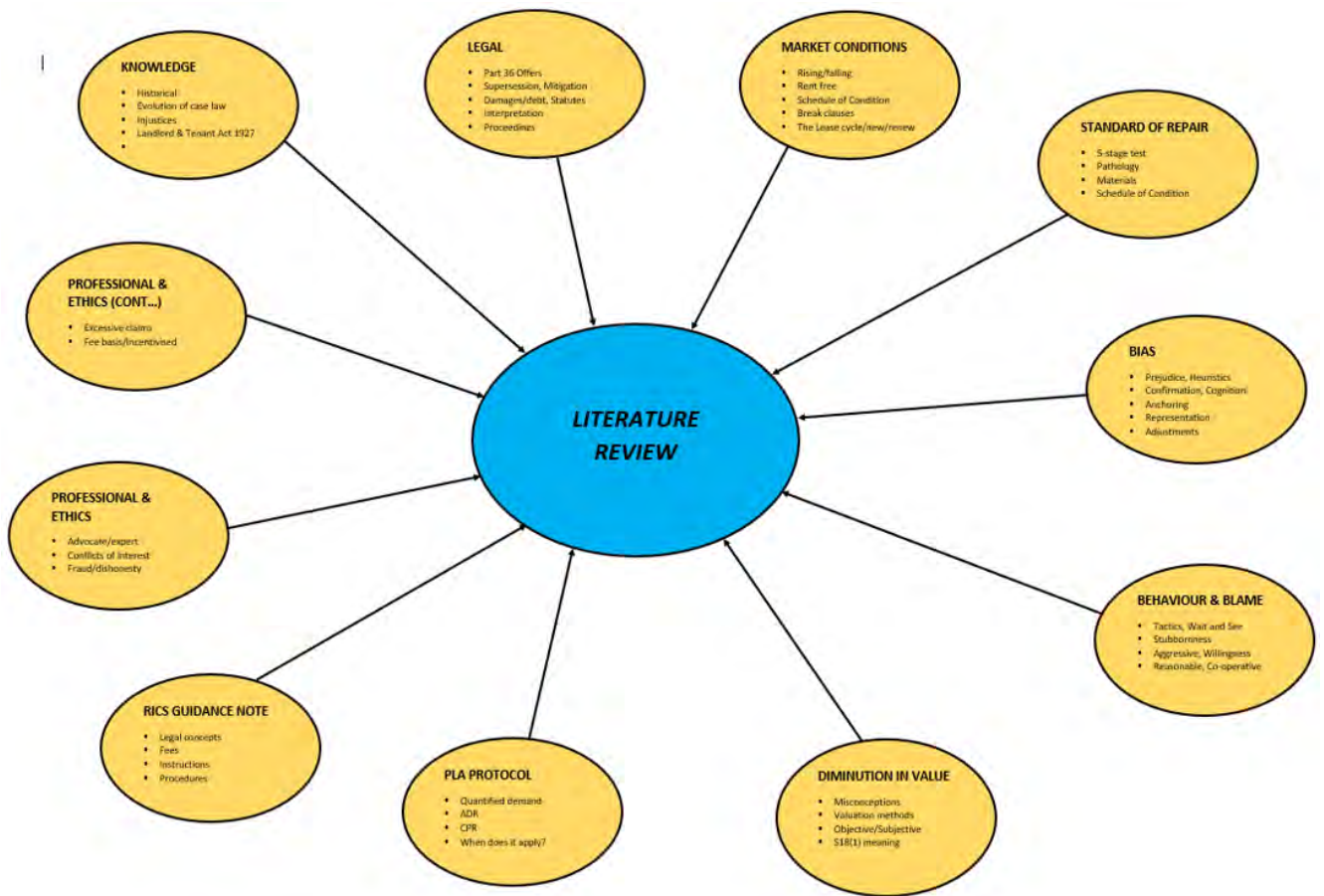


Figure 2.3 – Literature Review Tensions
 Source: The Author

2.14 The Schedule of Dilapidations

Table 2.2 shows an extract from the seventh edition of the RICS Dilapidations Guidance Note (2016) which shows the schedule in tabular format.

Table 2.2 - An Extract from the RICS Dilapidations Guidance Note, 7th Ed. 2016

Permission to reproduce this has been granted by RICS

Item	Clause no.	Breach complained of	Necessary remedial works	Cost

The Guidance Note provides other alternative formats to the way in which the schedule can be presented. All formats are tabular. The Dilapidations Protocol (2012) also illustrates a similar tabular format.

The completion of the schedule relies on a series of sequential propositions. Each proposition may have similarities or be related to the preceding and subsequent proposition, but each is capable of being challenged. Paragraph 2.2.5 of the RICS Guidance Note states (2016 p.5) “Schedules of Dilapidations, Quantified Demands, Responses, Scott Schedules, Diminution Valuations and correspondence should not contain allegations of breaches that do not exist, remedies that are inappropriate (for instance, replacement of items when patch-repair would be sufficient), or figures that are exaggerated or understated”.

An analogy is shown at Table 2.3. To distinguish this from the RICS and Protocol schedules, the columns have been completed with letters instead of text or monetary values.

Table 2.3 – Analogy of the Schedule

1 Item No.	2 Clause No. (Proposition)	3 Breach complained of (Proposition)	4 Remedial works required (Proposition)	5 Landlord's costings/loss (Proposition)			
1	A	+	B	+	C	+	D
2	E		F		G		H

Source: The Author

If proposition A is true, and proposition B is true, proposition C must be true in order to ensure that proposition D is true. If proposition A is not true, propositions B, C or D cannot be true. Likewise, if proposition C relies on proposition B which is found to be untrue, proposition C and D will also fail. The significance of the failure transpires vertically as well as horizontally. If proposition F relies on propositions A or B it will also fail if they prove to be false.

The greater the risk of not being able to substantiate truths when the claim is made, the greater the risk of tensions arising. The process, reading from left to right may therefore give rise to a falsehood of certainty and truth.

An alternative analysis

The schedule can be illustrated using the following example, see Table 2.4.

Table 2.4 – The Analysis of Aesthetics, Negative Truths and Breach of Contract

1 Item No.	2 Clause No.	3 Breach complained of	4 Remedial works required	5 Landlord's costings
1	5	The tenant has replaced some of the ceiling tiles, but the existing tiles are a slightly different colour	Replace all ceiling tiles so that they are the same uniform colour	£1,500
2	30	The tenant has not complied with statute	Provide copies of test certificates	£500

In Table 2.4 the lease end tension that arises in Item 1, the difference in colour between new and existing ceiling tiles, is one of aesthetics. The proposed remedy, to ensure consistency in colour concerns the standard of repair and may bring about tension if the tiles are not in disrepair. The tension that arises in Item 2, is that if there is no requirement to test the services, the allegation is that the tenant has not complied with its obligations, meaning it has not done something. Blackburn (2017) describes this as a negative fact, and in practice causes tension as the response may argue that there is no breach of contract and the tenant's obligation to comply with statute ceased at lease end.

From Table 2.4 philosophical gaps in our knowledge regarding the concept of truth to which there are different philosophical meanings are illustrated. Blackburn (2017) describes one such theory as the correspondence theory of truth, whereby truth corresponds to the facts if facts can prove the truth. Alternatively, he describes the pragmatists meaning of truth, based on the work of Peirce (1878) as the way in which different views converge as the enquiry progresses, but the truth is never reached. This has a modern application in dilapidations, whereby surveyors' opinions converge as issues are narrowed, and perhaps compromise is reached. The further the enquiry progresses, the greater chance surveyors will get closer to the truth, with the knowledge that if they do not, they either compromise or seek legal redress.

Figure 2.4 illustrates the effect that time has on revealing the truth. A landlord's risk of proving their actual loss (assuming they are not demolishing the property) reduces as lease end approaches. Events prior to and after lease end shed light on the landlord's actual loss at lease end. If the landlord undertakes the works, evidence will be submitted to substantiate the loss. If no works are undertaken, loss by way of diminution in value evidence will be obtained. If a new incoming tenant agrees to undertake some or all of the works in lieu of a reduced rent, further evidence will be provided. A tenant's risk increases as lease end approaches. The strategy to wait and see or undertake the works is a challenging for surveyors to advise upon.

The choices of analysis by proposition are:

- To accept the proposition, remedy and cost
- To disagree on the proposition and everything that follows
- To agree to disagree but compromise in order to settle

A compromise option is agreed with the understanding that:

- It is agreed with the intention of settling
- It is agreed with the belief that success was imminent
- It is agreed with the understanding that two other surveyors or a court may reach an alternative position

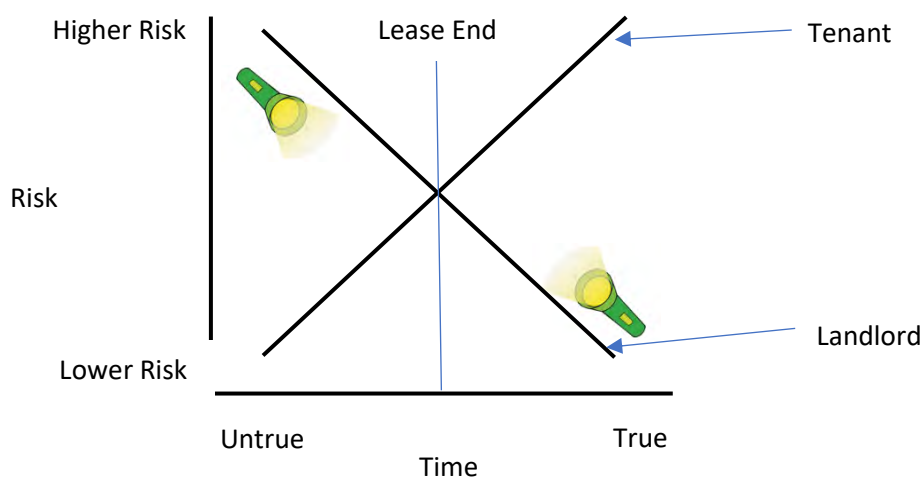


Figure 2.4 - The Cumulative Proposition of Truth.
Source: The Author

In this alternative analysis, parties to a dispute discuss and narrow the differences so that the truth converges until either they reach what appears to be the truth, or to compromise with the consensus that they are near to the truth. When truth is unknown, propositions are made with a presumption that the truth will materialise. It is made therefore for fear or unease of not making it, out of concern of being neglectful, out of curiosity either knowingly or unintentionally. In the context of dilapidations, this research demonstrates that surveyors may include items in their schedule, which they wait to see how the tenant responds to. The linear and formulaic approach to problem solving does not pause to ask if the propositions from either party are accountable and worthy of criticism. Convention and guidance are to present the schedule in a tabular format. Figure 2.5 illustrates alternative meanings and resources of knowledge.

Each column represents an alternative meaning to the schedule. The skills, resources and knowledge required is represented in columns of disks, each offering an alternative meaning to the dispute through the lens of pathology, natural science, psychology, pedagogy and philosophy.

CLAUSE	BREACH COMPLAINED OF	REMEDIAL WORKS	COST
Clause No.	Observations Measurements Problem solving Listening Photography	Constructive Knowledge Communication Presentation	Negotiation Empathy Emotional Intelligence Knowledge Engagement Persuasion Professional
Clause No.	Proposition Supposition Hypothesis Speculation Deduction Suspicion Assumption	Cure Re-dress Penalty Mitigation Recourse	Cost Quotation Loss Compensation Settlement
Clause No.	Language Subjective Objective Semantics Terminology Syntax	Aesthetics Architecture Buildability Practicality Proportionate	Principles Roles Law Knowledge Ethics Professionalism
Clause No.	Material science Chemistry Physics M&E Engineering Microbiology Biology Engineering	Pragmatic Sensible Expected Workable Appropriate	Economics Mathematics Logic Concession

Figure 2.5 - Alternative Meanings Given to Resources and Knowledge.
Source: The Author

2.15 Summary

The outcomes of the literature review reveal gaps in our knowledge about the root causes of why dilapidations are difficult to resolve. This first part of the review was refined to dilapidations, which revealed a body of knowledge regarding technical issues, and although references to behavioural issues such as tactics arose, the literature did not unpack this further and offer insight into the question of why this occurs. The key issues of dilapidations are founded in law. The historical literature is silent on the issues or difficulties faced by advisors, but the injustices of tenants was referred to leading up to the introduction of the Landlord and Tenant Act 1927. There continue to be gaps in our understanding of dilapidations, as cases focus on the breaches of contract and remedy, whereas this research highlights that as cases develop the parties move further away from the contractual dispute and require further skills and knowledge outside the field of dilapidations, see Chapter 6, Figure 6.9.

Key themes emerged from the literature which were technical in nature and gave insight into the way in which dilapidations is understood and processed within the field. The presentation of the actual schedule was investigated under the philosophy of truth and proposition. It found that each column in the schedule represented a proposition which if found to be true in the conventional sense, could be taken forward to support the next proposition. As this enquiry demonstrates the criticism of any proposition can be made with ease, bringing about a collapse of the entire proposition. This research enquiry brings about new ideas and understandings into the field of dilapidations by investigating a broader field of academic and practising areas of knowledge.

2.16 Reflective Comments

Surveyors and organisations need to reach out further beyond the literature of dilapidations to comprehend the root causes of why dilapidations are difficult to resolve. Further training and study both at practice and academic levels is required. Technical issues surrounding dilapidations overshadow root causes. Although the literature does reflect on behavioural issues, it does not seek to explore this further or unpack why surveyors experience difficulties when trying to resolve disputes in the built environment.

CHAPTER THREE

A CRITICAL REVIEW OF BUSINESS RISK AND ORGANISATIONAL CULTURE

3.0 Introduction

The previous chapter reviewed the literature in the field of dilapidations and the schedule itself. It established that literature focuses on the technical issues of disputes and does not unpack the core reasons of why dilapidations are difficult to resolve. Technical issues are less challenging to understand, and the reasons dilapidations are difficult to resolve is found outside the dilapidations sphere of literature. Further gaps remained in the way in which organisations consider risk and the way in which they are influenced by their own internal policies and external regulation. The way in which this is contextualised in the workspace is therefore unknown. This chapter examines critical factors influencing dilapidations within the landscape of the commercial workspace and the meaning and understanding of risk to the landlord, tenant and surveyor's organisations is examined.

3.1 Surveyors' Perception of Risk

Surveyors may be overly influenced by process and not enough by landlord or tenant motivations. Landlord's may be categorised as owning a single property, a modest portfolio, an investor with a wide geographical spread of diverse properties, or a substantial managed portfolio. Landlord's investment motivations range from securing a small pension to a significant yield, being proactive, marketing property prior to lease expiry and as a negotiating tactic may steer tenants towards a commercial settlement, (see Table 3.2). They will be aware of a tenant's defence but may be more accommodating in order to swiftly find another tenant. Some tenants may have little or no knowledge of their lease obligations and may submit to poor reasoning as to why they should not settle claims. In contrast tenants may be large occupiers in retail or finance sectors, with data sets of reinstatement, repairing and decorating costs. The risk therefore to the appointed surveyor is that they do not comprehend the motivations or expectations of their client. Table 3.1 sets out the Landlord and Tenants' perception of business risk through the lens of a surveyors, and Table 3.2 sets out the Landlord's and Tenant's attitude to property as an investment.

Table 3.1 – Landlord and Tenants’ Perception of Business Risk Through Surveyor’s Lens

Timing	Landlord Business Risk	Tenant Business Risk
Prior to lease	Low – procures legal and rental advice	High – fails to procure advice. Risk of adverse repairing and reinstatement obligations
During Lease	High – may result in trespass or breach of covenant if the procedure to step in and repair is flawed	Low
At Lease End	High if tenant declares bankruptcy. The interviews conducted in this study enquiry revealed a diverse range of opinion when respondents discussed their understanding of the business risk and tactics of their clients.	High – if no accounting provision for dilapidations. Unaware of liabilities. Tactically wait

Table 3.2 – Landlord and Tenants’ Attitudes to Property as an Investment

Landlord	Tenant
As investor. Property is a prime choice compared to other forms of investment and a prime interest	As occupier. Prime function is their business and not to be distracted by the condition of the landlord’s property. The property is a secondary interest
One off landlords to medium size and large investment portfolio	Do not understand the terms of their lease
Informed landlords receive advice on licence agreements and reinstatement provisions	May undertake standard fit-out and neglect remaining property including external fabric
May have standard lease terms and retain legal advice	May see cost of pre-lease professional advice as a barrier to taking advice
Smaller landlords regard their property as a main source of income or pension	Tenants do not wish to litigate
Large portfolio landlords regard the property in the round, they may not have seen the property	They may drive the negotiation if they cannot afford to settle
May not be aware of the Protocol	Do nothing and wait and see what happens

3.2 Organisational Risk

3.2.1 Company Strength

Larger organisations may have considerable sector experience and multi-disciplined teams. They may have greater access to resources and have associations with other disciplines offering specialist advice such as material science, valuation and law. A mismatch with smaller inexperienced firms may lead to delays and frustration. They may have in-house experts who themselves act as expert witnesses (Kahneman, Sibony and Sunstein 2021).

3.2.2 Company Policy

The way in which businesses integrate external and internal policies into their own practices differs. Determinants include experience, leadership, behaviour, the presentation of documents, fee mechanisms and response policy. Their clients' policies also affect their schedule and responses. Landlords may have reinstatement policies and tenants may always adopt a wait and see approach. Smaller businesses may encounter diffusion barriers (Ward 2016), wherein the capacity to obtain, comprehend, absorb, and apply policy changes may be disregarded or of low concern. Larger businesses are more likely to employ internal resources to facilitate change, or actively pursue challenges (Argyris 1977).

3.3 Organisational Barriers

The presentation and format of schedules is formulaic. This study illustrates that the respondents' approach was both personalised and subjective with emphasis placed on comparative techniques to assist decision making, including previous experience or citing case law. The resultant output of the schedule is therefore governed in part by the experience of the surveyor, leaving reduced scope for the presentation for alternative approaches to problem solving or dispute avoidance.

3.3.1 External Influences

Responses are affected by the pressure of affordability. Tenants may notify their surveyor if they cannot afford to settle, thus the strategy and approach may be remodelled. Similarly, landlords who undertake works will influence their surveyor and provide credibility to the surveyor's assertion.

3.3.2 Internal Influences

Cartwright (2002) suggests that within the culture of a large organisation, experienced managers who have been institutionalised within their own workspace, may think in a linear and non-learning manner with little incentive to adapt, sometimes referred to as single loop learning. They would not be amenable to a double loop learning examination and reflection of their current methods (Argyris 1977). The Focus Group provided no evidence of double-loop practises, which, if prevalent, may foster cultures of change. Large, specialised organisations may have access to a deeper knowledge base and comprehensive library, legal counsel, and online databases. Similar resources may not be accessible to small organisations creating an impediment that delays conflict resolution. As a result, surveyors competing against one

another may have disparate approaches and be vulnerable to surveyor variability (Kempton 2003). Several explanations, including bias, were cited at the Focus Group. A question was posed, "*Would the view be different if both surveyors were acting for the landlord or the tenant?*" This is important and in contrast to Kempton's research as surveyors in this study are working against each other within a contentious space, so that if two surveyors on the same side do hold divergent opinions, it may be due to internal organisational factors such as training, recruitment policies, resources and knowledge. This research establishes that the mismatch in skills and resources contribute towards delays when the parties are unevenly matched.

The "factors of process" in the construction sector have pursued comparable lines of enquiry and according to Love et al (2008) what is necessary are investigations into the behaviour of organisations. According to Roberts, Zeidner and Matthews (2001) organisational behaviour tries to "study the effects of individuals, groups, and structure on behaviour in order to enhance the success of an organisation." Industry improves because of a greater comprehension of how teams and individuals impact organisational or team-based behaviours (Love et al. 2011). Moreover, while the way in which problems are resolved may be analysed using recognised techniques that represent best practise and the way individuals behave is more difficult to predict and control (Love et al. 2008), a view supported by the outcomes of this enquiry.

In contrast to the long-held notion that a company's performance is solely impacted by economic factors, there has been a shift toward the realisation that human behaviour has a significant effect in an organisation's performance. Emotions play a significant role in organisations (Love et al. 2008) and in the context of this study, Emotional Intelligence (EI) cannot be overlooked (Kotze and Venter 2011) although the respondents' responses to constructs regarding EI were varied and less certain.

Friedman (et al. 2000) conducted an examination of conflict styles. Using a conceptual framework based on Blake and Mouston's managerial grid, the research built upon prior analogies that had created typologies of styles. The two styles were described as self-focused and other-focused, respectively. Self- and other awareness was characterised as a "collaborating" or "integrating" style. An "avoiding style" is characterised by a lack of care for oneself and others. It was classified as a "competing" or "dominant" style to have high self-focus and less care for others. The "accommodating" or "obliging" style is characterised by a high regard for others and a low regard for oneself.

Friedman et al. (2000) express difficulty in comprehending whether conflict styles are constant with each issue or fluctuate depending on the nature of the conflict. For instance, a person's behaviour in a disagreement in the work place may differ from their behaviour in a conflict with a family member. This study reflects that an organisation's method of conflict resolution may differ from office to office as well as between two surveyors within the same office. According to the research of Friedman (et al. 2000) and Kelley and Stahelski (1970) those with a cooperative prosocial approach adapted their style to the approach chosen by the other side. The correlation analysis of this study confirmed this although more so between tenant surveyor and landlord's surveyor, than landlord's surveyor and tenant's surveyor. The benefit is that people with a prosocial inclination would seize the opportunity if it happened. Disputes may be easier to resolve when one party complies with the other. In the space of this study, there may be motivations for one side to become accommodating. The Focus Group recalled a situation in which the prospect of legal action by one party may halt negotiations. In such situations, the choice to avoid litigation may be based more on business considerations to avoid the potential expense and risk of defeat.

Individuals who continually safeguard their own interests may be reluctant to concede a commercial decision until the conflict is near resolution. However, there is a risk that this method will lead to additional conflict and diminish the likelihood of its resolution resulting in an increase in time and expense. There is also the possibility that both disputing parties adopt the same strategy and approach, so prolonging the conflict. Other obstacles may include an inability to think critically about one's work and performance, a result of not working in a large team, or a lack of self-efficacy (Aliakbari and Sadeghdaghighi 2012). In the field of dilapidations, practitioners may accept the current theory of process or challenge it and work to improve it (Argyris 1977).

Individuals may have less time for difficult issues and relay constant questions as a tactic to avoid them and avoid their own questions, disregard correspondence, and cease communication. Why this occurs is unknown, although the FG suggested tactics are employed as an unwillingness to confront facts or a deliberate plan to disregard the other side. Individuals involved in a dispute maybe disposed to being "hot" or "cold" (Gerzon 2018). "Hot" people are emotional, shout, are aggressive and threatening, whereas "cold" people suppress their feelings, murmur, look away, or withdraw. Both characteristics provide insight into a person's emotions, how they may respond and is telling on the culture or organisations policy on recruitment, promotion or training and the major study confronted this (Goleman 2019).

The research of Kruger and Dunning (1999) suggests that some individuals are predisposed to overestimate themselves. The cause is typically ignorance found within an environment that does not promote feedback. The tendency for organisations that allow surveyors to work primarily alone may be prone to neglecting to reflect or oversee the dispute handling capabilities of its staff.

Access to resources varies due to expense, apathy, or ignorance. The study revealed that it is stereotypical that more experienced surveyors rely on their experience while younger surveyors conduct their research, although there is recognition that surveyors also learn from experienced surveyors, although at a cost to their clients.

Through the lens of a surveyor, the structured interviews revealed the following business and organisational risk, see Table 3.3.

Table 3.3 – Surveyors' Approach to Business and Organisational Risk

Issue	Landlord	Tenant	Landlord's Surveyors	Tenant's Surveyor
Market Conditions	Landlords with larger portfolios are more likely to be aware of the market place than landlords of single or smaller portfolios		Surveyors do little market research	
Affordability	Balance the risk of insolvency and are more conscious			Will consider the risk of not being paid their fee. Tenant may tactically use the risk of bankruptcy
Resources		Tenants often take no advice at the outset. Delays may be tactical	Will rely on experience and will understand compromise. Need to understand the investment reason	Tenant surveyors know what they are doing, and it frustrates the landlord
Internal Resources			There is a lot of repetition. Finding time to reflect is a problem. Inexperienced surveyors are difficult to deal with	It is important to reflect
Skills/ continued learning			May train because of CPD. Lack of excellent training. Landlord's team tend to be more proactive	
Tactics	Taking legal action might depend on whether the Landlord has done the work or not. Landlords can be bullies	Tenants do not want to litigate. Tenant can drive the negotiation if they have little resources	There is a lot of bragging. Surveyors might not see the bigger picture of estate management	Larger practices may use their statistics to show success rate

Surveyors recognise the value of reflection but lack the time to engage in it. The "sausage machine mindset" refers to the technique and format of dilapidations schedules that have developed. When tenants respond to schedules, reflection is said to occur, but this study clarifies that this is not reflection but analysis. Inexperienced surveyors may exhibit a pattern of being difficult due to a lack of expertise, poor ability, and comprehension of the difficulties. The way surveyors behave, think, act and react is subjective and they behave differently not because the facts presented to them are the same or different, but because each party interprets or sees them differently, and this interpretation is based on several factors including the individual's technical knowledge, skills, comprehension, ability to communicate, what influences them inside and outside of their organisation, their systems of work and the way in which both parties behave. This is referred to as "noise" (Kahneman, Sibony and Sunstein 2021) as opposed to bias. The work of Kahneman, Sibony and Sunstein (2021) is significant. They define and distinguish noise from bias. The term noise is used to describe human judgements which are disagreeable with one another, and significant noise, as in the case of dilapidations, creates delays and frustrations.

Training was discussed in this enquiry. Although a skills audit was not undertaken it was noted that surveyors train to fulfil their professional CPD obligations, which could include dilapidations, but there is a desire for high-level training, as training is a crucial characteristic for enhancing comprehension and decreasing bias and noise. The respondents confirmed the impasse which occurs and the intransigence that causes delay. The skill of listening to others (Covey 2004) was stressed to comprehend an alternative viewpoint or opinion. However, the way in which schedules of dilapidations are prepared rarely engages the opposing party's surveyor prior to issue, thereby missing an opportunity to discuss the issues at hand. Therefore, the blind nature of the responses described by Kahneman, Sibony, and Sunstein (2021) reflects pushback and seeks to identify bias in others but not in themselves.

The survey responses indicate that tenants are unlikely to welcome legal action. They note that landlords and tenants do not intend to litigate, which may be reassuring to surveyors who would otherwise face the additional scrutiny of their schedules or responses. The strategy of changing tactics may be implemented for a variety of reasons, and either party is likely to have an array of products, such as the disclosure of additional information or the hiring of solicitors, to persuade the other party into accepting or changing its position on an issue, to influence the other party, to bring closure to the negotiations, or simply because the negotiations have stalled.

3.4 Balanced Scorecard (BSC)

The BSC developed by Kaplan and Norton (1992) balances financial, internal business, customer and innovation and learning perspectives. Figure 3.1 illustrates four categories, Approach, Listening, Reflection and a commitment to Life Long Learning. These are the outcomes of this research. The BSC can be used to monitor, review and reflect on the approach and commitment to life-long learning, reviewed against how well listening and reflecting is achieved and perceived.



Figure 3.1 - The Balanced Score for Disputes.

Source The Author

3.5 Summary

This enquiry makes evident that business risk is understood through the lens of respondents and how they perceive and understand risk and motivations of both their clients and own organisation. The prime focus for landlords is to seek a return on their investment, whilst for tenants the premises are a secondary concern to their business needs. This polar attitude leads to friction. The formulaic approach to dilapidations can therefore bring about a linear process which may overlook the desire to understand more about business motivations.

Surveying organisations have sub-conscious barriers to working efficiently. These include poor access to cost information, market conditions, legal advice and authoritative texts. The outcomes can lead to further delays and costs secondary to the prime purpose of the claim.

Further issues are summarised below;

- Tenants' highest business risk is prior to lease, if advice is not obtained, and at lease end when claims are typically made. Poor financial and business planning will compound issues when coupled with a coincident business relocation
- Large organisations are likely to invest in significant resources including databases, legal advice, multi-disciplined teams, a comprehensive library, and sector specialisms. Mismatches are likely to occur with smaller organisations
- The risk of little time for reflection advances complacency in approach
- A personal approach to dilapidations may go overlooked by an organisation's strategy towards its clients
- An organisation's output will reflect inputs from formulaic guidance, leaving little space for creativity of approach, and an overemphasis on process will do little to advance progress in dispute resolution
- An organisation's performance measured against economic factors may overlook an organisations emotional intelligence towards dispute handling
- An organisation's conflict style may have an adverse effect on the resolution of the dispute and an over estimation of ability may be significant

3.6 Reflective Comments

The schedule is driven by a procedural approach found in guidance, and is reliant on company policy, data and previous experiences of similar issues, together with authoritative literature and common law. Large firms may be mismatched against smaller firms if they have greater access to resources. Surveyors dispute management and performance does not appear to be monitored. The transfer of the BSC to the application of dispute management would set measurable targets and offer a proven and established management tools for managing performance.

This chapter and the previous chapter established that the field of dilapidations is focus driven, emanating first from digests of reported cases which gave the briefest of details, followed by the development of the landlord's approach to recovering its losses, irrespective of whether or not the landlord intended to undertake any repairs, to the reporting of tenant injustices. This unfairness was the trigger which brought about an amendment in the law of property by statutory intervention, following which the Landlord and Tenant Act 1927 is widely interpreted by the courts, most notably by the way damages are calculated. The literature since then primarily focuses on the common law and the procedures involved, supported by RICS guidance. The Focus Group identified that dilapidations are influenced both internally and

externally, and the business risk of not understanding dilapidations may have serious consequences on the outcomes of a dispute. A surveyor's understanding of risk may be mismatched to a tenant or landlord's management of risk. Barriers to understanding dilapidations include the cost of training, access to resources and specialist knowledge. Surveyors can be mismatched against one another leading to tensions and delays. Together, the literature reviews in Chapter Two and Three combine to give the body of knowledge in dilapidations and creates the foundation on which the law of dilapidations is built.

This research confirms however that the literature does not reveal the complex human relationships and behavioural issues which this research demonstrates leads to frustration and delays, resulting in a wider search of issues outside the field of dilapidations. These include fields of natural science, psychology, pedagogy and philosophy including analysis by proposition. Kahneman, Sibony and Sunstein (2021) differentiate noise and bias, a significant attribute to dispute behaviour, found in the wider context of the literature. The literature establishes significant gaps in our knowledge and reveals that our understanding of how disputes develop and move away from the claim itself, is poorly understood. It reveals that surveyors are not aware of what they do not know.

CHAPTER FOUR

RESEARCH METHODOLOGY

4.0 Introduction

The previous chapters discussed themes in which dilapidations literature can be categorised. The cognitive explanation of why such disputes are prolonged and demanding is unknown. The wider influences of propositions (Blackburn 2017) bias, noise (Kahneman, Sibony and Sunstein 202) remained indiscernible and disregarded. This wider understanding has application to the management of organisations, training and reflection about the way in which disputes are managed. The emotional intelligence of the parties influences decision making, so resultant delays are caused when issues are mis-understood or exhibit a lack of experience.

The rationale for this research was based upon not knowing what the tensions were and discovering the gaps in our knowledge. The issues surrounding the complexities of dilapidations were unknown. To ensure the project was sufficiently scoped, a Focus Group was first initiated, the outcomes of which became the catalyst for the remaining study which shaped the questionnaire and interviews.

4.1 Methodology

This enquiry is primarily a qualitative study, but the methods used to analyse data from the questionnaire and interviews also uses qualitative methods. The mixed method approach brings certainty to the outcomes and the data endorsing the meaning and reflections given during the semi-structured interviews. It is important to reveal what difficulties lie beneath disputes, in all its forms, not simply the process of inspection, schedule, completion and negotiation. It brings about cognitive meaning, resultant outcomes and wider implications for practice and the academic environment. In this research limiting the enquiry to only technical issues would not have allowed the research to consider the wider implications of human behaviour.

The research question, *Dilapidations: Are the tensions understood by stakeholders?* could alternatively be written as, *Contextualising Advisor Behaviour in Disputes: Understanding and Observing Dilapidations* or *Contextualising Judgments in the Field of Dilapidations*. The cognitive thought mechanisms, which are founded on knowledge and experience, are likely however to produce the same or comparable meanings when investigated (Kahneman 2011).

It is for the above reasons that numerous factors influenced the design of the research enquiry. These include the philosophical ontological stance and the substance of the research matter; an enquiry into how surveyor's see the world through their own senses. This inquiry is therefore based on several crucial choices made to investigate the subject matter so that the philosophical presumptions reinforced the procedures of inquiry, i.e. the research design, techniques, data collecting, and analysis (Creswell 2014). The essence of the problem, which is to say, why dilapidations are sometimes difficult to resolve, is therefore concerned with lived experiences.

4.2 Research Methodologies

4.2.1 Worldview Paradigms

The way in which the world is observed and the method by which the research enquiry was investigated shaped the methodology. The philosophical, ontological and epistemological issues upon which the research is based reflects how comprehension and reality is perceived. Ontology is concerned with what reality is and epistemology concerned with how we know.

There are two major ontological positions. The first is that the world is seen objectively and relies on empirical knowledge. In the natural sciences knowledge is enhanced and comprehended in an objective manner. Realism is an ontological paradigm whereby facts or reality exists which are independent of our minds. Alternatively, in social sciences the world is perceived subjectively. Information is acquired and used as a foundation. Relativism falls within this paradigm whereby what is considered and valued is relative to the individual holding such views. The ontological position is significant due to the subjectivism of how the world is comprehended and interpreted. Due to the nature of the enquiry this research methodology falls within a subjective ontology.

Epistemology is the study of learning about the world and the foundations of knowledge (Ritchie et al. 2014). There are two major philosophies. The first is comprehending knowledge by induction, by building upon the foundations of understanding so that knowledge expands with experience. In this way a theory is developed. Induction is concerned with observation and drawing conclusions from it. Deduction is concerned about the world through deduction or learning top down. Theories can be tested, and the catalyst may be an idea, or hypothesis which is then observed. The results are capable of replication in similar enquiries. The following briefly describes the most significant paradigms, see Table 4.1.

Table 4.1 - Philosophical World Views

Research Paradigms	Key Features
Positivism	Positivism, also known as the scientific method (Ritchie et al 2014) is a quantitative methodology and is objective. It separates the researcher from the enquiry to avoid biasing or influencing the research results. Existing theory can be used to construct a testable hypothesis whose results can be observed (Saunders 2015) and repeated. A scientific experiment is an example employing facts and measurement to validate data.
Realism	Realism is a quantitative and qualitative analysis. According to Richie et al. (2014), the ontological stances of realism and relativism have affected social science. Realism is a belief that the objective physical and social world exists independently of our ideas and perceptions which can be quantified. Truth is therefore observed from the outside. Examples include scientific investigations designed to confirm or refute a theory and such experiments are based on observations that may provide a definitive response. After acquiring such knowledge, it could be applied to further similar studies.
Relativism	Relativism is a belief that the world is comprehended subjectively, and that the world only exists in accordance with perceptions (Richie et al. 2014), The truth is viewed from within and perceived subjectively resulting in multiple answers. Associated with such views is the notion that beliefs change and are influenced by experiences. Such subjective beliefs are referred to as relativism, and qualitative research methods may be utilised.
Interpretivism	Interpretivism, a qualitative methodology describes the philosophical position that perceptions of what is perceived advance comprehension and provide knowledge.(Ritche et al 2014). This determines how decisions are progressed. In qualitative research, the respondents' narratives, justifications, and interpretations are emphasised more than the researchers understanding of the topic. Research is conducted with, and about human subjects as opposed to inanimate objects. Interpretivism is characterised by a desire for subjective knowledge based on an inductive, bottom-up methodology and resides within a subjective framework.
Constructivism	Constructivists believe that knowledge and understanding are constructed or acquired, as opposed to received. The philosophy gained importance in education, where educational policy had been based on a behaviourist philosophy for some time. (Jones and Brader-Araje 2002). Constructivism explores involvement, learning via questions and answers, and interaction amongst each other, with students working in groups. Constructivism is a qualitative research methodology (Soffer 1993) and the philosophical understanding is such that individuals strive to establish subjective meaning for the world in which they live and work through experience (Marsden and Littler 1998). Researchers attempt to comprehend the complexity of viewpoints by analysing the significance respondents assign to their own experiences and their interactions with others. This phenomenology study forms strong ties with this perspective. During the inductive process, researchers' own experiences may also influence the interpretation provided, so that themes or replies are given significance. Therefore, people construct meaning in the environment they understand by involvement and contact with others, with their own prior experience influencing their future behaviours.

4.2.2 Methods of Enquiry

This study adopts a phenomenological philosophical approach (Oppenheim 1992). This conception of method is concerned with the comprehension of experience and observation and the way in which reality manifests itself through lived experience. It is a methodological assumption, and by a careful analysis meaning can be applied. This chapter sets out the meaning given by the data collected during the pilot study, questionnaire, and semi-structured interviews (Randolph 2016). Table 4.2 sets out the alternative methods of enquiry which this research considered.

Table 4.2 – Summary of Alternative Methods of Enquiry

Action Research	According to Lune and Berg (2017) action research is "one of the few research approaches that embrace principles of participation, reflections, empowerment, and emancipation of people and groups interested in improving their social situation or condition". Action research requires researcher participation alongside respondents. Several major components of action research include (Lune and Berg 2017) reflection and interpretation, participant engagement, integration of the results, and sharing with the respondents. Action research involves a participant or respondents who together with the researcher, comprise the study group. It necessitates openness, transparency, the ability and willingness to communicate information inside the group, and for that information to be discussed. Action research was not appropriate in this enquiry due to client confidentiality and ethical concerns, as respondents would be unwilling to divulge personal client information.
Ethnography	Ethnography is an alternative qualitative methodology used to describe the study of groups of persons. According to Livine (2016) conventional anthropology comprises of four research disciplines: biology, prehistoric archaeology, languages, and social or cultural. Within a social group or community, ethnography examines beliefs, understandings, behaviour, and comprehension. This type of research expanded significantly in countries where ethnographic cultures, such as city life, were investigated. It became apparent that people's individual perspectives and social interactions inside the social group, as well as interviewing them, were crucial. This research methodology is not appropriate for an ethnographic investigation due to reasons of client confidentiality.
Grounded Theory	Grounded theory, a further alternative method is the formulation of general, abstract theories of processes or interactions based on the perspectives of the respondents. There are multiple stages of data collecting (Creswell 2014). There is a correlation with this research inquiry, but the purposes and objectives of this study are to investigate why tensions occur and their causes. Elicitation of the procedure is likely to disclose a pattern of outcomes that conforms exclusively to the regulatory procedure. Based on the nature of the research topic, the aims and objectives, the literature evaluation, the gaps in our knowledge and understanding, and the nature of the respondents, qualitative, phenomenological research methodologies will be employed.

4.3 Rationale for the Research Methodology and Design

In this section, the rationale and summary of the technique and methods used in the research are discussed and the research tools and approach including qualitative, quantitative and mixed methods are explored. Other approaches are expressed if the opportunity to conduct the research were to arise again and concludes that the approach taken challenges intellectual habits, and preconceptions.

A mixed method approach using both qualitative and quantitative methods was chosen. The literature review provided technical and anecdotal experiences, but the design of this research was founded on the knowledge that there are no previous empirical studies into the association between cognitive behaviour in dilapidations and source of delay in resolving them. As numeric data collected from practitioners required analysis, a mixed method approach, using outputs of a Focus Group and data analysis of questionnaire and structured interviews was chosen. The structured interviews required analysis by both methods and resulted in data sets providing results in both correlation and decision tree analysis.

Following refinement, the enquiry faced a number of issues:

- What are the outcomes from the literature, and could they be codified?
- What direction should the enquiry take? The answer was to engage a Focus Group
- What outcomes of the Focus Group could move towards a questionnaire?
- What outcomes from a questionnaire could move toward semi-structured interviews?
- What tools were available to achieve this?

In social science, the creation of knowledge is founded on sensory experience. Respondents replies to the same question were likely to vary, which was the purpose of the interview, resulting in varying meanings and interpretations. The design of the framework allowed each phase to be critically analysed, (Walsh and Seward 1990) forming the structure for the next phase. The design was capable of being documented and substantiated so the outcomes of the interviews could be found to emanate from the previous phases and literature review.

Consideration was given to quantitative, qualitative and hybrid research methods. Creswell (2014) emphasises that the three approaches are neither rigid nor diametrically opposed; rather, they represent the extremes of the same issues. A quantitative investigation tests hypothesis through objective measurement or scientific instruments and is capable of replication by others (Creswell 2014). Qualitative approaches employing words, as opposed to quantitative approaches employing figures, are consistent with philosophical beliefs. Individual accounts of a phenomenon predispose meaning in qualitative research (Ritchie et

al. 2014) and qualitative research seeks to comprehend the human or societal significance of situations (Creswell 2014). Questions and comprehension evolve inductively, from the bottom up. The research yields themes which are used to interpret data, so the emphasis of qualitative research is on lived experience.

To construct an impression of what is occurring, qualitative research requires an upward thought process, or inductive reasoning. Inquiries or interviews that begin in a similar method, easing participants into the study, are more likely to elucidate valuable data. Such methods may imply sequential questioning, which could involve revisiting subject matter if it becomes apparent that more lines of inquiry are necessary. In this study both quantitative and qualitative data was collected, analysed, and integrated resulting in a deeper comprehension of the issues.

4.4 Research Challenges

Qualitative research is effective when the most relevant factor to the study is unknown. The method may be necessary if the topic is novel or if the issue has never been studied with a particular sample or group (Creswell 2014). The design of the enquiry resulted in preparing for several issues including:

- Awareness that the researcher's questions and expertise may influence the research design because of prior knowledge (Blaikie 2007). The approach was therefore to allow respondents to take the lead on questions.
- Awareness that respondents may behave and react objectively to the topic of study, or that their behaviour may alter. It is crucial to comprehend this phenomenon, as respondents may disclosed their own approaches and difficulties in a forum where they may have felt compelled to respond in a manner conforming to established protocols and processes for resolving dilapidations.

Upon reflection and discussion, the outcomes of the investigation required the initial design to be adjusted so that each stage of the enquiry can be appraised against the research aim, see Figure 4.1.

4.5 My Adopted Approach

The aim of this enquiry is to understand why dilapidations are difficult to resolve. Each stage of the enquiry met the objectives and provided the framework within which the data could be used to refine the next stage. This approach enabled the building blocks that cause delay and frustration arising from the tensions to be revealed, making a significant contribution to our knowledge of how we comprehend and behave in disputes.

4.5.1 Literature Review

The assessment of the literature revealed it can be clustered into surveying, law and regulation, see Figure 2.1. Due to a lack of data, a pilot study for the next phase questionnaire recounted the work from the literature review to enable the enquiry to further investigate, improve, and refine tensions and their relationships. However, due to the absence of literature regarding the true source of tensions, it was necessary to conduct a Focus Group in order to scope the research.

4.5.2 Focus Group

The Focus Group, presented with the research question, would either support or oppose it. If endorsed, the results would be used towards a pilot study questionnaire and final questionnaire. The participants responded in a positive atmosphere whereby their lived experiences were discussed with others (Brinkman and Kvale 2015).

4.5.3 Pilot Study

Oppenheim (1992) advocates that a pilot study be utilised to construct and modify the questionnaire. The pilot study was key to understanding the meaning respondents would give to questions and refined the major study. When completed the number of questions was reduced, and questions of a technical nature were removed from the enquiry as respondents were not as challenged by them as by questions relating to influence and behaviour.

4.5.4 Questionnaire

Respondents' replies were analysed. The analysis uncovered significant findings which were hitherto unknown, including the ranking of the challenges faces by technical, influential and behavioural issues.

4.5.5 Major Study - Interviews Using the Repertory Grid

Using the Repertory Grid (RG) method, in-depth interviews were conducted following additional analysis of the questionnaire to develop a deeper knowledge and understanding of responses. A more detailed discussion is found at Chapter 6. Personal Construct Theory, created by George Kelly, is one such design strategy (Kelly 1955). Using a technique known as a Repertory Grid, which elicits constructs from respondents in the form of a grid, a thorough knowledge of a person's thoughts and understandings can be gained. The repertory grid is a data gathering technique used to determine how an individual perceives or interprets a given topic (Jankowicz 2004). It was chosen in contrast to open ended interviews because of the way in which the constructs can be designed, and data can be analysed together with the data from the previous questionnaire. A construct is a person's manner of thinking, or construing. According to Kelly, our perception of the world is constructed through comparison. For this enquiry, the repertory grid technique therefore provided an effective method for eliciting the respondents understanding and meaning they gave to dilapidations based on their lived experience.

The researcher and participant engage in conversation. The participant is free to discuss openly their understanding of issues and concerns, their understanding of tensions, as well as any underlying issues. The expertise of the researcher is to develop the conversation and extract significant areas of interest from the participant. Kelly believed that to have an opinion on a subject matter, we must be aware of alternatives (Jankowicz 2004). Understanding a person's constructs provides insight into how they perceive the world (Jankowicz 2004). In other words, they must comprehend how they perceive the world in their own terms and not through the lens of their own reasoning. The grid approach distils the interviewee's thoughts on a chosen topic, so that the subject is agreed by the interviewer and the interviewee, and a sequence of items may be selected by the interviewee or pre-planned by the interviewer if a comparison with other interviews is desirable. In the context of this research, the subject matter and themes were determined by analysis of this enquiry's previous findings, although the parameters of the topic can be selected by the respondents (Kawaf and Tagg 2017) or specified by the researcher. By setting them out, the researcher creates an organised approach, allowing identical questions to be posed to different individuals.

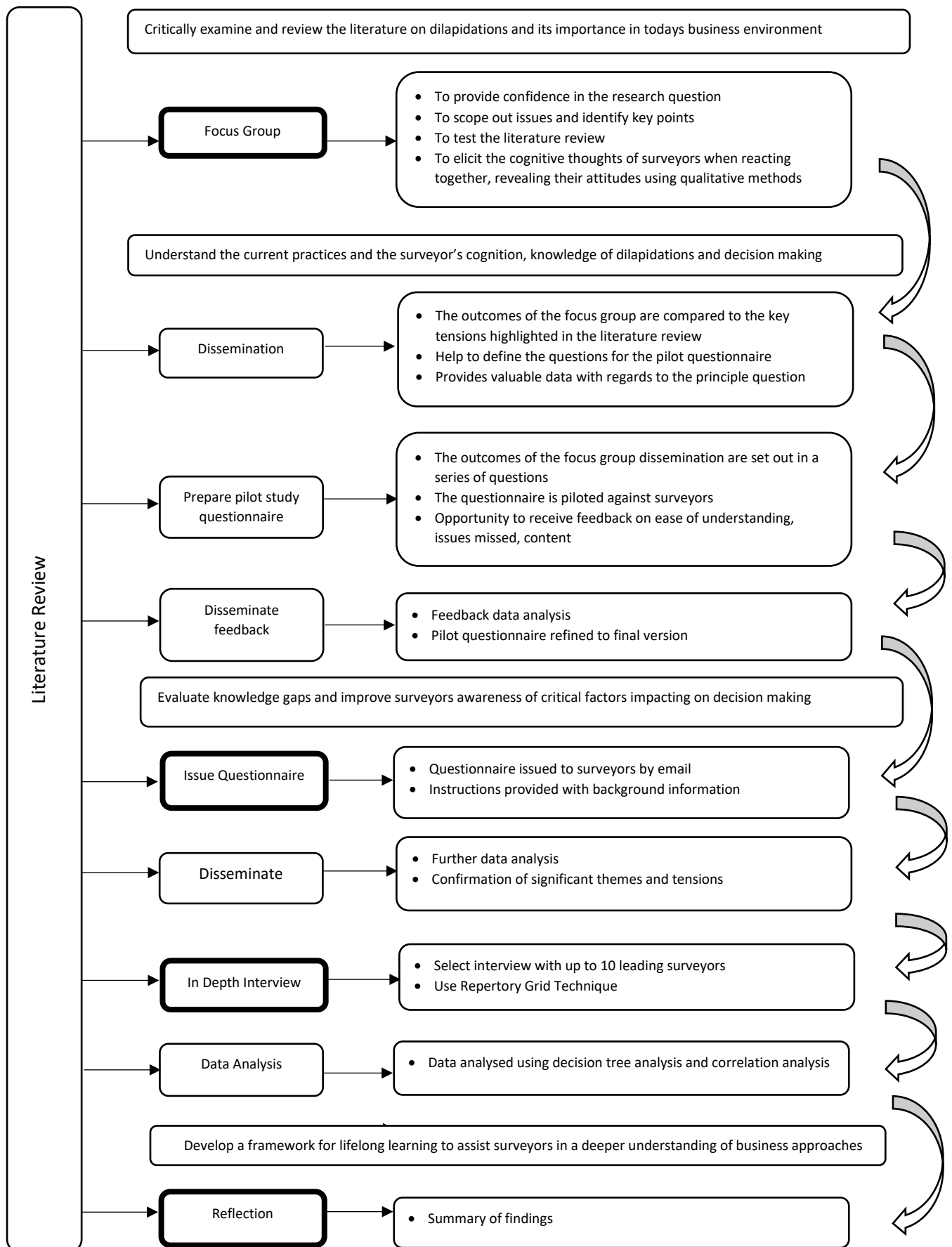


Figure 4.1 – Research Approach

In this research enquiry the constructs and elements were derived and provided to the respondent to achieve consistency and to allow comparable and correlations to be made during the analytical stages of the study.

4.6 The Repertory Grid

4.6.1 Constructs

The first grid consisted of 91 supplied constructs based on technical, influential and behavioural tensions elicited from the previous outcomes. Constructs are polar opposites, the construct on the left hand column of the grid have a score of 1 and referred to as the Emergent Pole. The construct on the right hand column has a score of 5 and referred to as the Implicit Pole. Jankowicz (2004) describes the benefits of providing the respondent with pre-determined constructs:

- Respondents utilise identical constructs bringing consistency to the matter under investigation
- It simplifies the investigation during analysis
- The respondents' interpretations are based on their own experiences
- It provides a method for considering how a sample of respondents interpret the same issues.

Pre-determined constructs were therefore formulated from the literature review and questionnaire and put to each participant in the interviews. The results, recorded on the Repertory Grid, brought about consistency in response and allowed the data sets to be analysed using the same methods.

4.6.2 Elements

The Focus Group referred to six stakeholders, including "Self". The six Elements formed two teams.

- Tenant's surveyor
 - Tenant
 - Tenant's Solicitor
- } Tenant's team
-
- Landlord's surveyor
 - Landlord
 - Landlord's Solicitor
- } Landlord's team

Each construct was read out to the participant, who scored the construct against each Element. The results were data sets about themselves and their opposing surveyor, as well as the legal teams and landlord and tenant.

4.6.3 Rating

A rating scale of 1-5 was chosen. 1 represented the initial or emergent construct, while 5 represented the opposite or implicit construct. Five is an optimal number, and 3 offers a compromise for respondents in case they did not know the answer because they had no experience of it, or were unable to answer, or if the answer was in the middle between 1 and 5. Ratings of 6 or higher would likely delay the interviewing process and did not offer a middle ground response. The numeric answers were entered onto the Repertory Grid during the interview.

4.7 Pilot Study

The principal results of the pilot study were:

- 91 constructs were too many. The duration of the initial interview was excessively long. The 60-minute target time was exceeded (Appendix 2)
- Several questions required explaining prompting refinement
- Prior to the second pilot study interview, the constructs were reduced to 54 (Appendix 3)
- Some questions were repeated. Respondents observed this, and duplicates were eliminated
- Certain questions were modified and clarified

The response times to technical questions were significantly quicker than those to influential questions. Consideration of the behavioural questions took significantly longer. It confirmed that the results of the questionnaire that behavioural issues were more difficult to manage and control. The technical questions were removed, and the total number of constructs was reduced from 54 to 34 (See Figure 6.1). Kahneman (2011) calls this System 1 and System 2 thinking, whereby system 1 thinking is recalled quickly, with ease, whereas system 2 thinking requires effort.

The pilot study uncovered several crucial characteristics and opportunities.

- It promoted the elicitation of the respondents' personal subjective experiences so that they could express, elaborate and or justify their ratings to provide meaning, explanation and comprehension of the issues

- It became apparent that the conversation was neither open nor closed, and that themes were emerging
- It confirmed that the Repertory Grid was created to understand the subject matter from the respondent's point of view (Brinkmann and Kvale 2015).
- The way in which the interview was conducted, with data being collected, was more comparable to a traveller than a miner (Buetow 2013).

The major study of interviews and analysis were therefore designed because:

- It was consistent with the theoretical framework and research design
- Interviews permit pre-prepared questions, and questions evolve from prior phases of study
- Semi-structured interviews permit the use of topical questions or themes driven from the prior phases of study
- The method permits the use of identical questions for each participant, while allowing a more careful examination if necessary, or simply to record whatever commentary the respondents choose to provide, to explain or justify their reasoning or response
- It allows for the elicitation of various elaborate meanings, is comprehensible and accessible (Qu and Dumay 2011)
- It lends itself to non-face-to-face interviews, which was fortuitous during the Covid-19 pandemic and offered an adaptable and sensitive method for conducting structured interviews
- The respondents could state their preference for either the landlord or tenant team
- It is based on dialogue (Brinkmann and Kvale 2015)
- It permits comparisons and analysis
- It provides a framework for discussion and focuses on the researcher's agenda, and can be conducted in less than 60 minutes
- It affords the opportunity to establish rapport with the participant prior to the interview (Hannabuss 1996).
- With careful design, the interviewer cannot be judgemental (Hannabus 1996).

There are several characteristics shared by qualitative research instruments (Creswell 20102) which were endorsed and formed part of the design structure. The following Table 4.3 compares them to the actual outcomes.

Table 4.3 – Qualitative Research Tools Compared to Actual Outcomes

Condition	Criteria	Outcome
A natural location	This may occur in the participant's office, where they work, rest, or engage in the study's activity. The process is intimate and personal, and the researcher can observe how the subject behaves and reacts throughout data collecting. The process may occur multiple times.	In this study respondents were either at home or at their place of work. Respondents were able to relax and speak openly about their experiences.
Researchers are the primary instrument	Researchers create their own questionnaires and interview questions, collect and analyse the data themselves, and design their own questionnaires.	In this study the initial literature provided the catalyst for the way in which the tensions could be categorised, which developed the issues discussed at the focus group, which led to the questionnaire and semi-structured interviews.
Multiple data courses	The data collection may consist of interviews, text and observations; following which the data can be organised and classified.	In this study the data consisted of dialogue from the focus group, semi-structured interviews questionnaires and Repertory Grid.
Inductive then Deductive data analysis	Researchers will examine data, constructing patterns and comparing information from various sources. The procedure is iterative until themes emerge, which may necessitate additional data collection.	In this study the final outcomes were a result of an inductive process, commencing with the data from the literature reviews which was built upon and expanded as each stage of the research strategy was engaged.
Respondents' meaning	The researcher focuses on the participant's interpretation of the problem, as opposed to their own.	In this enquiry time for reflection was made, and each of the primary research enquiries i.e. the questionnaire and Repertory Grid involved pilot studies. The respondents were also given the opportunity to reflect at the end of the semi-structured interviews.
Emergent design	The initial strategy cannot be precisely defined and stated since the questions may need to be modified as themes emerge or as respondents introduce variation to the process.	In this study, the research enquiry significantly developed from Focus Group to semi-structured interviews. The research framework was adapted.
Reflexivity	Researchers must reflect on their own role in the study and how this may influence the direction of the research.	This study has resulted in changes in professional practice.
Holistic account	Researchers gain a comprehension of the entire topic and problem, reporting on several levels and identifying various components.	This enquiry has wider implications for the landscape of dispute resolution as a result of converging several areas of research and science.

Source: Creswell (2014)

4.8 Decision Tree Analysis

Decision Tree Analysis is a tool to assist problem solving and predict probability. It is a method to analyse the way in which participants perform their own tasks in addition to interview and observation and gives insight into the probability of how landlord's and tenant's surveyor respond to questions. It was used in this enquiry as a method by which the respondent's own reflections could be analysed following interview. It graphically presents outcomes so that the decision making process can be visualised (Song and Lu 2015). This assists in probability analysis by way of comparison of relationships. It is widely utilised in project management as a comparative tool which highlights risk and benefits in complex projects and applied in disease prediction (Toth et al. 2021).

Decision Tree Analysis starts with an initial problem or concept. Each concept is represented as a node. Nodes are connected by branches and splitting occurs when the branches are divided into two or more further nodes. Common examples of splitting include wishing to analyse risk v benefit, implement change or do nothing, or high cost versus low cost. The outcome assists users in decision making and graphically is similar to a flow chart.

4.9 The R Project for Statistical Computing: rpart: Recursive Partitioning and Regression Trees

R software, a statistical programming language, was used in this analysis. Its algorithm splits the datasets into sub-sets. It has several key attributes and benefits including the capacity to observe prediction (Victor 2015). In this study the results of the repertory grid interview were entered as 340 data points. It has the benefit that:

- The software is blind to what it is looking at
- It reflects the way the respondents were thinking
- It is unbiased
- It does not know if a landlord or tenant's surveyor responded
- It provides insight into what is actually happening
- It represents outcomes in colour. In these results the landlord is rated blue, the tenant green. The darker the colour, the more confidence the software has that the prediction falls into this category.

In this research enquiry it gives new insight into the probability of the way in which landlord and tenant surveyors react and respond to the 34 polar constructs given to them, offering for the first time a predictive model on how respondents reflect upon themselves and their counterparts.

4.10 Statistical Correlation Analysis

Correlation analysis was undertaken to ascertain correlations between the landlord's and tenant's surveyor, the legal team and landlord and tenant. This yet unknown enquiry would give insight into how each surveyor party viewed the other opposing surveyor, solicitor, landlord and tenant.

According to Ratner (2009) correlation coefficient was devised by Karl Pearson in 1896. It is a measure of the strength of the relationship between two variables, so that following analysis

the relationship between can be measured and illustrates how each reacts to one another. As a statistical analysis method, it is measured from -1.00 to +1.00.

The closer the correlation to 1.0 the stronger the relationship, either as a positive or negative number. (Ratner 2009). A correlation of 0 is the weakest correlation.

0	No linear relationship
+1/(-1)	Perfect positive (negative) linear relationship – as one variable increases the other also increases/decreases in an exact linear rule
0.7-1 (-0.7 to -1)	A strong positive (negative) relationship
0.3-0.7(-0.3 to -0.7)	A moderate positive (negative) relationship
0-0.3/(0 to -0.3)	A weak positive (negative) relationship

A positive correlation means that both variables move together in the same direction, whereas a negative correlation means that both variables move in the opposite direction. A zero correlation means that changes in one variable does not cause the other to change. In this study, the analysis identified which variables are strongly related. A strong correlation between the Tenant' Surveyors responses about the Landlord's Surveyor, means that as the Tenant Surveyor moves in one direction, perhaps towards the Emergent Pole, they move the Landlord's Surveyor in the same direction.

4.11 Criticisms of the Methodology/Correlation Results

As the sample size was small, the 34 construct questions each participant gave were grouped to give a larger sample of 170. A total of 340 data sets, for both landlord and tenant surveyors was therefore applied. Within each of the five respondents for each landlord and tenant surveyor group, there were likely to be differences in the responses given. Such differences are attributable to experience, the number of dilapidations instructions received, training, an understanding of dilapidations, a comprehension of constructs and their conscious and unconscious bias towards themselves and their clients. The results are therefore less accurate than had a greater number of surveyors been questioned in each group.

Correlation does not mean causation and although both surveyor groups gave similar correlation coefficients, it does not mean that the score they gave themselves caused them to give a similar score to the other surveyor, although most surveyors scored themselves lower i.e. toward the emergent construct than the implicit construct.

According to Kelly we make forward decisions by construing. The responses given by the participants were based not only on previous experiences but also their perception, because they responded to hypothetical questions such as Construct 29 – *May exhibit anxiety or passion/ may exhibit guilt or shame*, with the knowledge that they might not ever meet or communicate with the other stakeholders. So, if surveyors based their answers purely on their experiences, they would not be able to answer all of the questions. Perceptions of the opposing surveyor may change therefore once they meet them.

4.12 Reflection

The interviews provided an opportunity to discuss concerns openly with the participant surveyors. Using Microsoft Teams during the Covid lockdown and with their informed consent and anonymised answers, participants were reassured, as it gave them an opportunity to think freely away from their work environment. This research reveals that the way in which surveyors approach the subject matter differs, with a significant emphasis on themselves. It was wrongly anticipated that there would be greater bias and that all the constructs would be understood. Some constructs were too intellectually constructed but analysis of the responses in the context of bias and noise give them significance (see Kahneman, Sibony and Sunstein 2021).

The Repertory Grid method was highly successful. Jankowicz (2004) emphasises the flexibility and ease with which the common approach to the interview allows the participant to design their own constructs and elements (Tan and Hunter 2002). To present the participant with constructs and elements, as advised by Jankowicz, ensured an alternative progressive technique built upon the growing foundation of data elicited from the previous phases. The research questions the method of research inquiry in the context of being impartial, detached, unbiased, and an observer, and could these attributes be distinguished? (Tufford and Newman 2010) Or did the research inquiry benefit from the participation in the subject as a practitioner facing tensions in disputes? This enquiry concludes that both apply.

The Focus Group concurred that dilapidations are challenging to address and resolve. In addition, the group identified five new tensions in dilapidations that were not identified in the literature review. However, the current environment offered little in the way of research into why people behave; it was the Focus Group that yielded the three-tiered cone - technical, influential, and behavioural, (See Figure 5.12).

There are limits of the employed methods:

- The questions were prepared, leaving little room for additional constructs
- Not motivated by statistical analysis

- Comparatively modest sample size
- Due to Covid it was not possible to meet with the respondents to establish a preliminary rapport
- It was necessary to demonstrate experience to inspire trust
- The responses could be influenced
- Individuals may provide a morally appropriate response as opposed to a natural one.

The following are the benefits of the employed techniques:

- The methodologies were derived from the previous study as outlined in the methodological framework
- Little, if any, primary research exists regarding the experience of surveyors in dispute resolution
- It can be tested and is inherently adaptable
- Each participant can interpret the structure in their own manner
- Each participant was experienced in their field
- Opportunities arose to solicit comments from both landlord and tenant surveyors, i.e. both sides of the conflict
- Permits the enquiry to analyse both the discussion and the grid
- Provides the chance to delve further into a question and examine the situation
- Provides immediate contrasts and comparisons to the researcher, as well as participant contradictions
- Complete control can be maintained
- Can lead to the emergence of additional tensions
- Ethical considerations, including confidentiality issues, were alleviated when the research design was set out
- It allows respondents to evaluate their reaction without being required to articulate it

Alternate possibilities were considered.

- Emailing structured questions was too impersonal and discouraged conversation
- Observation is impossible due to time limits and confidentiality concerns
- Grounded theory is excessively time-consuming
- Focus groups with fewer respondents - the first focus group gave outstanding data
- Case study analysis has confidentiality difficulties
- Ethnographic inquiry is too time-consuming and privacy concerns
- Hermeneutic method is too time-consuming and privacy concerns

4.13 Discussion

The time and resources given to the preparation and refinement of the methodology was successful. The structure of the framework at Figure 4.1 proved invaluable for two significant reasons. First it provided the framework upon which each sequential stage could be planned. It provided the questions such as what needs to be done next? Who will collaborate? What issues will be faced? Secondly, the data used for each sequential stage was founded in the findings of the previous stage. This is important as the methodology provides a forward and backward research trail. The outcomes of this enquiry are the product of each step, and each step provides an invaluable insight into behaviour in disputes.

The research framework also allowed the question of Why? to be asked at every step. The pilot studies at each stage with experienced surveyors resulted in confidence in the approach and questions asked, giving reliable substantiation to the respondents.

4.14 Reflective Summary

The research design provided strong stability to the enquiry and reinforced the nature of the question. The research trail for the final outcomes of this study can be traced back to its roots in the literature review and subsequent stages. The narrative explained the rationale and the contribution to knowledge is founded on primary research. It has heeded results which offers for the first time a method by which the substance of a dispute can be categorised into three components and provides an understanding of the core issues to a dispute, distant from technical issues.

CHAPTER FIVE

DATA ANALYSIS AND DISCUSSION

5.0 Introduction

This chapter examines the results of the Focus Group and Questionnaire Survey. Chartered Surveyors with expertise in dilapidations were invited to attend. All respondents gave their informed consent and remained anonymous. Using the outcomes of the literature review as the framework to the discussion, the respondents spoke freely and frankly about their experiences of dilapidations. The Focus Group affirmed the issues and the pilot study provided scoping for the major study.

5.1 Background to the Focus Group

The research question was submitted to a Focus Group (FG) in order to;

- instil trust in the validity of the research question; and
- to understand the respondents' personal opinions, meaning and experiences; and
- to acquire data for the next stage of the enquiry.

The FG comprised seven experienced Chartered Building Surveyors having a wide experience base of small to large property organisations. The FG considered if dilapidations are difficult to resolve, questioned the existence of the tensions identified in the literature review, inquired if other tensions existed, explored other issues that could cause increases in time and resources and discussed the impact on behaviour. The research question was proposed to ascertain if the challenges were uncommon. They were not, and many cited additional common frustrations including exaggerated claims or underestimated responses, that other surveyors didn't understand the process of dilapidations or the basis of diminution in value, had ignored guidance and protocols, or that fees were incentivised. The disposition of other surveyors, such as being unduly hostile, not replying to communication, or being overly defensive, was also discussed.

Anecdotally, respondents were not forthcoming regarding systemic, deep underlying or root causes beyond those that may be defined as technical or influential. According to Love et al. (2008), "While processes can be readily optimised using deterministic heuristic and stochastic tools and techniques to determine "best practice" and law like predictions, the nature of human behaviour and the performance of individuals and teams in the workplace is far more difficult

to accurately predict or optimise”. Therefore, a formulaic approach regulated by best practice or guidance will not account for the way in which people behave.

The lack of primary evidence and data justified the use of questionnaires and interviews to collect information and provides insight into the greater debate of identifying core causes of disputes in the built environment. Having categorised the tensions (see Figure 2.3) and based on the outcome of the initial discussion with the respondents, the approach was modified to maintain the qualitative and flexible quality of the research (Doody and Doody 2016). The outcome was to tabulate over forty tensions identified in the literature and classify them into a total of ten tensions. These tensions formed the basis of the FG discussion.

Following the FG, the comments were analysed and disseminated comparing the experiences to the literature review. The information gathered served as guidance for how the questionnaire would be developed. A second FG gave respondents the opportunity to refine the questionnaire following which it was distributed to 12 anonymous respondents.

5.2 Focus Group Outcomes

The FG revealed three significant findings:

1. Additional Tensions
2. Categorisation of Tensions.
 - a. Technical
 - b. Influential – External and Internal
 - c. Behavioural
3. Capacity to Control Tensions

Table 5.1 summaries additional tensions identified by the FG. These were first hand lived experiences and not found within the literature.

Table 5.1 - Summary of Additional Tensions

Additional Tensions	Outcomes
Affordability	Tenants respond with offers to settle that are substantially lower than the claim. This may be a tactical approach or because they cannot afford to settle the claim in full. Tenants may hesitate to admit financial instability. Landlords are compelled to make a choice. First, accept the tenant's offer to avoid the possibility of collecting nothing if the tenant enters administration; second, seek a payment plan; third, pursue the owners of the lease if there are personal guarantees or a guarantor; and fourth, seek to wind up the tenant and recover what it can.
Resources	Limited access to resources serves as a barrier. Resources can include databases, access to legal advice, specialist support services, literature, subscription services and cost indices. The tensions created are crystallised when access to resources is mismatched, so that one party's inability to respond to questions or responses causes delay and prompts further questions.
Company Strength	Larger companies may have specialist knowledge, sector experience and market awareness. They may offer complementary cross-team disciplines including building surveying, agency, and valuation and offer sector-specific expertise such as in the financial, retail, commercial, industrial and leisure sectors. Lack of sector experience, access to third-party data and absence of cost indices may be subconscious and a hidden restriction for a smaller business.
Company Policy	The manner in which businesses combine external and internal agencies into their own dilapidation's policies differs. It may be achieved by policies driven by management, behaviour, the provision of written materials, fee basis and response policy. These could be externally impacted by the manner in which their client's policies are incorporated into their own and by how their own policies influence their client's decision-making. Smaller businesses may encounter diffusion hurdles (Ward 2016), wherein the capacity to obtain, comprehend, absorb, and apply policy changes may be disregarded or of little concern.

Figure 5.1 illustrates how the themes have developed. This is compared to the tensions elicited from the literature review in Chapter 2, Figure 2.3.

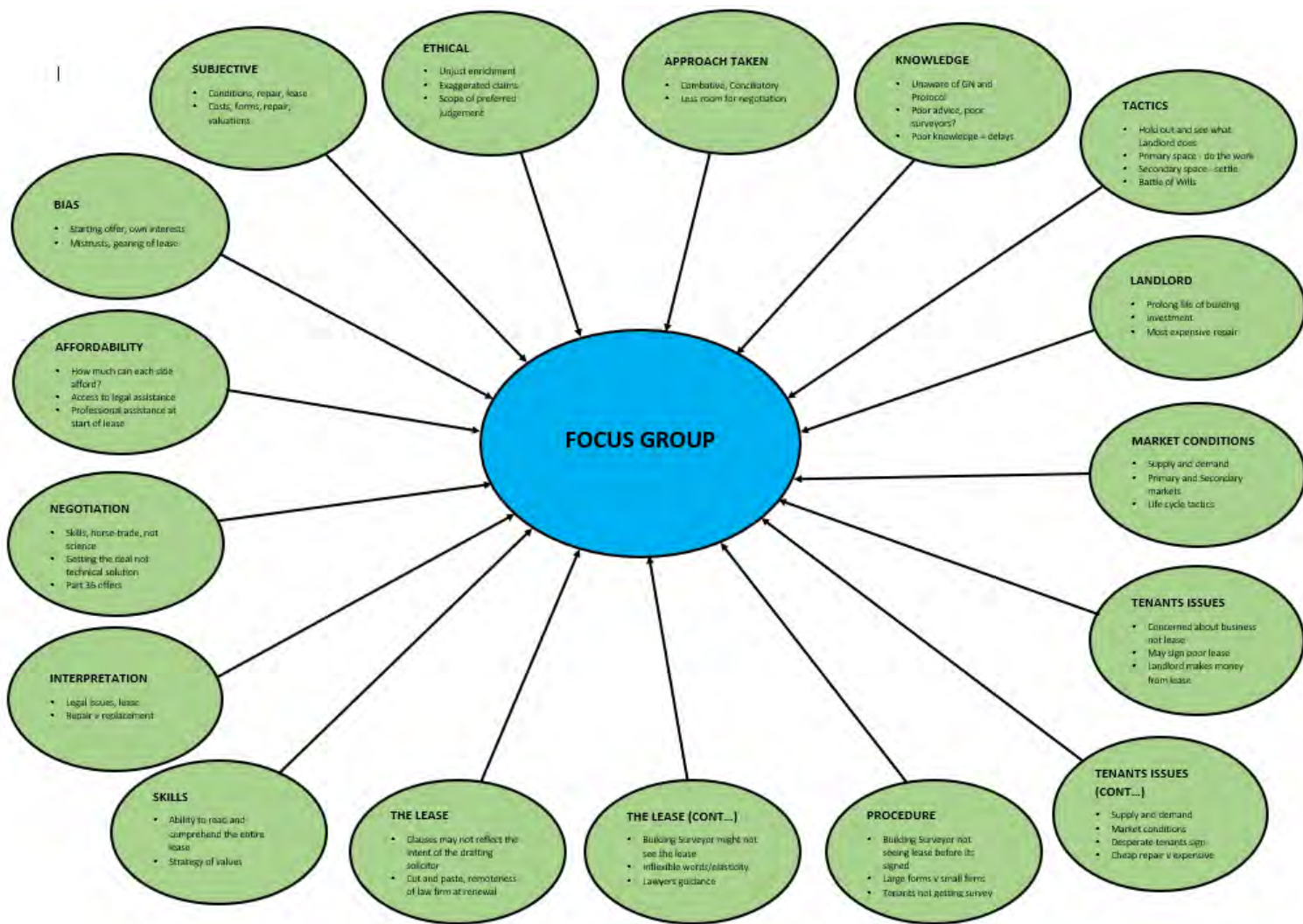


Figure 5.1 – Summary of Focus Group Tensions.

Source: The Author

5.2.1 Categorisation of Tensions

The FG transcripts were analysed and reviewed against the literature. When mapped, for the first time, three distinct categories were revealed, see Table 5.2.

Table 5.2 – Categorisation of Tensions

Category 1 Issues	Technical	Issues including cost of repair, pathology, legal matters and interpretation. Issues to which third party advice can be obtained. Matters of fact but subject of disagreement. Dilapidations is concerned with skills, pathology, solutions, costs and legal interpretation. The disagreement on technical issues leads to delay and tension. Technical issues are likely to be the first to arise but importantly the simplest to manage.
Category 2 Issues	Influential	Issues caused by external and internal influences. <i>External Influences</i> include mandatory guidance, influence from clients, professional guidance and the Protocol. Some tensions emerge externally to an organisation and others originate from within an organisation, thus having an internal influence. This result is not revealed in the review of relevant literature. <i>Internal Influences</i> include compliance with company policy, procedure, methodology, format, in-house resources. Cartwright (2002) suggests that within the culture of a large organisation, when dealing with experienced managers who have been institutionalised within their own organisation, they think in a linear and non-learning manner with little incentive to adapt; this is sometimes referred to as single loop learning. They would not be amenable to a double loop learning examination and reflection of their current methods (Argyris 1977). The Focus Group provided no evidence of double-loop practises, which, if prevalent, may foster cultures of change.
Category 3 Issues	Behavioural	Issues concerning behaviour of self and others, acting in a conciliatory or stubborn way, the conduct of the parties. In contrast to the long-held notion that a company's performance is solely impacted by economic factors, there has been a shift toward the realisation that human behaviour has a significant effect in an organisation's performance. Emotions play an important role in organisations (Love et al. 2011), and in the context of this study, Emotional Intelligence, or EI, which cannot be ignored, cannot be overlooked (Kotze and Venter 2011).

The findings of the FG are very significant and could be applied to the analysis of all forms of dispute and makes an important contribution to knowledge. This finding became critical in the development of the pilot studies, questionnaire and major study.

5.2.2 External Influences

A surveyor's approach will be affected by the additional pressure of affordability. A tenant is likely to notify their surveyor when they can no longer afford to settle who may then alter their strategy and approach. Similarly, a landlord who undertakes the work will influence their surveyor and provide credibility to the surveyor's assertion. Large, specialised businesses may have access to a comprehensive library, legal counsel and online databases. Such resources

may not be accessible to small businesses, creating an impediment that delays conflict resolution.

Other external influences include client instructions, RICS Guidance and the Protocol. There is a process-based approach to dilapidations, as recognised by common law and statutes. As a result of professional guidance (RICS Dilapidations Guidance Note) and The Dilapidations Protocol, the process has been extensively developed. In addition, the GN contains several Appendices that illustrate the tabular layout of claims and responses. The 7th Edition GN was released after the official release of the Dilapidations Protocol. Therefore, the GN represents new required methods and demonstrates how the Quantified Demand should be presented.

Several tensions generated in the literature assessment lacked contextual significance. The RICS Guidance Note and the Protocol outline a sequential process methodology. This brings uniformity, commonality, and a minimum level of professionalism to the presentation and justification of claims prepared by its members, as well as creating an expectation among those involved in the dispute that the claim is prepared and submitted in accordance with the Protocol. However, apart from example letters and agendas, there is little to enhance communication language. The Guidance Note offers suggestion and sets out the implications on the parties should their schedule or response be exaggerated or understated, but the way in which the parties behave, and think is not found in the guidance or Protocol. Different meanings can be derived from advice and protocol, giving rise to "elasticity" in which words or phrases are susceptible to several interpretations and hence ambiguity, or doing little to mitigate the threat of viruses (Busby and Hughes, 2004) if the lease is silent on the subject. Dilapidations sometimes involve several claims and issues, all of which must be addressed. Obvious problems, such as a cost disparity, may be instantly obvious (Kumaraswamy, 1997), but the underlying cause may be unknown.

5.2.3 Internal Influences

The evaluation of dilapidations revealed an insubstantial approach to the fundamental cause or underlying causes of large delays. Disputes in dilapidations were compared to construction disputes within the built environment to determine if some causes were obvious while others were not. Kumaraswamy (1997) analysed the causes of construction disputes and outlined major categories, such as cost claims involving delayed possession, variations, unanticipated ground obstructions, inaccurate drawings, and time claims involving inclement weather, additional works, and unanticipated ground obstructions. Kumaraswamy distinguished between immediate reasons of disagreements (proximate) and root causes, as well as evident

and less obvious causes, and found that the higher the hierarchy, the greater the likelihood that the reason was a root cause.

This research discovered that although construction and dilapidations conflicts share certain similarities, there are several significant distinctions between the two. In dilapidations disputes, parties engage the services of surveyors and lawyers to prepare the claim. The instructed parties employed to serve and resolve the issue are often unlikely to have had prior involvement with the property and are unlikely to be acquainted with one another. In construction conflicts, the parties will be familiar with one another, and issues are likely to have occurred prior to the dispute escalating but handled during the construction process. Almost always, construction projects conclude without the need to claim damages, whereas in dilapidations, because of the way in which the schedule is prepared and presented, it automatically results in a claim for damages due to the deliberate identification of breaches of lease covenant. Disputes in both industries result in comparable concerns, primarily an increase in time and expense. In common with both industry disputes however is the findings that the performance of negotiators receives less attention (Carmeli, Gelbard and Reiter-Palmon (2013) a point noted in this research enquiry.

5.2.4 Capacity to Control Tensions

Following the classification of tensions into three groups the capacity to control them was examined. Each tension was either susceptible to internal and external control or out of reach.

The FG reasoned that surveyors had control or limited control over some of the tensions and accepted that other circumstances, such as the way the dispute was being managed or led by the parties or their representatives, made some issues difficult to control or resolve.

The tensions were categorised into technical, influential and behavioural issues. Technical tensions include common and fundamental issues, such as the definition of repair, types of repair techniques, pricing, and legal doctrine. Influential issues were not thoroughly explored but include the influence of the surveyor's own practises, guidance and regulation and how various surveyors approach these influences. Behavioural issues include the way in which the parties conduct themselves.

It was unknown how surveyors would rank the categories if given the opportunity to do so and whether there would be a hierarchy. Would they infer that the dominant issue that causes concern is surveyor's behaviour, and how would they comprehend their own and another surveyors' understanding? The work of Busby and Hughes (2004) demonstrates a further

incapacity to regulate tensions. Busby and Hughes (2004) believe that latent pathogens in the construction industry remain dormant until they manifest. Kumaraswamy (1997) indicates that certain causes of disagreements are manageable, and if eliminated through management processes, the likelihood of a dispute occurring is reduced. In the realm of dilapidations, pathogens occur in a variety of forms including poorly worded leases, poorly prepared schedules of condition and poorly drafted demise plans. The use of guidance and example letters is one method for controlling them. Although they do not eliminate the "flexibility" of interpretation, they prescribe a format and language that when used may prevent errors and ensure uniformity. The FG noted that surveyors are rarely instructed before lease commencement to evaluate the building or to advise on draft lease covenants. The outcome is that once signed meaning will be derived from the clause itself and not from what the parties intended to express (see *L Schuler AG v Wickman Machine Tool Ltd* [1974] AC 235). In contrast, the FG acknowledged that tenants may wilfully sign poorly drafted leases for commercial reasons, fully aware that they have taken a commercial decision.

5.3 Focus Group Summary

The Focus Group provided an invaluable insight into the strategic cognitive thoughts of practicing surveyors not found in the literature and makes a significant contribution to our knowledge. Importantly it provided a means to categorise issues which can be applied to the wider inquiry into disputes and importantly how to analyse them by distinguishing the technical, influential and behavioural issues. There are parallels to construction disputes, but there are significant differences in the time in which the parties to the dispute are engaged with one another.

5.4 Questionnaire

Following the Focus Group, a pilot study questionnaire was developed. The work of Van Ort (see Brink and Wood 1998) sets out five reasons for conducting a pilot study:

- To determine if the main study is feasible
- To identify problems that may arise in the research design
- To refine the method of data collection and analysis
- To test the methods employed
- To provide experience to the researcher

The work of Prescott and Soeken (see Brink and Wood 1998) establishes three criteria for pilot studies:

- To assess if the planned study is feasible or not
- To assess if the instrumentation or tools are feasible
- To assess if there any problems that may arise from data collection

The work of Burns and Grove (see Brink and Wood 1998) establishes six further criteria for pilot studies:

- To develop and refine the research instruments
- To develop protocols for implementation
- To ascertain if the sample size is representative
- To examine the validity and viability of the research instruments
- To ascertain if validity of the data analysis techniques

5.5 Second Focus Group Meeting and Questionnaire Design

Several members of the FG met again to discuss the findings of the first FG and to discuss the pilot questionnaire.

The questionnaire was refined and shared with the FG following which it was finalised. A copy of the questionnaire is included at Appendix 1. Several issues were addressed.

1. The three categories were endorsed
2. The name by which to call the three categories was discussed. Options included:
 - a. Developed Learning (level 1) which became Technical Issues
 - b. External and Internal Focus (level 2) which became Influential Issues
 - c. Personality (level 3) which became Behavioural Issues
3. Parties to a dispute try to manipulate each other
4. Parties to a dispute always wish to win, or otherwise come away with something
5. There must be a willingness to agree to settle in mediation, and a level of understanding or empathy

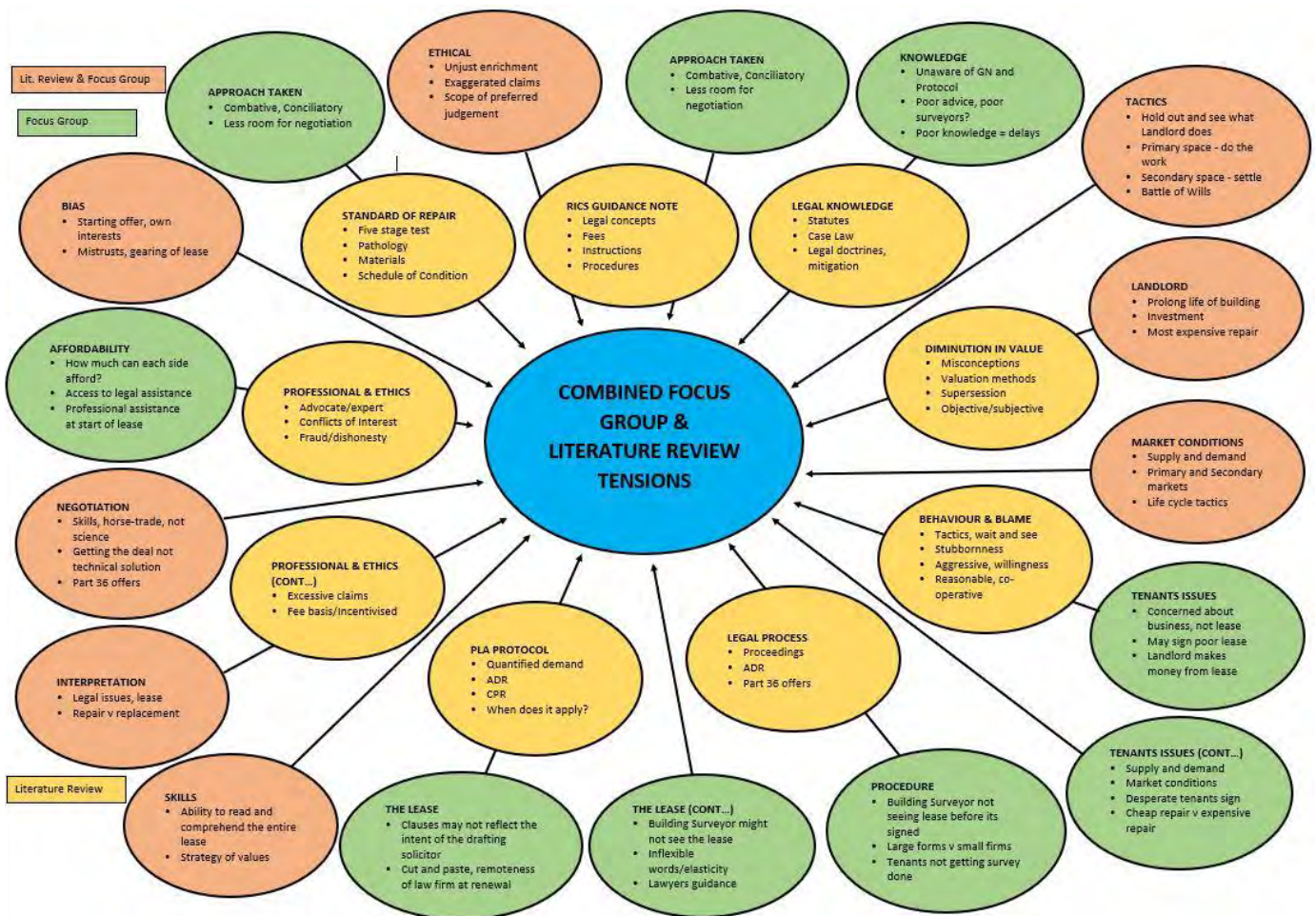


Figure 5.2 – Summary of All Tensions

Source: The Author

5.6 Format of the Questions and Data Analysis

5.6.1 Background Information to the Respondents

General information about the 12 anonymised respondents including their experience of dilapidations was obtained. A copy of the questionnaire is found at Appendix 1.

Are there differences in replies from respondents who had significant experience to compared to those who had less experience? The majority of respondents had greater than 21 years' experience.

1. How many years have you been a chartered surveyor?

Experience in years	Number of Respondents
1-5	1
6-10	2
11-15	
16 -20	1
21+	8

2. Are you?

Company status	Number of Respondents
A sole trader	1
Work within a small team but you carry out all or nearly all the dilapidations instructions	4
Work with a team that specialises in dilapidations	7

The majority of respondents worked with a specialised team

3. If you consider *all* of the instructions you personally undertook over the last 12 months, approximately what percentage were concerned with dilapidations, acting either for landlord or tenant?

% of Instructions	Number of Respondents
Up to 25%	2
26% - 50%	1
51%-75%	4
76% - 100%	5

The results showed that the majority of respondents spent most of their time dealing with dilapidations.

4. Within those dilapidations instructions what is the approximate split between acting for tenants or landlords?

% Split	% Split	Number of Respondents
100% Tenant	0% Landlord	1
Nearly always tenant	Occasionally Landlord	1
Tenant 75%	Landlord 25%	2
Tenant 50%	Landlord 50%	4
Tenant 25%	Landlord 75%	2
Occasionally tenant	Nearly always landlord	1
0% Tenant	100% landlord	1

The balance was evenly split between landlord and tenant.

5. Which geographical region is most of your work?

Region	Geographical Distribution
London	4.66
South East	1
East Midlands	0.33
West Midlands	3
East of England	1
East Midlands	
South West	0.68
Yorkshire and Humberside	1
North West	.33
Wales	0.33

From the above table, most respondents were experienced practitioners, and this attribute provides a tool for comparison against the question responses. The landlord/tenant split might provide more divergence in responses if the sample size was larger.

5.7 How do Surveyors Rank Tensions?

5.7.1 Dilapidations Issues

This section was developed from both Focus Group meetings. The issues from the literature and from the FG are combined into three issues; technical issues, influential issues and behavioural issues.

Category 1 Technical Issues Issues for example relating to technical matters, cost of repair, pathology, legal matters or interpretation. They might be matters which require professional advice from others. They may be matters of fact but in all cases can be the subject of disagreement.

Category 2 Influential Issues Issues caused by external and internal influences. External influences for example include mandatory or professional guidance, or influence from clients. Internal influences for example include compliance with company policy, procedure, methodology, format, in-house resources.

Category 3 Behavioural Issues Issues concerning behaviour of self and others. Behaviour includes for example acting in a conciliatory or stubborn way. It includes for example how one party conducts themselves, resolves the issue, eases the issue or makes matters worse.

In each table the experience of the participant is included in the left column. Right hand columns show the total scores of each participant for each category, and their instruction base. T = tenant or mostly tenant, L = landlord or mostly landlord. T/L = equal split.

5.8 Category 1 Technical Responses

Using the table below, and from *your own personal experience*, please circle which of the above categories each issue falls under. You may circle one or more category for each issue.

Yrs Experience	Participant	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	Total	Tenant/Landlord
Issue		Knowledge	Legal knowledge	Tactics	Landlord	Market Conditions	Tenant	Procedure	The Lease	Skills	Interpretation	Negotiation	Affordability	Bias	Subjective	Ethical	Approach Taken	Diminution in Value	Legal Process	Legal Doctrines or Concepts	Standard of Repair	Behaviour	PLA Protocol	RICS Guidance Note	Professional		
21+	12																									0	L
21+	11																									0	L
21+	10																									0	T
21+	9																									0	T/L
16-20	8		1																							1	T
21+	7	1	1			1		1	1	1	1							1	1	1	1		1	1	1	14	T/L
21+	6					1		1							1		1									4	T/L
21+	5																									0	L
6-10	4		1		1					1								1		1	1			1		7	T/L
21+	3	1	1	1	1	1		1	1	1	1	1	1	1	1			1	1	1	1		1	1	1	20	T
6-10	2																									0	L
1-5	1				1						1	1			1						1					5	T
Total		2	4	1	3	3	0	3	2	3	3	2	1	1	3	0	1	3	2	3	4	0	2	3	2		

Figure 5.3 – Technical Responses

5.9 Category 1 Participant Information

Some respondents differed in the interpretation of technical issues. However, the highest scoring technical issue was standard of repair and legal knowledge. Next were landlord, market conditions, procedure, skills, interpretation, subjective, diminution in value, legal doctrines or concepts, and RICS Guidance. Tenant, ethical and behaviour issues scored 0 points.

5.10 Category 2 Influential Responses

Yrs Experience	Participant	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	Total	Issue	
21+	12					2																				0	L	
21+	11																										0	L
21+	10																										6	T
16-20	9	2	2		2	2					2	2															14	T/I
21+	8	2				2					2	2															10	T
21+	7			2	2	2	2	2	2																		38	T/I
21+	6	2	2			2	2	2	2																		26	T/I
21+	5		2			2				2	2																20	L
6-10	4					2				2	2																14	T/I
21+	3	2	2	2	2	2	2	2	2	2	2																34	T
6-10	2																										0	L
1-5	1	2	2		2	2	2			2	2	2	2														24	T
	Total	10	10	4	10	18	8	8	8	12	12	4	12	4	4	4	2	6	12	8	8	4	6	8	4			
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	Total	Tenant/Landlord	
		Knowledge	Legal knowledge	Tactics	Landlord	Market Conditions	Tenant	Procedure	The Lease	Skills	Interpretation	Negotiation	Affordability	Bias	Subjective	Ethical	Approach Taken	Diminution in Value	Legal Process	Legal Doctrines or Concepts	Standard of Repair	Behaviour	PLA Protocol	RICS Guidance Note	Professional			

Figure 5.4 – Influential Responses

5.11 Category 2 Participant Information

The highest scoring influential issues were market conditions, affordability and legal process. These were followed by legal knowledge, landlord, tenant, procedure, the lease, skills, interpretation, legal doctrines or concepts. Approach taken scored the lowest influential issue scoring 2 points.

5.12 Category 3 Behavioural Responses

Yrs Experience	Participant	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	Total	Issue	
21+	12																										0	L
21+	11	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3		72	L
21+	10	3	3	3	3		3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3		63	T
21+	9			3				3	3	3																	48	T/L
16-20	8			3	3			3	3	3																	54	T
21+	7			3	3			3	3	3	3																42	T/L
21+	6	3		3	3			3	3	3																	33	T/L
21+	5	3	3					3	3																		48	L
6-10	4	3	3	3				3	3	3	3											3	3	3	3		30	T/L
21+	3			3	3			3	3	3																	27	T
6-10	2	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3		72	L
1-5	1	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3		63	T
	Total	21	9	33	24	9	33	27	21	12	15	33	18	33	24	33	27	24	21	21	15	33	24	15	27			
		1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	Total	Tenant/Landlord	
		Knowledge	Legal knowledge	Tactics	Landlord	Market Conditions	Tenant	Procedure	The Lease	Skills	Interpretation	Negotiation	Affordability	Bias	Subjective	Ethical	Approach Taken	Diminution in Value	Legal Process	Legal Doctrines or Concepts	Standard of Repair	Behaviour	PLA Protocol	RICS Guidance Note	Professional			

Figure 5.5 – Behavioural Responses

5.13 Category 3 Participant Information

All respondents scored against behavioural issues. The highest scoring behavioural issues were tactics, tenant, negotiation, bias ethical and behaviour. Legal knowledge and market conditions scored the lowest behavioural issue scoring 9 points each.

5.14 Summary of Responses

	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24
Behavioural	21	9	33	24	9	33	27	21	12	15	33	18	33	24	33	27	24	21	21	15	33	24	15	27
Influential	10	10	4	10	18	8	8	8	12	12	4	12	4	4	4	2	6	12	8	8	4	6	8	4
Technical	2	4	1	3	3	0	3	2	3	3	2	1	1	3	0	1	3	2	3	4	0	2	3	2
Total	33	23	38	37	30	41	38	31	27	30	39	31	38	31	37	30	33	35	32	27	37	32	26	33
	Knowledge	Legal knowledge	Tactics	Landlord	Market Conditions	Tenant	Procedure	The Lease	Skills	Interpretation	Negotiation	Affordability	Bias	Subjective	Ethical	Approach Taken	Diminution in Value	Legal Process	Legal Doctrines or Concepts	Standard of Repair	Behaviour	PLA Protocol	RICS Guidance Note	Professional

Figure 5.6 – Summary of Responses

5.15 Summary of Participant Information

Of the 24 issues, tenant issues scored the highest at 41 points, followed by negotiation with 39 points, followed by tactics, procedure, and bias at 38 points. The lowest point scorer was legal knowledge at 23 points, and skills and standard of repair at 27 points. The peaks of behavioural responses do not coincide with the technical and influential responses - See Figure 5.7

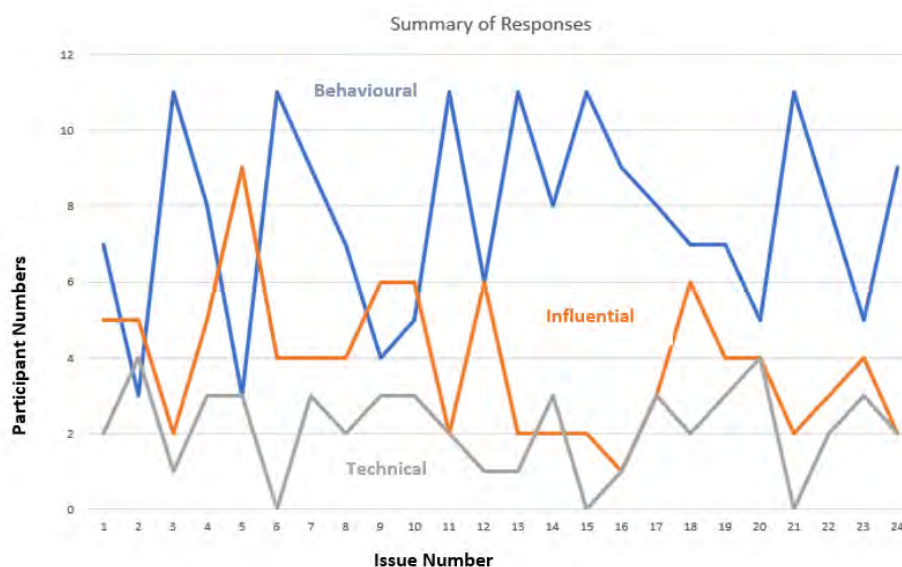


Figure 5.7 – Chart of Summary of Responses

5.16 Frequency the Issues Occur

5.16.1 How Often do the Issues Arise?

This question was designed to elicit the frequency issues occur.

In Table 2 circle the frequency you come across these issues. You may underline examples if you wish;

1. Very frequently
2. Frequently
3. Occasionally
4. Never

The resulted fielded the following analysis by rank, starting with the most common issue to the least frequent issue.

5.17 Frequency of Responses

Participant	31	29	29	38	32	30	30	37	34	30	27	32	32	27	29	37	33	35	32	30	30	34	34	38	0	L	
Yrs Experience	Knowledge	Legal Knowledge	Tactics	Landlord	Market Conditions	Tenant	Procedure	The Lease	Skills	Interpretation	Negotiation	Affordability	Bias	Subjective	Ethical	Approach Taken	Diminution in Value	Legal Process	Legal Doctrines or Concepts	Standard of Repair	Behaviour	PLA Protocol	RICS Guidance Note	Professional	Total	Tenant/Landlord	
21+	4	4	4	4	4	4	4	4	4	4	3	4	4	4	4	4	4	4	4	4	4	4	4	4	4	95	L
21+	4	3	3	4	4	3	3	4	4	3	3	3	3	3	4	4	4	3	2	4	3	3	3	4	4	81	T
21+	2	1	3	3	3	3	4	4	4	2	2	3	3	3	3	3	3	3	3	3	3	4	4	4	4	73	T/L
16-20	8	2	2	3	3	3	3	3	4	2	2	2	3	3	3	3	3	3	3	3	3	3	3	3	4	69	T
21+	7	2	2	3	3	2	3	2	3	4	1	1	1	3	2	3	3	2	3	2	2	3	2	2	4	58	T/L
21+	6	2	2	1	3	1	2	3	2	3	1	2	3	1	2	3	2	2	2	2	2	3	3	3	2	51	T/L
21+	5	4	4	2	4	4	3	3	2	3	4	4	4	2	2	4	4	4	4	2	1	3	3	3	3	76	L
6-10	4	3	3	1	4	3	3	1	3	1	2	3	4	1	2	3	4	4	3	2	1	3	3	4	4	61	T/L
21+	3	1	1	1	3	1	2	3	2	3	1	2	2	1	2	3	1	2	2	1	2	2	2	2	2	43	T
6-10	2	4	4	4	4	3	4	4	4	4	4	4	4	4	4	4	3	4	4	4	4	4	4	4	4	94	L
1-5	1	3	3	4	3	3	2	3	3	3	3	3	2	2	2	3	3	3	3	3	3	3	3	3	3	69	T

Figure 5.8 – Frequency of Responses

5.18 Participant Information

The lower the score the more frequent the issue arises. The most frequent occurring issues are subjective and negotiation, scoring 27, followed by ethical, legal knowledge and tactics. The least frequent issue is landlord and professional issues scoring 38 points, followed by the lease and approach taken scoring 37 points.

5.19 How Difficult are Tensions to Deal With?

This question was defined to elicit how difficult the respondents found the issues.

Although dilapidations claims are most often resolved, issues may sometimes be difficult to deal with. Whilst it is accepted that claims for dilapidations take time to resolve, some issues may cause further delays.

In Table 3, rank how difficult *you sometimes personally find the issue to deal with*. You do not have to rank all issues, or indeed any issue. You may underline examples if you wish.

1. I sometimes find this issue very difficult to deal with
2. I sometimes find this issue difficult to deal with
3. I find this issue OK to deal with

5.20 Difficulty of Responses

Yrs Experience	Participant	Knowledge	Legal knowledge	Tactics	Landlord	Market Conditions	Tenant	Procedure	The Lease	Skills	Interpretation	Negotiation	Affordability	Bias	Subjective	Ethical	Approach Taken	Diminution in Value	Legal Process	Legal Doctrines or Concepts	Standard of Repair	Behaviour	PLA Protocol	RICS Guidance Note	Professional	Total	Tenant/Landlord	
21+	12																									0	L	
21+	11	3	3	3	3	3	3	3	3	3	3	3	2	2	3	3	3	3	3	3	3	3	3	3	3	3	70	L
21+	10	3	3	3	3	3	3	3	3	3	3	3	2	2	3	2	2	3	3	2	2	2	3	3	3	3	65	T
21+	9	3	3	1	1	1	1	3	3	3	3	3	2	1	2	3	2	3	3	3	3	3	3	3	3	3	59	T/L
16-20	8	3	3	1	1	1	1	3	3	3	3	3	2	1	2	2	2	3	3	3	3	2	3	3	3	3	57	T
21+	7	3	3	2	1	1	1	2	2	3	3	3	2	1	2	2	2	3	3	2	3	2	3	3	3	3	55	T/L
21+	6	3	3	3	3	2	3	2	2	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	69	T/L
21+	5	3	3	3	2	2	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	70	L
6-10	4	3	3	2	2	2	2	3	3	3	3	3	3	2	3	3	3	2	3	3	3	3	3	3	3	3	66	T/L
21+	3	3	3	3	3	2	3	3	2	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	70	T
6-10	2	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	72	L
1-5	1	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	3	72	T

Figure 5.9 – Difficulty of Responses

5.21 Participant Information

The lower the score the more difficult the issue is to deal with. A respondent's score of 72 means that the participant does not find any issue difficult to deal with. Participant 7, with 21+ years' experience had the lowest score of 55 indicating difficulty with a number of issues. The most difficult issue to deal with is market conditions scoring 23 points, followed by landlord issues scoring 25 points. The least difficult issues to deal with are knowledge, legal knowledge, skills, interpretation, negotiation, legal process, Protocol, professional and RICS Guidance Note.

5.22 What Do Surveyors Think About Dilapidations?

This question was designed to elicit their views on the research issues.

From *your personal experience*, please tick which outcomes you feel most strongly represents your view.

Answers were ranked:

- 2 = Strongly disagree
- 1 = Disagree
- 0 = Neither disagree or agree
- 1 = Agree
- 2 = Strongly agree

Participant

	1	2	3	4	5	6	7	8	9	10	11	12	
The claim for dilapidations could take longer to resolve	0	2	0	1	1	0	1	0	1	1	1		8
The costs associated with resolving the claim could increase	1	2	0	-1	-1	-1	1	1	1	1	1		5
Any costs associated with resolving the claim are normally borne by the instructing party, until such time as costs are reserved	1	2	-1	1	2	-1	0	-1	-1	0	0		2
The conduct of the parties can in itself contribute to further delays	1	2	2	2	2	2	2	1	1	2	2		19
It doesn't really matter			-2	-1	0	-2	-1	-2	-2	-1	-1		-12
Any others you wish to add?													0
Conduct and biased approach	1	2											3
Method of repair and changes in legislation	1	2											3
													0

Figure 5.10 – Surveyors' Thoughts on Dilapidations

5.23 Participant Information

Consensus was virtually reached that the conduct of the parties can contribute further to delays.

One participant added

“Conduct of people who have been in the profession for quite some time are used to doing things in a certain way. Their approach isn't necessarily always in line with updated guidance; i.e. ensuring a fair and reasonable outcome. It can be a very biased approach for their client, often exaggerating claims (trying it on), or shirking responsibility on cases”

5.24 How Do Surveyors Rank the Categories?

This question was designed to elicit how the participant ranked the issues. Dilapidations is complex and requires knowledge and understanding of a significant number of technical and legal issues, combined with skills in several areas. Reflecting on your responses above, please circle your *personal experience* of the three categories below (the categories are those set out above);

1. I have control
2. I have less control
3. I have no control

Category 1	Technical	1	2	3
Category 2	Influential	1	2	3
Category 3	Behavioural	1	2	3

21+	12					
21+	11	1	2	2	5	
21+	10	2	2	2	6	
21+	9	2	2	2	6	
16-20	8	2	2	2	6	
21+	7	1	2	2	5	
21+	6	3	3	3	9	
21+	5	3	3	3	9	
6-10	4	3	2	2	7	
21+	3	2	2	3	7	
6-10	2	2	2	3	7	
1-5	1	2	2	3	7	
	Total	23	24	27		Total
		Technical	Influential	Behavioral		

Figure 5.11 – Surveyors' Ranking of Categories

5.25 Participant Information

Behavioural issues scored 27, Influential issues scored 24 and Technical issues scored 23. Respondents 1-4 all scored 7. Respondents 5 and 6 both scored 9 indicating that they had no control over any of the issues. Respondents 7 and 11 both scored 5, meaning they had less control.

5.26 Discussion

The findings revealed that surveyors have more control over technical issues, less over influential issues and less over behavioural issues, but technical and influential issues were further influenced both internally and externally.

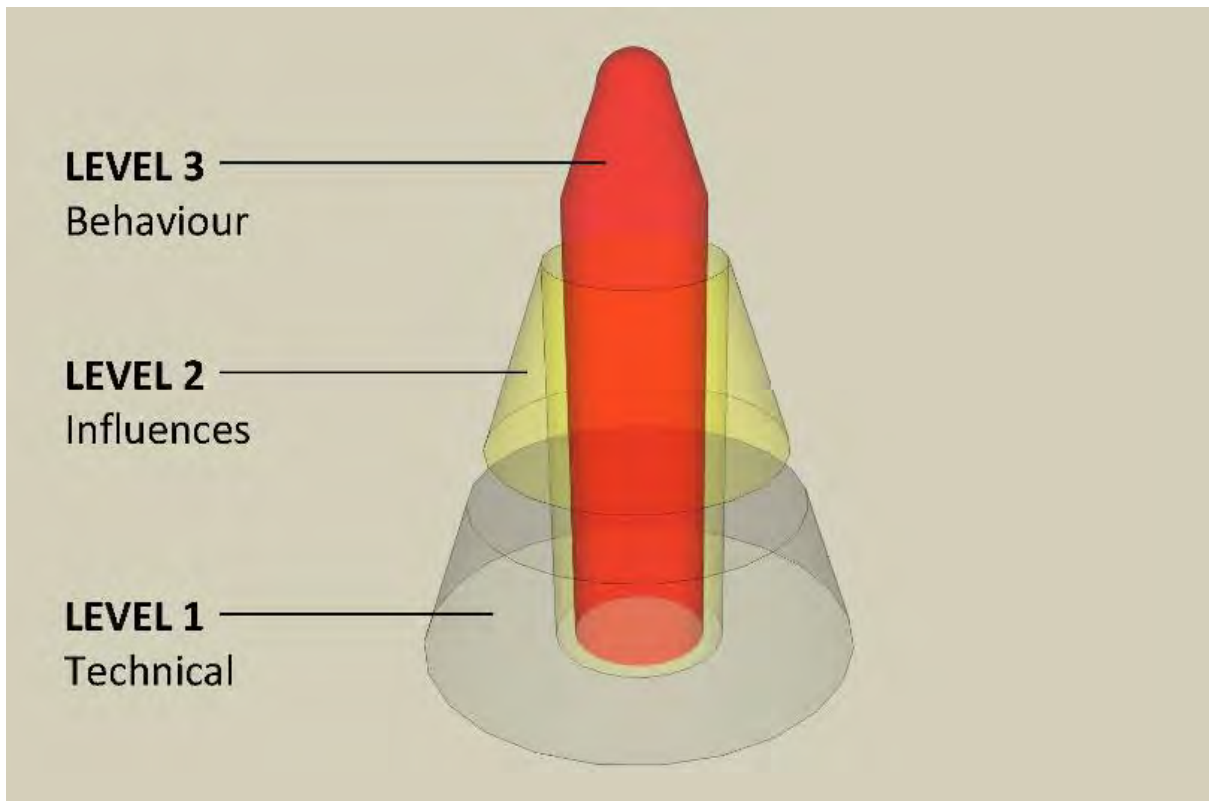


Figure 5.12 – The Cone

Source: Author

This enquiry is not suggesting that the behaviour of surveyors is the root cause of all issues but suggests that it is the surveyor's understanding of the issues that influences the way in which the dispute is resolved, and dispute professionals with a high EI may be more apt to resolve complex disputes without necessarily having technical skills (Barosa 2016-2017).

This research extends further the research of Kempton (2003) who studied the reasons why two surveyors inspecting the same property, primarily houses, come to different subjective survey decisions about its state of condition, repair and cost to repair. The research concluded that surveyor variability was caused by differences in surveyors experience, attitude to risk, heuristics (rules of thumb) and biases and although two surveyors inspecting the same building may come to different decisions as to its condition and state of repair, it does not follow that they are both wrong. It means that they both have a different opinion.

There are key similarities between the work of Kempton and this enquiry. Kempton and the FG both acknowledged that surveyor's opinions are subjective, and surveyors may be correct in their approach. Further, the reasons why there may be differences are similar, although attitudes to risk was not elicited from the literature review or FG. Both activities are undertaken in the built environment, and both review and offer opinions on disrepair and costs. In this respect this research is closer to the work of Kempton than Kumaraswamy, who unpacked the root causes of construction disputes.

This research differs however from Kempton's as dilapidations surveyors are working within a contentious and sometimes adversarial environment, and the underlying causes of delay and cost are germane and detrimental to the client and to the research question. It is recognised however that the way in which surveyors are influenced internally and externally may also apply when undertaking condition surveys. Another difference arises because unless a property is inspected twice by another surveyor, surveyor variability will go unchecked, whereas in dilapidations the surveyor's decision process is immediately subject to scrutiny and often criticism by the other surveyor.

According to Kruger and Dunning (1999) the success of persons, and their satisfaction depends upon their knowledge and knowing which rules to follow and strategies to take forward. It was noted that in the participant responses technical knowledge was rated low, with only two respondents rating it, but it scored higher on its ability to influence, and 5 surveyors stated that it has a behavioural influence. This means that knowledge in a dispute is used as a tool by the parties beyond its literal meaning, to bring influence and affect behaviour. Secondly, knowledge varies as does the strategies people follow. This would partly explain why there is a divergence of results on the same question in the same subject matter. Kruger and Dunning found that when people are incompetent both in the strategies they take forward or adopt to achieve the satisfaction they desire, they make incorrect conclusions and wrong choices, but they do not have the perception to realise it. They have an inability to self-monitor and cannot comprehend when they are right or likely to be wrong. They go further to say that the ability to make good judgements goes hand in hand with the ability to recognise it. They therefore overrate their competence. Dilapidations is not a subject matter that is well known and only becomes an area of learning during higher education or the workplace. Knowledge is therefore gained from learning and from experience through heuristics and problem solving (Pickrell 1999).

One respondent concurred with the findings of Ward (2016) who refers to the work of Larsen (2005) and cites barriers including "*complexity, cost, regulation, risk, time, opposing interests, threat and insult, uncertainty*", (Ward 2016 pp89-90). The sentiments of surveyors who could

be described as “stuck in their ways” are unlikely to change. The work of Argyris is also relevant as the concept of single and double-loop learning applies as the industry is poor on self-reflection and feedback.

The difference in responses between the experienced and less experienced may be compared to research which showed that experts have a better understanding of their own skills and the ability to self-monitor than novices (Kruger and Dunning 1999). Those engaged in dilapidations may lack time for reflection and instructions maybe undertaken on a one to one basis, often in small teams, without the requirement or desire to engage more widely within the workplace environment. One result of this is that surveyors are unlikely to receive feedback on their performance, skills and abilities.

One criticism of landlord's surveyors is that they are biased and exaggerate the claim. This is borne out in the research. Further surveyors tend to blame others if their success or strategy is limited or fails (Festinger and Carlsmith 1959). Kruger and Dunning (1999) conclude that failure can be attributed to more ambiguity, in that failure can be attributed to a single failed event out of many attributes, whereas success often requires many things to go right and may also include an element of luck.

The issue of bias scored high in the responses. Although the research questionnaire was not designed to elicit surveyors understanding of bias (Kempton 2003), surveyors understand the principles of bias. All respondents scored bias as a behavioural issue. This enquiry suggest that surveyors are not referring to their own bias but those of others.

The work of Love et al. (2011) was relevant in the responses. The respondents confirmed however that despite the regulatory framework of guidance and the Protocol, and the way in which they influence organisations, there is still inconsistency amongst behaviour which cannot be controlled.

The responses to have been tabulated and plotted as a line chart. To achieve this the responses of Question A - Influential (worth 2 points) and Question A – Behavioural (worth 3 points) were converted back to 1 point each to provide consistency of answers.

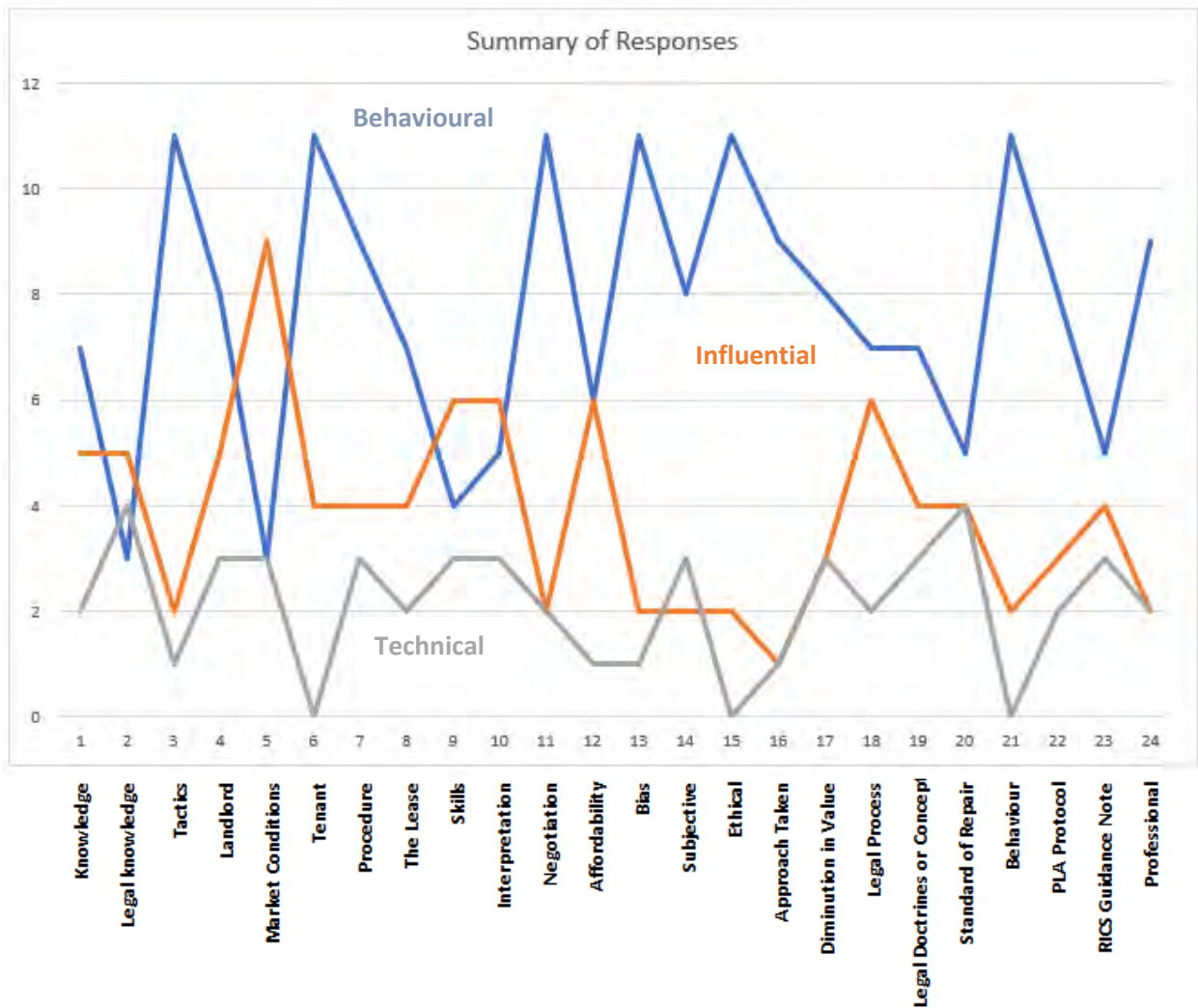


Figure 5.13 – Summary of all Responses

From Figure 5.13 and Table 5.3 which presents the findings based on Low – High scores, the highest scoring issue has been compared to the other two. The highest scores were given to behaviour, and the lowest to Technical. This triangulates and confirms Figure 5.12 whereby the three issues can be ranked in order of concern:

- Technical
- Influential
- Behavioural

Table 5.3 – Tabular Presentation of Responses to Technical, Influential and Behavioural Scoring

Issue	Technical	Influential	Behavioural
Knowledge	Low	Mid	High
Legal Knowledge	Mid	High	Low
Tactics	Low	Mid	High
Landlord	Low	Mid	High
Market Conditions	Low	High	Low
Tenant	Low	Mid	High
Procedure	Low	Mid	High
The Lease	Low	Mid	High
Skills	Low	High	Mid
Interpretation	Low	High	Mid
Negotiation	Low	High	High
Affordability	Low	High	High
Bias	Low	Mid	High
Subjective	Mid	Low	High
Ethical	Low	Mid	High
Approach Taken	Low	Low	High
Diminution in Value	Low	Low	High
Legal Process	Low	Mid	High
Legal Doctrines or Concepts	Low	Mid	High
Standard of Repair	Low	Low	High
Behaviour	Low	Mid	High
Protocol	Low	Mid	High
RICS Guidance Note	Low	Mid	High
Professional	Low	Low	High

The responses to technical grouping were lower than anticipated. For example, “knowledge”, “skills” and “diminution in value” were expected to score high on technical as a prime skill. The respondents reflected that these were behavioural issues used to manipulate the other party, see Table 5.4.

Table 5.4 – Summary of the Focus Group and Questionnaire Findings

Focus Group and Questionnaire Summary	Findings
Additional tensions not revealed in the literature	Affordability, Resources, Company Strength, Company Policy
Categorisation of Tensions	Technical, Influential, Behavioural
External and Internal Influences	Tensions can be influenced by external factors including affordability, strategic planning, regulation and market conditions and by Internal influences such as company policy, training, mentoring, skills, access to resources and knowledge
The Control of Tensions	Tensions are capable of being controlled externally or internally within an organisation, whilst others such as market conditions are out of reach
Tensions can be ranked	Technical, Influential and Behavioural. The resolution of technical issues is by research and enquiry. Although challenging, technical issues are less difficult to manage than behaviour issues such as tactics and the language of communication.
Tensions can be mapped	The mapping of tensions by chart allows for the first time an observation of how each compare and contrast with one another

5.27 Summary

By analysis of the questionnaire, the way in which surveyors rank tensions is established. Of note, the difficulty by which tensions, influences and behavioural issues is understood for the first time.

CHAPTER SIX

MAJOR STUDY AND ANALYSIS

6.0 Introduction

Practitioners agree that tensions caused by dilapidations generate uncertainty (Beckett 2016) culminating in delay and costs. What is unknown about these tensions is their root cause, variance, magnitude and significance. It is also unknown whether tensions are unique to dilapidations or whether they are comparable to other fields of dispute.

The previous chapters have:

- Reviewed the literature
- Engaged a Focus Group, the findings of which were pivotal in the development of our understanding of dilapidations
- Discovered that tensions are thematic and can be grouped into technical, influential and behavioural issues
- Discovered that the difficulty in which each is managed can be ranked

Kumaraswamy's (1997) research uncovered the core reasons of conflict in construction disputes and the work of Busby and Hughes (2004) defined the term pathogen as a word or phrase laying latent and unnoticed that causes problems when discovered at a later point, a parallel to poor lease drafting. The investigation found that behavioural concerns were the most challenging, while technological ones were the less so, illustrated by Figure 5.12 which distinguishes between technical, influential, and behaviour issues, each of which has its own impact on the outcomes of a dispute.

This chapter augments and expands the findings of this research thus far by providing a personal interpretation of tensions elicited from practising surveyors utilising Kelly's Personal Construct Theory (1955) and the Repertory Grid Technique. The interviews provided the opportunity to explore challenges faced by surveyors in an environment that allowed them to talk freely. Using Microsoft Teams during the Covid lockdown may have reassured some respondents, as they were able to communicate outside of the office. The way in which surveyors approach topics differs, with a significant emphasis on themselves.

6.1 The Pilot Research

A pilot study interview with two experienced surveyors who had participated in the focus group, pilot questionnaire, and survey was undertaken. The reasons were:

- They were familiar with the research strategy in advance
- They had given their informed consent
- Both were knowledgeable and reflective of the landlord and tenant surveyor's cognitive processes.

6.2 Final Repertory Grid Interviews and Results

During the Covid lockdown 34 constructs were discussed remotely using Teams, with ten experienced chartered building surveyors who act for landlords, tenants or both. Some worked for large organisations, some smaller, some were sole traders. Some were experiencing the effects of the pandemic (Andrews 2021). The background to the research, interview process and explanation of the repertory grid technique and how to respond using the scoring of 1-5 were first discussed together with the way in which the interview was anonymised following which each participant gave their informed consent. Each participant was informed of their right to withdraw from the process. They were given the opportunity to represent the landlord or tenant for their responses. The first five out of six chose to represent the tenant's surveyor. The author read out each construct and participants either made notes or asked for the constructs to be read out again. Their responses to each construct were recorded as a 1-5 against each element for each construct. Notes were taken if participants wanted to explain their reasoning. The author gave no feedback or comment on any responses and made it clear that the process was only to record the participants responses. It was explained that there were no right or wrong answers, see Figure 6.1.

6.3 Findings of Repertory Grid Interviews

The interview results are disseminated in two ways. The first is a descriptive analysis of the results, as Jankowicz recommends (2004). The second analyses data using correlation coefficient analysis and decision tree analysis. Correlation analysis was used to understand the correlation between the landlord and tenant surveyors and between themselves and solicitors, landlord and tenant. Decision tree analysis was used to give insight into probability and if there were patterns attributable to either the landlord's or tenant's surveyor.

6.4 What the Respondents Thought of the Interview

The first part of this section examines the overall evaluation and the second part a subjective evaluation of each construct. Some respondents noted that the comparisons and contrasts were not always direct or contrasting but the decision to adjust and rework the implicit pole was made to simulate the respondents' professional experience, to allow them to postulate and deliberate the two constructs, and for them to consider, evaluate, and question their own attitudes and positions.

	Theme	1	Tenants Surveyor	Tenant	Tenants Solicitor	Landlords Surveyor	Landlord	Landlord's Solicitor	5
1	Market Conditions	Researches market conditions and data and/or make enquiries from others							Relies on instinct or personal knowledge and will not make enquiries
2	Affordability	Creditworthiness is considered at the outset							The risk of nil settlement or bankruptcy is not entertained
3	Resources	Utilises internal and external resources, books, cases, cost information etc which aids settlement							Relies on experience and intuition which may be a barrier to settlement
4	Resources	Successful settlement occurs because they know what they are doing							Delays are caused because they don't know what they are doing
5	Internal Resources	Encourages reflection within the organisation							Little appetite to adapt, is repetitive in their approach
6	Skills	Continues to learn, update, train, reflect							Indifferent to life-long learning
7	Skills	Listens to others first							Doesn't listen and promotes their own case
8	Knowledge	Comprehends shortfalls in their own knowledge							Ignorant to shortfalls in their own knowledge
9	The Lease	Will work within the meaning of the covenant							Will try to introduce new terms
10	PLA Protocol	Adopts the structure and spirit of the Protocol to make progress towards settlement							Uses the Protocol as a means to cause unnecessary delay
11	Tactics	Gently reminds others of the potential risk of litigation							Quick to use the threat of litigation
12	Tactics	How successful a party has been in settling claims is generally not referred to							How successful a party is, is used to apply pressure
13	Tactics	Has a consistent approach to the claim							Will change tactics if they cannot afford to settle
14	Tactics	Responsive, proactive, helpful							Unresponsive, delaying, hostile
15	Bias	Is impartial towards their client or case							Is biased towards their client or case
16	Empathy/EI	Understands another person's values							Is not aware of another person's values
17	Empathy/EI	Takes time to understand the emotions of others							There is little time to understand the emotions of others
18	Self-serving bias	Understands that success may be a team effort							Considers that success is usually down to them
19	Self-serving bias	Incentivised fees make little difference to the outcome							Incentivised fees can influence the outcome
20	Self-serving bias	Well written and accurate schedules should be expected							Exaggerated or grossly diminished claims are to be expected
21	Fundamental Attribution error/Loss aversion/self serving bias	When things go wrong they take ownership							When things go wrong they blame others
22	Confirmation Bias & Influence	Remains open minded about information received, even if unfavourable							Rejects viable information because it doesn't help their case
23	Heuristics	Takes time to investigate, ask questions, drill down							Tends to adopt a previous approach to problems
24	Holistic approach	Will eventually take a global approach towards settlement							Will maintain a forensic approach to settlement
25	Behavioural Style	Accommodating and Obliging							Competing and dominating
26	Negotiation	Is trained in negotiation skills							Has no bespoke training
27	Negotiation	A systematic approach is taken giving meaning to each argument							It's all about the end figure
28	Awareness	Initial behaviour is important and can ease tensions							Initial behaviour is irrelevant
29	Awareness	May exhibit anxiety or passion							May exhibit guilt or shame
30	Certainty effect	Can differentiate between certain and probable outcomes							Poor understanding of outcomes
31	Approach Taken	Takes a flexible approach to communication which reduces tension and builds trust							Takes a rigid or formulaic approach to communication which increases tensions
32	Approach Taken	Can differentiate between an objective and subjective issue							Is ambivalent to objective and subjective issues
33	Approach Taken	Is trustworthy							Tries it on and waits for response
34	Approach Taken	Surveyors are always experts							Surveyors are at liberty to be advocates

Figure 6.1 – The Repertory Grid

6.5 Overall Assessment

Respondents were comfortable with the subject matter. To avoid bias or suggesting a predetermined response, the theme of each construct was withheld. Some respondents replied in the same order, while others grouped the elements into pairs, such as Tenant Solicitor/Landlord Solicitor. However, the nature of the questions occasionally elicited a response that reflected the interpretation of the construct. Prior to answering some respondents recorded the construct in its entirety, while others abbreviated it, and others remembered it. Therefore, the ability to comprehend difficult questions varied, meaning that some respondents could recall past experiences to difficult questions more easily than others.

6.6 Eyeball Analysis

Table 6.1 - Summary of Respondents' Replies to Each Construct

Number	Theme	Construct Implicit Pole Emergent Pole	Summary of Responses
1	Market Conditions	Researches market conditions and data and/or make enquiries from others Relies on instinct or personal knowledge and will not make enquiries	In the literature review and focus group, the issue of interpretation and large portfolio landlords' efficiencies were referred to. In contrast, inadequate preparation or laziness is admitted, as a lack of thought leads to poor judgement. Large portfolio landlords will be aware of market conditions and commission pre-lease advice.
2	Affordability	Creditworthiness is considered at the outset The risk of nil settlement or bankruptcy is not entertained	Risk versus benefit is considered, and the Protocol is mentioned, but not as a guideline. It was recognised that the Protocol influences surveyors. Affordability may suggest the probability of not being compensated, indicating that surveyors also consider client creditworthiness. Bankruptcy was also discussed in the Focus Group.
3	Resources	Utilises internal and external resources, books, cases, cost information etc which aids settlement Creditworthiness is considered at the outset	While some have access to excellent resources, others may not, due to cost, apathy, or ignorance. Negotiation skills are crucial but the cost of skilling up is uncertain. Younger, less experienced surveyors are stereotyped as having to relying on their research. Moderating provides surveyors a second opinion, but it is an opposing opinion from the tenant surveyor and not from the landlord's team. Surveyors learn

		Relies on experience and intuition which may be a barrier to settlement	from more experienced surveyors, but the costs are hidden.
4	Resources	Successful settlement occurs because they know what they are doing Delays are caused because they don't know what they are doing	Time as a delay tactic is previously referred to and is used in different ways to the same effect. First, to extend the negotiation period, which is a "wait and see" tactic, used by tenants to understand what the landlord does with the property, or by the landlord to see if any offers to settle are increased; or to obtain better cost information, quotations, replies, or funding; and secondly, to frustrate the landlord. Sometimes tenants avoid pre-lease advice, resulting in delays in addressing conflicts that should not have occurred. Landlords may be knowledgeable because property is their business and sometimes surveyors employ delays strategically. National retailers may use specialists, while some surveyors with less specialist knowledge may themselves cause delays. This question elicits a wide range of interpretations and judgments.
5	Internal Resources	Encourages reflection within the organisation Little appetite to adapt, is repetitive in their approach	Some surveyors acknowledge that reflection is important yet have little time to do so. The "sausage machine mindset" refers to the technique and format of dilapidations schedules following external guidance. Tenants' schedule responses are not reflection but analysis. The less experienced surveyors developed a pattern during the interviews, and a lack of expertise, skills, and comprehension may cause delay.
6	Skills	Continues to learn, update, train, reflect Indifferent to life-long learning	Surveyors attend training courses or seminars to fulfil their continuous professional development (CPD) as opposed to attending targeted training. There is a paucity of high-level dilapidations training which is key towards improving understanding and reducing noise and bias.
7	Skills	Listens to others first Doesn't listen and promotes their own case	The responses reflect the standoff and intransigence reported by surveyors. Covey (2004) highlighted listening as a talent for understanding opposing views or opinions. The inspection is rarely undertaken by both surveyors together prior to being served missing an opportunity to examine the issues first-hand. Kahneman, Sibony, and Sunstein (2021) describe the blind nature of the reactions as a pushback in which

			respondents in a debate seek for bias in others but not in themselves.
8	Knowledge	Comprehends shortfalls in their own knowledge Ignorant to shortfalls in their own knowledge	The question asked if surveyors were aware of their knowledge gaps or not but was interpreted in reference to landlord's surveyors adopting a wait and see policy regarding items which they are unsure about, which is either tactical and /or influenced by others. The tenant surveyor may be the first to contest the items' accuracy.
9	The Lease	Will work within the meaning of the covenant Will try to introduce new terms	The meaning of covenants and their interpretation are important, but the discussion revealed that surveyors are less confident with lease interpretation than the skills required to measure or describing a building defect. It also revealed that the lack of reference to solicitors implies that surveyors are likely to be unassisted on legal matters.
10	The Protocol	Adopts the structure and spirit of the Protocol to make progress towards settlement Uses the Protocol as a means to cause unnecessary delay	Variable responses show ambiguity, but all respondents acknowledged its importance and effect. The Protocol's impartiality and guiding principles make it a useful reference if either party transgresses. During negotiations, the Protocol is referred to more than the RICS Guidance Note and case law.
11	Tactics	Gently reminds others of the potential risk of litigation Quick to use the threat of litigation	Surveyors are unlikely to relish any form of legal action. They note that landlords and tenants do not want to litigate, which may please surveyors who would otherwise be scrutinised for their schedules, responses, and conduct. Landlords may consider litigation if they've done everything, and the tenant isn't responding or both parties can't reach a compromise.
12	Tactics	How successful a party has been in settling claims is generally not referred to How successful a party is, is used to apply pressure	Responses imply that the practise is known, although experience varies. The common theme is that it is utilised tactically to enhance success rates or during negotiations. This could be seen as intimidation or simply marketing.
13	Tactics	Has a consistent approach to the claim Will change tactics if they cannot afford to settle	The strategy of changing tactics may occur due to several reasons, and either party is likely to have several methods including the disclosure of additional information, instructing solicitors, to persuade the other party into accepting or changing its position on an issue, to influence the other party,

			to bring about closure, or simply because the negotiations are floundering.
14	Tactics	Responsive, proactive, helpful Unresponsive, delaying, hostile	A limited response focusing on the implicit pole, emphasising that tenants may do nothing, and clients can be troublesome. Strategies are to be expected.
15	Bias	Is impartial towards their client or case Is biased towards their client or case	The types of bias were not discussed during this question. The respondents did not see bias towards their client as misguided or dishonest. Bias was discussed in the context of formulating a coherent case for which the tenant has to answer, or as a method of safeguarding the tenant's resources, and not in the pretext of subterfuge. Although the conventional meaning given to bias includes the predisposition to lean and favour a party to the dispute, it is conceded that bias is inevitable and ultimately surveyors are simply championing their client's case. If the agency for this includes a dynamic approach to strategy, then so be it. According to Kahneman, Sibony and Sunstein (2021) bias cannot be changed, but noise can.
16	Empathy	Understands another person's values Is not aware of another person's values	The ability to understand the other side's principles or moral belief is overlooked but not intentionally. For some respondents, the question generated a pause to gather thoughts and to speculate as they had not been asked to consider this before. These type of questions about behaviour animated a slower response, reflecting on why they hadn't considered empathy before (Randolph 2016).
17	Empathy	Takes time to understand the emotions of others There is little time to understand the emotions of others	The ability to understand the other side in a dispute was not presided over very long compared to other constructs. One participant noted that it is important. Compassion, apprehension or awareness may not arise, and the supposition is that there may be little time or appetite to cognize either the landlord or tenant's empathy, in the belief that surveyors are unlikely to reveal their own to each other.
18	Self-Serving Bias	Understands that success may be a team effort Considers that success is usually down to them	A low response to this question suggests that respondents didn't think it a concern or that it's doesn't occur frequently. The stereotypical anecdotal convention that younger surveyors have much to learn was discussed again, but there is little evidence that inexperienced surveyors think that success is down to them. One participant noted that one party

			can gain an advantage as a result of the other party's inexperience.
19	Self-Serving Bias	<p>Incentivised fees make little difference to the outcome</p> <p>Incentivised fees can influence the outcome</p>	<p>The surveyor's fee arrangement with their client is contractual but may or may not be recovered under the lease. Respondents noticed that tenant surveyors are more inclined to charge incentive fees when paid for savings. It was raised as a tension as they may be seen as pernicious and may precipitate a significantly reduced response. The event is comparable to the converse allegation of exaggerated claims but has not acquired as much momentum or acclaim. Incentivised fees may promote thought and focus attention, although there's little evidence to unpack this claim.</p> <p>There are three actors to deliberate such issues at the negotiation stage.</p> <p><u>The Client</u></p> <p>The matter is a contractual one based on their fee arrangement. The client may be both oblivious and indifferent to the concept.</p> <p><u>The Surveyor</u></p> <p>The organisations remuneration arrangements may include an incentivised fee arrangement, thereby influencing the surveyor. Alternatively, the landlord's surveyor may include their costs and attempt to recover them regardless of lease covenant.</p> <p><u>The Opposing Surveyor</u></p> <p>The opposing surveyor may not know about the incentivised fee arrangement or may ask for it to be disclosed. The proposition is that it may understate or downplay the response, the reward being a larger fee. The question of fact may be asked, to ascertain if fees for negotiation are recoverable. Contrastingly, fees for negotiation may be a cause for tension.</p>
			<p>Whether or not any of the fee arrangements are recoverable is a matter of fact and the terms of the lease, but if they are not recoverable, they can be described as:</p> <ul style="list-style-type: none"> • Ineffectual; meaningless, struck out, to be expected • Irritative; provokes a response that calls for evidence, wastes time • Incendiary; provokes a stern response.

			This enquiry describes these tensions as trip-wires and distinguishes them as purposefully included, with warnings signs given (in the form of costs) to provoke, knowingly or unwittingly, and are therefore tactical, but erroneous. Other examples include claims for loss of rent and rates.
20	Self-serving Bias	Well written and accurate schedules should be expected Exaggerated or grossly diminished claims are to be expected	According to Construct 19, exaggerated claims receive more scrutiny than understated or trivialised responses. If tenant responses are similarly egregious, it's not surprising that landlords' claims are large, given that the surveyor expects deductions, which leads to negative reciprocity.
21	Fundamental Attribution Error/Loss Aversion	When things go wrong, they take ownership When things go wrong, they blame others	The respondents couldn't interpret this because they lacked experience.
22	Confirmation Bias and Influence	Remains open minded about information received, even if unfavourable Rejects viable information because it doesn't help their case	The respondents couldn't interpret this because they lacked experience.
23	Heuristics	Takes time to investigate, ask questions, drill down Tends to adopt a previous approach to problems	No comments given
24	Behavioural Style	Will eventually take a global approach towards settlement Will maintain a forensic approach to settlement	The responses highlight three themes, one of process, tactics and awareness or understanding of business rationale. The approach taken confirms that the fundamental issues of the dispute are first discussed. Each claim commences with a demand followed by a refusal. Randolph, (2016) states that claims include a rational part and sometimes an emotional part. The process following serving of the notice through the Scott schedule is set out.
			Stage 1 The Claim Stage 2 Initial response Stage 3 Argument and counter argument Stage 4 Narrow the differences - win and concede

			<p>Stage 5 Make an offer to settle based on a global approach or a forensic approach</p> <p>Stage 6 Accept and agree</p> <p>Stage 7 Move to ADR or litigation</p>
			<p>Surveyors are reluctant to arrive at Stage 5 without Stages 2-4 and this maybe because neither party likes to concede. Of the first six respondents, five wished to respond as the tenant's surveyor. What does this say? Is it because the burden lies with the landlord's surveyor to demonstrate breaches, remedies and costs, and for the tenant's surveyor to merely respond? One participant commented that this is the singular biggest cause for delay meaning the time taken to make a global offer (which recognises concession) is likely to be less than the time it takes to make an offer based on a forensic approach. Behavioural style is pivotal and indispensable to the period it takes to agree to settle. Although one participant referred to the tactic of the tenant making a without prejudice offer prior to lease end, no other respondents in this or the focus group referred to this, despite its merits. They all held the unanimous position that the claim amounts to a negotiation, or horse trade.</p>
			<p>The respondents used their own heuristics on occasions. This construct was reduced to global/forensic, and Construct 34 was reduced to expert/advocate, as a way to quickly understand the question and the response.</p>
25	Negotiation	<p>Accommodating and Obliging</p> <p>Competing and dominating</p>	<p>The respondents didn't develop their responses to this question beyond observing that surveyors change their responses as a tactical approach.</p>
26	Negotiation	<p>Is trained in negotiation skills</p> <p>Has no bespoke training</p>	<p>The significance is:</p> <ol style="list-style-type: none"> 1. Surveyors should be trained in negotiation if they wish to address dilapidations. In the wider sense this applies to all actors engaged in disputes 2. Training should be available. The surveyors did not propose who should provide training, be it in house, outsourced or via a professional institution. Negotiation training is available however, but surveyors did not give insight into

			<p>why they had not undertaken any, or intimate what barriers stood in their way, such as time or costs of training</p> <ol style="list-style-type: none"> 3. Surveyors want to be trained, so there is both an admission that their skills in training are either insufficient or lamentable, and that they wish to do something about it 4. Surveyors are not trained, acknowledging that this unique skill is lacking. It also demonstrates that surveyors ask themselves “how can this be?”, that such a significant skill is required in dilapidations, yet surveyors remain untrained (McMillan 2016)
27	Negotiation	<p>A systematic approach is taken giving meaning to each argument</p> <p>It's all about the end figure</p>	<p>A systematic approach is taken giving meaning to each argument.</p> <p>This construct is similar to construct 24. Respondent's responses vary but the question centred on time, meaning that those who can step away from dilapidations to focus solely on the settlement figure, are likely to spend less time on it than others who do not. The 7 stages of the claim are set out and this research reveals that in order for surveyors to focus on the settlement figure, the following must apply:</p> <ol style="list-style-type: none"> 1. An acceptance and willingness to compromise (Davies 2018) 2. A mindset that the settlement figure can be un-coupled from the claim. It is proposed that surveyors who are excellent negotiators may be successful in other fields of negotiation 3. An acknowledgment that if expert witnesses are instructed, they may also propose a settlement figure, having had no previous involvement with the dispute 4. A comprehensive understanding of the claim and its issues 5. A certainty that they can encourage their client to reach a similar conclusion, having articulated the merits of the claim
28	Awareness	<p>Initial behaviour is important and can ease tensions</p> <p>Initial behaviour is irrelevant</p>	<p>Respondents emphasised the value of pre-communication. The opening correspondence, often by email, may recognise the timetable or response or articulate the client's stance and modus operandi.</p>

			Professional yet pleasant communication can set the stage for how the negotiation and conflict will unfold. In 2007, 47% of executives and in-house solicitors indicated disliking their counterpart lengthened litigation. (Randolph 2016).
29	Awareness	May exhibit anxiety or passion May exhibit guilt or shame	Several respondents said they didn't understand this question. Emotional intelligence has a significant but undetected role in disputes. Understanding how others may respond or interpret actions or language might change the conflict's direction and momentum and how much time is wasted by the parties. The results of the question demonstrate that there is little conscious awareness or appetite.
30	Certainty Effect	Can differentiate between certain and probable outcomes Poor understanding of outcomes	Being able to interpret and decode certain and probable outcomes is a blend of art and science. The few respondents who wished to express this further considered risk. The approach to risk in the context of the dispute is recognised in distinct pathways, including the commercial risk of championing an ambitious claim which may result in a cash loss, to being over confident in defending a downgraded response which results in litigation. Surveyors however often maintain a restraint when sensing that a potential settlement may be imminent and take instructions regarding outcomes.
31	Approach Taken	Takes a flexible approach to communication which reduces tension and builds trust Takes a rigid or formulaic approach to communication which increases tensions	The way in which actors engage with one another plays a crucial aspect of negotiation and personifies them.
32	Approach Taken	Can differentiate between an objective and subjective issue Is ambivalent to objective and subjective issues	This construct is similar to constructs regarding bias but also the nature of the claim when analysed line by line. The contrast is made between landlord and tenant surveyor, with the emphasis of understanding being placed with the surveyor. The question was to unpack the issue of delays caused by objective and subjective issues, and how they are differentiated. The expression of subjectivity is more likely to materialise than objectivity in negotiation, with the allegation that the interpretation of issues in dispute is sometimes made by both sides.

33	Approach Taken	<p>Is trustworthy</p> <p>Tries it on and waits for a response</p>	<p>There was no suggestion by any participant of deceitfulness. The respondents acknowledge that there are areas of grey that neither party to the dispute has an answer, other than to negotiate the point. The surveyors suggested that no harm can come by suggesting a line in a claim, as the other party can respond to it. It was stated that both parties use this tactic and further suggested that this is undertaken knowingly. Another participant stated that this is the point of dilapidations, to suggest something, for it to be knocked back and responded to until a resolution is achieved. Alternatively, more than one option can be suggested. These can be referred to as:</p> <p>Plausible Proposition A suggestion, idea or proposal that is capable of being plausible, it could happen, it is imaginable, it could be accepted as being true</p> <p>Persuasive Proposition A suggestion, idea or proposal that is convincing, compelling, powerful, forceful</p> <p>Perfect Proposition A suggestion, idea or proposal that is capable of being proven, unchallengeable, undeniable, conclusive, is true</p> <p>Problematic Proposition A suggestion, idea or proposal that is incapable of being true, unsubstantial, without substance.</p>
34	Approach Taken	<p>Surveyors are always experts</p> <p>Surveyors are at liberty to be advocates</p>	<p>The varied responses gave different meanings to the interpretation of the question. The factual question of whether a surveyor is an expert or advocate was expanded only by one participant with the response that surveyors are not experts unless instructed as an expert witness. Surveyors appear to be confused about the question and are unable to distinguish between behaving like an expert (with professionalism and integrity whilst at the same time advocating their clients' case) and being instructed as an expert witness. They are mutually exclusive, so that if a surveyor is engaged pre-litigation, they may have to decline an invitation to act as an expert witness. So, to act like an expert, is not the same as being instructed as an expert. The opposite is also</p>

			<p>true, so that surveyors are expected to negotiate and resolve a dispute by advocating their client's case, something expert witnesses cannot do.</p>
--	--	--	---

6.7 The Emergent and Implicit Pole Analysis

6.7.1 The Tenant's Surveyor

The Tenant's Surveyor scored themselves closer to the emergent pole on 49 occasions. The most frequent were; Utilises internal and external resources, successful settlement occurs because they know what they are doing, they continue to learn, update and train, they listen to others first, and initial behaviour is important. These collectively are grouped into resources, skills and awareness. They scored themselves closer to the implicit pole on 9 occasions. The most frequent were; incentivised fees can influence the outcome, exaggerated or grossly diminished claims are to be expected and surveyors are at liberty to be advocates. These collectively can be grouped as self-serving bias, bias, approach taken.

They scored the landlord's surveyor closer to the emergent pole on 9 occasions. The most frequent were; initial behaviour is important and can ease tensions, grouped within awareness. They scored the landlords surveyors closer to the implicit pole on 9 occasions. The most frequent were; surveyors are at liberty to be advocates grouped within approach taken.

6.7.2 The Landlord's Surveyor

They scored themselves closer to the emergent pole on 62 occasions. The most frequent were; Adopts the structure of the Protocol and well written and accurate schedules should be expected. These collectively can be grouped as influenced by the Protocol, self-serving bias. They scored themselves closer to the implicit pole on 9 occasions. The most frequent were; Has no bespoke training, and surveyors are at liberty to be advocates. These collectively can be grouped as negotiation and approach taken.

They scored the tenants surveyor closer to the emergent pole on 26 occasions. The most frequent were; The Protocol, can differentiate between certain and probable outcomes and can differentiate between objective and subjective issues. They can be collectively grouped as the influence of the protocol, certainty effect and approach taken. They scored the tenant surveyor closer to the implicit pole on 15 occasions. The most frequent were; has no bespoke training, surveyors are at liberty to be advocates, grouped as negotiation and approach taken.

6.8 What Does This Tell Us?

Landlord’s surveyors thought they were closer to the emergent pole 50% more times than the tenant’s surveyors rated themselves. Is this because they have more to prove and lose? Both groups stated themselves closer to the implicit pole on 9 occasions. The grouping of the tenant’s responses was more obvious than the landlord’s responses, resulting in a pattern of consistency towards the emergent pole regarding resources and awareness. In contrast the landlord surveyors grouping was less prominent but focused on the Protocol and self-serving bias. Neither group of surveyor’s results grouped the same themes close to the emergent pole. The landlord’s surveyors results elicited that they had no bespoke training in negotiation, of which the tenant’s surveyors had no grouping. Both groups of surveyors were consistent that surveyors are at liberty to be advocates. In contrast, the perception of the other surveyors was different from that group’s own perceptions of itself.

6.9 Participant Information

The emergent pole is seen as best practice, morally correct and professional, with the implicit pole being the opposite. The relationship between “Self” and the other elements can be seen at Figure 6.3. Both tenant and landlord surveyors on average (mean) rated themselves lower than their opposing surveyor. When ranked 1 – low score, to 5 high score, the ranking is as follows – See Figure 6.2, (tenant surveyor green, landlord surveyor yellow).

	Tenants Surveyor	Tenant	Tenants Solicitor	Landlords Surveyor	Landlord	Landlord's Solicitor
Total	381	590	455	509	633	499
Average (mean)	76.2	118	91	101.8	127	99.8
Order	1	5	2	4	6	3
Total	483	600	522	361	542	481
Average (mean)	96.6	120	104.4	72.2	108	96.2
Order	3	6	4	1	5	2

Figure 6.2 - Sum of Surveyors Constructs Ranked in Order

The two lowest scores were attributed to the landlord’s surveyor (361) and tenant’s surveyor (381). Landlords’ surveyors rated themselves closer to the tenants’ surveyors (483) than tenant’s surveyors to landlords’ surveyors (509) who rated the tenants’ solicitor closer to them (455). The implicit bias is that each surveyor rated themselves closer to the emergent pole than implicit pole (FitzGerald and Hurst 2017). Surveyors were complimentary about their

peers, and carefully considered their response, sometimes considering the other elements before answering. There was little to suggest a “backlash,” a negative reaction against the other side (Amanatullah and Tinsley 2013) and surveyors ranked the landlord and tenant in fifth and sixth place. The interpretation between acting as an expert or advocate (Fisher 2017, Beatty 2010) was discussed and it was clear that some surveyors did not know if they were acting as an expert or advocate, not through lack of thought, but they thought from lack of guidance. The proposition that surveyors working for larger practices had access to better resources or monitored performance was raised several times (Barroso-Castro, Villegas-Perinan and Casillas-Bueno 2016).

6.10 Statistical Correlation Analysis

This method gives insight into the correlation between the Elements through the lens of each participant.

The 34 Constructs have been grouped into:

- Diligence and Understanding
- Tactical Approach
- Bias and Noise
- Empathy and Emotional Intelligence
- Negotiation Skills

The sum of the 5 participants who responded on behalf of the Tenant’s Surveyor and Landlord’s Surveyor is divided by 34 to show the mean data set. Each construct is colour coded. Pale for a low score close to the Emergent Pole, and a deeper colour for a high score closer to the Implicit Pole.

6.11 Tenant’s Surveyor Correlation

Figure 6.3 sets out the mean of the combined score of each construct, of the 5 participants who responded on behalf of the Tenant Surveyor shown between a value of 0 and 1. The Emergency Pole is closer to 0 and the Implicit Pole is closer to 1. It can be seen that overall they mark themselves closer to the Emergent Pole than the Implicit Pole in 23 of the 34 constructs.

		Implicit Construct	Tenants Surveyor	Tenant	Tenants Solicitor	Landlords Surveyor	Landlord	Landlord's Solicitor	Emergent Construct
		1							5
		Diligence & Understanding							Diligence & Understanding
1	Market Conditions	Researches market conditions and data and/or make enquiries from others	0.24	0.56	0.50	0.47	0.62	0.56	Relies on instinct or personal knowledge and will not make enquiries
2	Affordability	Creditworthiness is considered at the outset	0.41	0.47	0.41	0.47	0.35	0.44	The risk of nil settlement or bankruptcy is not entertained
3	Resources	Utilises internal and external resources, books, cases, cost information etc which aids settlement	0.21	0.71	0.26	0.47	0.71	0.32	Relies on experience and intuition which may be a barrier to settlement
4	Resources	Successful settlement occurs because they know what they are doing	0.15	0.53	0.29	0.29	0.59	0.32	Delays are caused because they don't know what they are doing
5	Internal Resources	Encourages reflection within the organisation	0.32	0.50	0.35	0.41	0.56	0.41	Little appetite to adapt, is repetitive in their approach
6	Skills	Continues to learn, update, train, reflect	0.15	0.65	0.21	0.29	0.62	0.24	Indifferent to life-long learning
7	Skills	Listens to others first	0.26	0.50	0.38	0.56	0.65	0.50	Doesn't listen and promotes their own case
8	Knowledge	Comprehends shortfalls in their own knowledge	0.21	0.68	0.29	0.38	0.68	0.29	Ignorant to shortfalls in their own knowledge
9	The Lease	Will work within the meaning of the covenant	0.29	0.47	0.38	0.50	0.47	0.41	Will try to introduce new terms
10	PLA Protocol	Adopts the structure and spirit of the Protocol to make progress towards settlement	0.26	0.41	0.35	0.38	0.47	0.38	Uses the Protocol as a means to cause unnecessary delay
		Tactical Approach							Tactical Approach
11	Tactics	Gently reminds others of the potential risk of litigation	0.32	0.38	0.29	0.53	0.50	0.47	Quick to use the threat of litigation
12	Tactics	How successful a party has been in settling claims is generally not referred to	0.44	0.47	0.50	0.47	0.47	0.50	How successful a party is, is used to apply pressure
13	Tactics	Has a consistent approach to the claim	0.38	0.53	0.44	0.38	0.47	0.47	Will change tactics if they cannot afford to settle
14	Tactics	Responsive, proactive, helpful	0.38	0.47	0.41	0.44	0.47	0.41	Unresponsive, delaying, hostile
31	Approach Taken	Takes a flexible approach to communication which reduces tension and builds trust	0.26	0.38	0.53	0.44	0.53	0.59	Takes a rigid or formulaic approach to communication which increases tensions
32	Approach Taken	Can differentiate between an objective and subjective issue	0.35	0.53	0.32	0.32	0.53	0.38	Is ambivalent to objective and subjective issues
33	Approach Taken	Is trustworthy	0.38	0.56	0.35	0.59	0.62	0.44	Tries it on and waits for response
34	Approach Taken	Surveyors are always experts	0.65	0.68	0.50	0.68	0.71	0.50	Surveyors are at liberty to be advocates
		Bias & Noise							Bias & Noise
15	Bias	Is impartial towards their client or case	0.53	0.74	0.53	0.56	0.71	0.56	Is biased towards their client or case
18	Self-serving bias	Understands that success may be a team effort	0.41	0.35	0.32	0.53	0.38	0.32	Considers that success is usually down to them
19	Self-serving bias	Incentivised fees make little difference to the outcome	0.47	0.47	0.29	0.53	0.53	0.32	Incentivised fees can influence the outcome
20	Self-serving bias	Well written and accurate schedules should be expected	0.56	0.47	0.53	0.53	0.59	0.50	Exaggerated or grossly diminished claims are to be expected
21	Fundamental Attribution	When things go wrong they take ownership	0.32	0.59	0.41	0.38	0.62	0.47	When things go wrong they blame others
22	Confirmation Bias & Influence	Remains open-minded about information received, even if unfavourable	0.26	0.50	0.21	0.41	0.56	0.38	Rejects viable information because it doesn't help their case
		Empathy & Emotional Intelligence							Empathy & Emotional Intelligence
16	Empathy/EI	Understands another person's values	0.29	0.44	0.47	0.35	0.50	0.47	Is not aware of another person's values
17	Empathy/EI	Takes time to understand the emotions of others	0.41	0.53	0.56	0.47	0.56	0.59	There is little time to understand the emotions of others
24	Holistic approach	Will eventually take a global approach towards settlement	0.26	0.35	0.41	0.32	0.41	0.47	Will maintain a forensic approach to settlement
25	Behavioural Style	Accommodating and Obliging	0.44	0.38	0.41	0.53	0.53	0.50	Competing and dominating
28	Awareness	Initial behaviour is important and can ease tensions	0.15	0.41	0.38	0.29	0.53	0.44	Initial behaviour is irrelevant
29	Awareness	May exhibit anxiety or passion	0.35	0.29	0.44	0.29	0.32	0.44	May exhibit guilt or shame
		Negotiation Skills							Negotiation Skills
23	Heuristics	Takes time to investigate, ask questions, drill down	0.26	0.47	0.41	0.50	0.53	0.41	Tends to adopt a previous approach to problems
26	Negotiation	Is trained in negotiation skills	0.35	0.68	0.53	0.41	0.68	0.50	Has no bespoke training
27	Negotiation	A systematic approach is taken giving meaning to each argument	0.21	0.71	0.38	0.41	0.71	0.41	It's all about the end figure
30	Certainty effect	Can differentiate between certain and probable outcomes	0.24	0.50	0.29	0.35	0.47	0.29	Poor understanding of outcomes

Figure 6.3 – Mean of Sum of Tenant Surveyors' Repertory Grid

6.11.1 Tenant's Surveyor Analysis

Tenant Surveyors consider that in Diligence and Understanding, they:

- Are closer to the Emergent Pole for 9 of the 10 constructs followed by the Tenant's Solicitor, Landlord's Solicitor, Landlord's Surveyor, Tenant and Landlord
- They acknowledge that landlord's consider creditworthiness before all else
- Successful settlement occurs because they know what they are doing before anyone else and continue to learn and train before anyone else. These two constructs are significant because they are the lowest score in their table.
- They significantly research market data more than the others
- Consider the landlord and tenant close to the Implicit Pole
- The Landlord and Landlord's Solicitor are closer to the Implicit Pole.

Tenant Surveyors consider that in Tactical Approach, they:

- Are closer to the Emergent Pole for only 4 of the 8 constructs but overall rank themselves closer to the Emergent Pole followed by the Tenant's Solicitor, Landlord's Solicitor, Landlord's Surveyor, Tenant and Landlord, the same order as Diligence and Understanding.
- Share their ability to be tactical with the Tenant's Solicitor. As a team they are more tactical than the Landlord's team.
- They place the Tenant and Landlord closer to the Implicit Pole.

Tenant Surveyors consider that in Bias and Noise, they:

- Are closer to the Emergent Pole in 2 of the 6 constructs
- They rank the Landlord's Solicitor closer to the Emergent Pole, followed by the Tenant's Solicitor, Tenant's Surveyor, Landlord, Landlord's Surveyor and Tenant
- Acknowledge that when things go wrong they take ownership above all others and they are impartial to their client
- The Tenant and Landlord's Surveyor closer to the Implicit Pole

Tenant Surveyors consider that in Empathy and Emotional Intelligence, they:

- Are closer to the Emergent Pole in 4 of the 6 constructs
- They rank themselves closer to the Emergent Pole followed by the Tenant's Solicitor, Landlord's Surveyor, Tenant, Landlord and Landlord's Solicitor
- They rank themselves more capable than the others of understanding another person's values, emotions.
- The Landlord and Landlord's Solicitor are closer to the Implicit Pole.

- The Tenant is more accommodating and obliging yet shows anxiety and passion
- Show that the Landlord's Surveyor and Tenant will exhibit anxiety or passion
- Score close to the Emergent Pole when considering that their own initial behaviour is important

Tenant Surveyors consider that in Negotiation Skills, they:

- Are closer to the Emergent Pole in all 4 constructs
- They rank themselves lowest followed jointly by both Solicitors, Landlord's Surveyor, Landlord and Tenant
- Consider the Tenant and Landlord to be closer to the Implicit Pole

It tells us the tenant's surveyor consider themselves resourceful, skilful, listens to others, understands the Protocol, is aware of market conditions and continues to learn. Tactically, they are flexible, responsive, consistent and modest when settling claims. They consider themselves impartial and take ownership and are emotionally intelligent, understanding other's values and emotions. They acknowledge that initial behaviour is important. They are supreme negotiators, are trained, systematic and capable of understanding outcomes.

They consider the landlord and tenant to be the opposite to them in nearly all cases, who rely on intuition, cannot adapt, ignore shortfalls in their own knowledge and apply pressure. They blame others when things go wrong and consider that initial behaviour is irrelevant. They have a poor understanding of outcomes and have no training.

In all constructs, the Tenant's Solicitor is ranked second. They think that they are all the things they are, but not as close as the lowest score, The landlord's solicitor is ranked second, third twice and sixth of the groups. In Bias and Noise, they ranked closer to the Emergent Pole.

Overall, they rank themselves closer to the Emergent Pole followed by the Tenant's Solicitor, Landlord's Solicitor, Landlords Surveyor and jointly the Landlord and Tenant

6.11.2 Tenant's Surveyors Scatter Diagram Matrix

Scatter diagrams are a way to show the relationship between two variables on an X-Y axis. In this case, dots are used to illustrate to relationship. In a strong relationship, close to 1, the dots will resemble a diagonal line rising from left to right. When there is no relationship, the dots will be randomly distributed. In a negative strong relationship, the diagonal line will be created in the opposite direction.

The Correlation between the Tenant's Surveyor and all Elements is seen at Figure 6.4 Tenant's Surveyors Scatter Diagram Matrix which shows all of the scatter diagrams and thus the relationship between the elements.

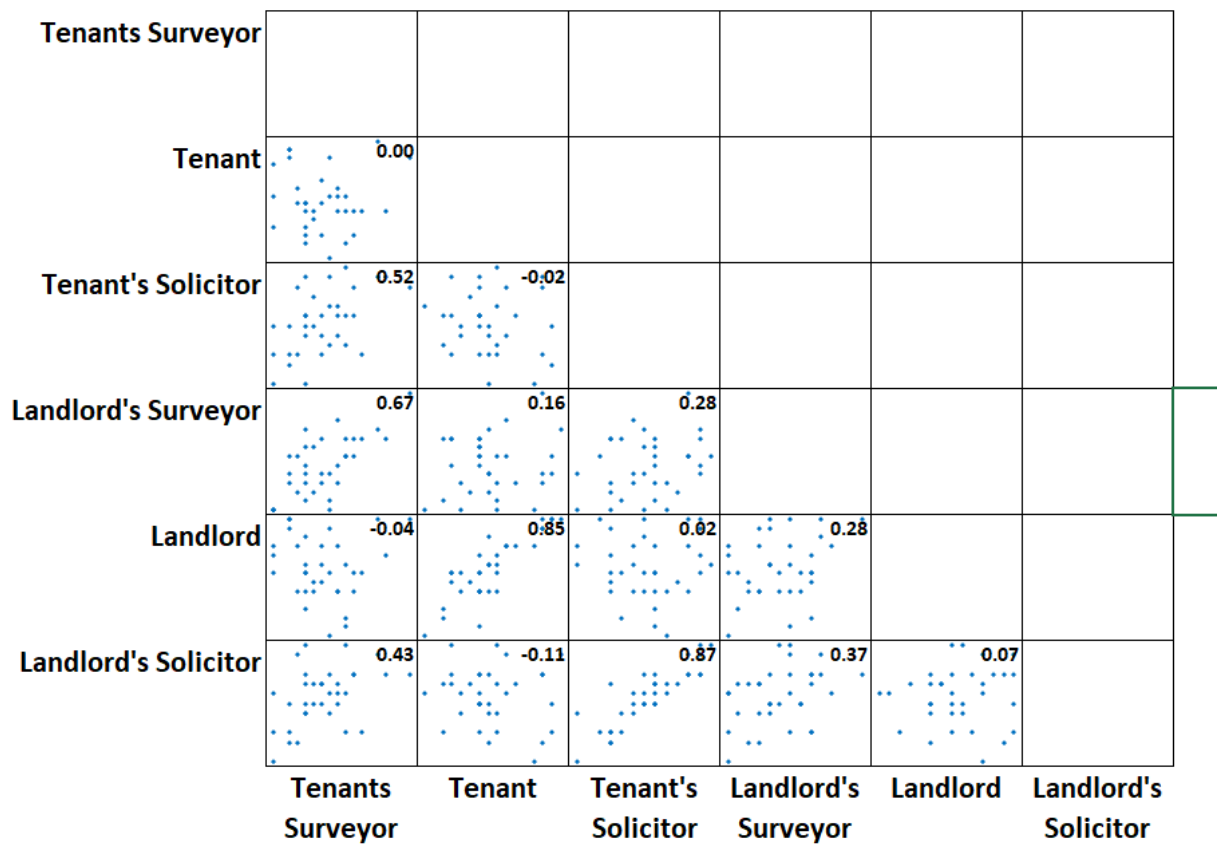


Figure 6.4 Tenant Surveyors' Scatter Diagram Matrix

The strong relationship between the landlord's solicitors and tenant's solicitor (0.87) can be seen in the scatter plot. The trend is for the dots to group and rise up from left to right. A similar pattern can be seen between the landlord and tenant (0.85). There are a number of weak relationships, tenant and tenant's surveyor (0.00) signified by the random nature of the plots, some negative in value, landlord's solicitor and tenant

(-0.11). The matrix shows an overall weakness of relationships between the parties through the lens of the tenant's surveyor.

Table 6.2 - Tenant Surveyors' Correlation in Descending Order

The Tenant Surveyors	
Landlord's Solicitor and Tenant's Solicitor	0.87
Landlord and Tenant	0.85
Landlord's Surveyor and Tenant's Surveyor	0.67
Tenant's Solicitor and Tenant's Surveyor	0.52
Landlord's Solicitor and Tenant's Surveyor	0.43
Landlord's Solicitor and Landlord's Surveyor	0.37
Landlord's Surveyor and Tenant's Solicitor	0.28
Landlord and Landlord's Surveyor	0.28
Landlord's Surveyor and Tenant	0.16
Landlord's Solicitor and Landlord	0.07
Landlord and Tenant's Solicitor	0.02
Tenant and Tenant's Surveyor	0.00
Tenant's Solicitor and Tenant	-0.02
Landlord and Tenant's Surveyor	-0.04
Landlord's Solicitor and Tenant	-0.11

Table 6.2 shows the correlation relationship the tenant's surveyor has with the professional team (surveyors and solicitors) and the landlord and tenant, and the perceived relationship between the others.

Using the following parameters,

- 0 No linear relationship
- +1/(-1) Perfect positive (negative) linear relationship – as one variable increase the other also increases/decreases in an exact linear rule
- 0-0.3/(0 to -0.3) A weak positive (negative) relationship
- 0.3-0.7(-0.3 to -0.7) A moderate positive (negative) relationship
- 0.7-1 (-0.7 to -1) A strong positive (negative) relationship

It can be seen that:

- The strongest relationship is between the two solicitors (0.87) closely followed by the relationship between the landlord and tenant (0.85)
- The next three relationships, in descending order are between the two surveyors (0.67) tenant's solicitor and tenant's surveyor (0.52) and landlord's solicitor and tenant's surveyor (0.43)
- There is a weak relationship between the landlord's surveyor and tenant (0.16) and even weaker between the landlord's solicitor and landlord (0.07) and landlord and tenant's solicitor (0.02)
- There is no relationship between the tenant and tenant's surveyor (0.0)
- The remaining relationships are positive negative ones

6.12 Landlord's Surveyor Correlation

In Figure 6.5 it can be seen that overall, they mark themselves closer to the Emergent Pole than the Implicit Pole, in 31 of the 34 constructs, even more so than the Tenant Surveyors. For Diligence and Understanding they score the Tenant further away than the Landlord. The Landlord team is again generally paler than the tenant's team.

		Implicit Pole							Emergent Pole
		1	Tenants Surveyor	Tenant	Tenants Solicitor	Landlords Surveyor	Landlord	Landlord's Solicitor	5
		Diligence & Understanding						Diligence & Understanding	
1	Market Conditions	Researches market conditions and data and/or make enquiries from others	0.56	0.79	0.74	0.29	0.53	0.53	Relies on instinct or personal knowledge and will not make enquiries
2	Affordability	Creditworthiness is considered at the outset	0.47	0.50	0.65	0.35	0.44	0.53	The risk of nil settlement or bankruptcy is not entertained
3	Resources	Utilises internal and external resources, books, cases, cost information etc which aids settlement	0.53	0.71	0.56	0.38	0.71	0.50	Relies on experience and intuition which may be a barrier to settlement
4	Resources	Successful settlement occurs because they know what they are doing	0.50	0.56	0.47	0.32	0.53	0.47	Delays are caused because they don't know what they are doing
5	Internal Resources	Encourages reflection within the organisation	0.50	0.68	0.65	0.35	0.50	0.53	Little appetite to adapt, is repetitive in their approach
6	Skills	Continues to learn, update, train, reflect	0.38	0.71	0.38	0.24	0.65	0.38	Indifferent to life-long learning
7	Skills	Listens to others first	0.44	0.56	0.59	0.38	0.53	0.53	Doesn't listen and promotes their own case
8	Knowledge	Comprehends shortfalls in their own knowledge	0.41	0.53	0.44	0.35	0.50	0.44	Ignorant to shortfalls in their own knowledge
9	The Lease	Will work within the meaning of the covenant	0.41	0.59	0.35	0.24	0.56	0.29	Will try to introduce new terms
10	PLA Protocol	Adopts the structure and spirit of the Protocol to make progress towards settlement	0.44	0.65	0.44	0.18	0.41	0.24	Uses the Protocol as a means to cause unnecessary delay
		Tactical Approach						Tactical Approach	
11	Tactics	Gently reminds others of the potential risk of litigation	0.41	0.53	0.47	0.53	0.47	0.56	Quick to use the threat of litigation
12	Tactics	How successful a party has been in settling claims is generally not referred to	0.44	0.59	0.50	0.38	0.53	0.47	How successful a party is, is used to apply pressure
13	Tactics	Has a consistent approach to the claim	0.59	0.71	0.68	0.47	0.56	0.56	Will change tactics if they cannot afford to settle
14	Tactics	Responsive, proactive, helpful	0.62	0.68	0.65	0.32	0.44	0.38	Unresponsive, delaying, hostile
31	Approach Taken	Takes a flexible approach to communication which reduces tension and builds trust	0.17	0.20	0.22	0.11	0.17	0.19	Takes a rigid or formulaic approach to communication which increases tensions
32	Approach Taken	Can differentiate between an objective and subjective issue	0.32	0.53	0.47	0.32	0.50	0.44	Is ambivalent to objective and subjective issues
33	Approach Taken	Is trustworthy	0.47	0.68	0.50	0.41	0.62	0.47	Tries it on and waits for response
34	Approach Taken	Surveyors are always experts	0.47	0.71	0.62	0.44	0.71	0.62	Surveyors are at liberty to be advocates
		Bias & Noise						Bias & Noise	
15	Bias	Is impartial towards their client or case	0.65	0.76	0.74	0.56	0.76	0.71	Is biased towards their client or case
18	Self-serving bias	Understands that success may be a team effort	0.41	0.47	0.44	0.41	0.47	0.44	Considers that success is usually down to them
19	Self-serving bias	Incentivised fees make little difference to the outcome	0.62	0.62	0.47	0.35	0.56	0.47	Incentivised fees can influence the outcome
20	Self-serving bias	Well written and accurate schedules should be expected	0.68	0.71	0.50	0.21	0.59	0.38	Exaggerated or grossly diminished claims are to be expected
21	Fundamental Attribution	When things go wrong they take ownership	0.41	0.59	0.53	0.41	0.59	0.53	When things go wrong they blame others
22	Confirmation Bias & Influence	Remains open-minded about information received, even if unfavourable	0.53	0.65	0.38	0.32	0.53	0.38	Rejects viable information because it doesn't help their case
		Empathy & Emotional Intelligence						Empathy & Emotional Intelligence	
16	Empathy/EI	Understands another person's values	0.50	0.65	0.59	0.32	0.74	0.59	Is not aware of another person's values
17	Empathy/EI	Takes time to understand the emotions of others	0.50	0.50	0.65	0.41	0.56	0.65	There is little time to understand the emotions of others
24	Holistic approach	Will eventually take a global approach towards settlement	0.44	0.53	0.50	0.29	0.38	0.50	Will maintain a forensic approach to settlement
25	Behavioural Style	Accommodating and Obliging	0.62	0.56	0.59	0.35	0.47	0.47	Competing and dominating
28	Awareness	Initial behaviour is important and can ease tensions	0.26	0.56	0.53	0.21	0.56	0.53	Initial behaviour is irrelevant
29	Awareness	May exhibit anxiety or passion	0.41	0.35	0.56	0.38	0.41	0.56	May exhibit guilt or shame
		Negotiation Skills						Negotiation Skills	
23	Heuristics	Takes time to investigate, ask questions, drill down	0.59	0.65	0.59	0.32	0.62	0.50	Tends to adopt a previous approach to problems
26	Negotiation	Is trained in negotiation skills	0.71	0.74	0.62	0.71	0.74	0.62	Has no bespoke training
27	Negotiation	A systematic approach is taken giving meaning to each argument	0.74	0.79	0.50	0.50	0.79	0.50	It's all about the end figure
30	Certainty effect	Can differentiate between certain and probable outcomes	0.29	0.65	0.32	0.29	0.47	0.32	Poor understanding of outcomes

Figure 6.5 – Mean of Sum of Landlord Surveyors' Repertory Grid

6.12.1 Landlord's Surveyor Analysis

Landlord's Surveyors consider that in Diligence and Understanding, they:

- Are closer to the Emergent Pole for all 10 constructs, one more than the Tenant's Surveyor, followed by the Landlord's Solicitor, Tenant's Surveyor, Tenant's Solicitor, Landlord and Tenant.
- They rank the Tenant closer to the Implicit Pole in 9 of the 10 constructs.
- They rank the professional team closer to themselves than the Landlord and Tenant

Landlord's Surveyors consider that in Tactical Approach, they:

- Are closer to the Emergent Pole for 7 of the 8 constructs, followed by Tenant's Surveyor, Landlord's Solicitor, Landlord, Tenants Solicitor and Tenant.
- They acknowledge that they are not the first to remind others about the risk of litigation, and the Tenant is the first to understand this.
- They state that both themselves and the Tenant's Surveyor are capable of differentiating between objective and subjective issues
- Tactically, they are not assisted by the rest of their team.

Landlord's Surveyors consider that in Bias and Noise, they:

- Are closer to the Emergent Pole in all 6 constructs followed by Landlord's Solicitor, Tenant's Solicitor, Tenant's Surveyor, Landlord and Tenant.
- They share their team effort success and taking ownership when things go wrong with the Tenant's Surveyor
- The Landlord and Tenant are closer to the Implicit Pole

Landlords' Surveyors consider that in Empathy and Emotional Intelligence, they:

- Are closer to the Emergent Pole in 5 of the 6 constructs
- They rank themselves closer to the Emergent Pole followed by the Tenant's Surveyor, Landlord, Tenant, Landlord's Solicitor and Tenant's Solicitor
- They rate both solicitors as having the least empathy and emotional intelligence
- Like the Tenant's surveyor they rank themselves more capable than the others of understanding another person's values, emotions.
- Score close to the Emergent Pole when considering that their own initial behaviour is important

Landlord's Surveyors consider that in Negotiation Skills, they:

- Are closer to the Emergent Pole in 3 out of 4 constructs
- They rank themselves lowest followed by Landlord's Solicitor, Tenants Solicitor, Tenants Surveyor, Landlord, Tenant
- They share the position of being closer to the Emergent Pole with the Landlord's Solicitor in negotiation training and giving systematic approaches to arguments.
- They share their position closer to the Emergent Pole with the Tenant's Surveyor when differentiating between certain and probably outcomes.

It tells us that the landlord's surveyor is bolder and more confident. When the scoring is compared to the Tenant's Surveyor, their results are more consistent and less spread. Only in negotiation skills does the Landlord's Surveyor acknowledge that others are compatible to them.

They are the head of their field in diligence and understanding across all constructs compared to the Tenant's Surveyor who ranked the landlord as having more awareness of a tenant's creditworthiness. Tactically they are strong and show that it is the Tenant's Surveyor who reminds them of the risk of litigation before their own team.

They are impartial, understand the success of the team, and expect to create well written schedules. They remain open minded even when receiving information that may be unfavourable. They are emotionally intelligent, but it is the Tenant is who is likely to show anxiety and passion, the same as stated by the Tenant Surveyor.

Their acknowledgement that their negotiation skills are not consistent can be seen. They share their skills with the solicitors and perceive that the Tenant's Solicitor is trained in negotiation skills.

Overall, they rank themselves closer to the Emergent Pole followed by the Landlord's Solicitor, Tenant's surveyor, Tenant's Solicitor, Landlord and Tenant. The Tenant's and Landlord's Surveyor agree that the following constructs share the same Element

- Has a consistent approach to the claim – Landlord's Surveyor
- Can differentiate between objective and subjective issues – Landlord's Solicitor
- When things go wrong they take ownership – Tenant's Surveyor
- May exhibit anxiety or passion – Tenant
- Can differentiate between certain and probable outcomes – Tenant's Surveyor

6.12.2 Landlord's Surveyors Scatter Diagram Matrix

The Correlation between the Landlord's Surveyor and all Elements is seen at Figure 6.6 which shows all of the scatter diagrams and thus the relationship between the elements.

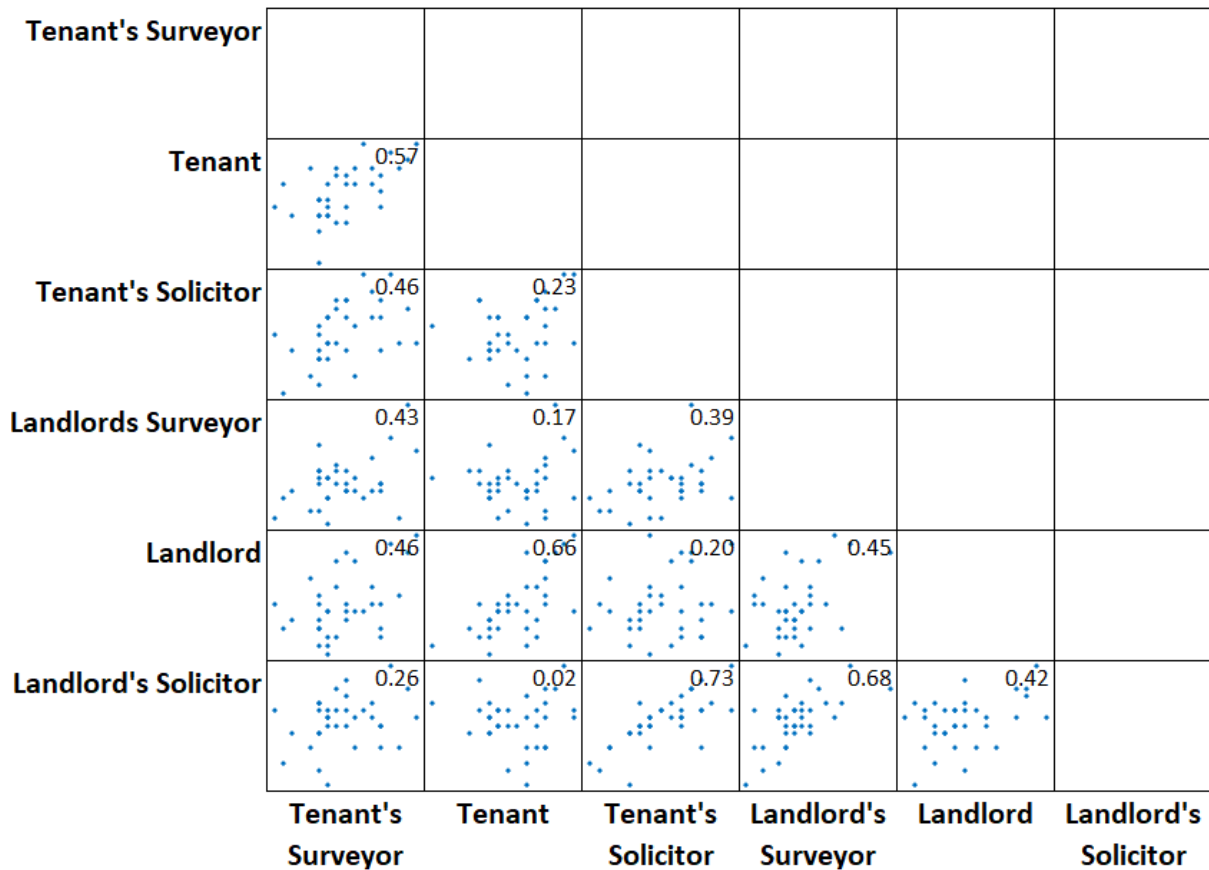


Figure 6.6 – Landlord Surveyors' Scatter Diagram Matrix

The landlord's surveyors scatter plots illustrate higher relationships than the tenant's surveyor. There are no negative correlations. The strongest relationship is again between the Tenant's Solicitor and Landlord's Solicitor (0.73) compared to the Tenant's Surveyors equivalent relationship (0.87). The relationship between the Landlord's Solicitor and tenant is shown by the random pattern (0.02).

Table 6.3 - Landlord Surveyors' Correlation in Descending Order

The Landlord Surveyors	
Landlord's Solicitor and Tenant's Solicitor	0.73
Landlord's Solicitor and Landlord's Surveyor	0.68
Landlord and Tenant	0.66
Tenant and Tenant's Surveyor	0.57
Tenant's Solicitor and Tenant's Surveyor	0.46
Landlord and Tenant's Surveyor	0.46
Landlord and Landlord's Surveyor	0.45
Landlord's Surveyor and Tenant's Surveyor	0.43
Landlord's Solicitor and Landlord	0.42
Landlord's Surveyor and Tenant's Solicitor	0.39
Landlord's Solicitor and Tenant's Surveyor	0.26
Tenant's Solicitor and Tenant	0.23
Landlord and Tenant's Solicitor	0.20
Landlord's Surveyor and Tenant	0.17
Landlord's Solicitor and Tenant	0.02

Table 6.3 shows the correlation relationship the landlord's surveyor has with the professional team (surveyors and solicitors) and the landlord and tenant, and the perceived relationship between the others.

Using the following parameters,

- 0 No linear relationship
- +1/(-1) Perfect positive (negative) linear relationship – as one variable increase the other also increases/decreases in an exact linear rule
- 0-0.3/(0 to -0.3) A weak positive (negative) relationship
- 0.3-0.7(-0.3 to -0.7) A moderate positive (negative) relationship
- 0.7-1 (-0.7 to -1) A strong positive (negative) relationship

It can be seen that,

- The strongest relationship is between the two solicitors (0.73) closely followed by the relationship between the landlord's solicitor and landlord's surveyor (0.68).
- The next three relationships, in descending order are between the landlord and tenant (0.66), tenant and tenant's surveyor (0.57) and tenant's solicitor and tenant's surveyor (0.46)

- The relationships between landlord and landlord's surveyor (0.45), landlord surveyor and tenant's surveyor (0.43) and landlord's solicitor and landlord (0.42) remain similar
- There are no negative relationships

6.13 Comparison Between Surveyors' Correlation

From Table 6.4 it can be seen that both surveyors reveal a close relationship to the solicitors. Both Repertory Grid tables confirm the same, and both surveyors rank their solicitor next to them in order from the Emergent Pole. The surveyors may consider legal advice to be consistent, reliable, trustworthy and supported by evidence. The tenant's surveyors overall scoring was closer to 1 than the landlords surveyors scoring, but show no relationship between themselves and their client, and negative relationships below a score of 0.

The landlord's surveyors showed no negative relationships. Both surveyors showed no relationship between the landlord's solicitor and the tenant. The low scores are attributed to the tenant.

Table 6.4 - Comparison of Surveyors' Correlation in Descending Order

Landlord's Surveyor		Tenant's Surveyor	
Landlord's Solicitor and Tenant's Solicitor	0.73	Landlord's Solicitor and Tenant's Solicitor	0.87
Landlord's Solicitor and Landlord's Surveyor	0.68	Landlord and Tenant	0.85
Landlord and Tenant	0.66	Landlord's Surveyor and Tenant's Surveyor	0.67
Tenant and Tenant's Surveyor	0.57	Tenant's Solicitor and Tenant's Surveyor	0.52
Tenant's Solicitor and Tenant's Surveyor	0.46	Landlord's Solicitor and Tenant's Surveyor	0.43
Landlord and Tenant's Surveyor	0.46	Landlord's Solicitor and Landlord's Surveyor	0.37
Landlord and Landlord's Surveyor	0.45	Landlord's Surveyor and Tenant's Solicitor	0.28
Landlord's Surveyor and Tenant's Surveyor	0.43	Landlord and Landlord's Surveyor	0.28
Landlord's Solicitor and Landlord	0.42	Landlord's Surveyor and Tenant	0.16
Landlord's Surveyor and Tenant's Solicitor	0.39	Landlord's Solicitor and Landlord	0.07
Landlord's Solicitor and Tenant's Surveyor	0.26	Landlord and Tenant's Solicitor	0.02
Tenant's Solicitor and Tenant	0.23	Tenant and Tenant's Surveyor	0.00
Landlord and Tenant's Solicitor	0.20	Tenant's Solicitor and Tenant	-0.02
Landlord's Surveyor and Tenant	0.17	Landlord and Tenant's Surveyor	-0.04
Landlord's Solicitor and Tenant	0.02	Landlord's Solicitor and Tenant	-0.11

Table 6.5 Comparison of Surveyors' Correlation by Element

	Landlord's Surveyor	Tenant's Surveyor
Landlord's Solicitor and Tenant's Solicitor	0.73	0.87
Landlord's Solicitor and Landlord's Surveyor	0.68	0.37
Landlord and Tenant	0.66	0.85
Tenant and Tenant's Surveyor	0.57	0.00
Tenant's Solicitor and Tenant's Surveyor	0.46	0.52
Landlord and Tenant's Survey	0.46	-0.04
Landlord and Landlord's Surveyor	0.45	0.28
Landlord's Surveyor and Tenant's Surveyor	0.43	0.67
Landlord's Solicitor and Landlord	0.42	0.07
Landlord's Surveyor and Tenant's Solicitor	0.39	0.28
Landlord's Solicitor and Tenant's Surveyor	0.26	0.43
Tenant's Solicitor and Tenant	0.23	-0.02
Landlord and Tenant's Solicitor	0.20	0.02
Landlord's Surveyor and Tenant	0.17	0.16
Landlord's Solicitor and Tenant	0.02	-0.11

From Table 6.5 the similarities and disparities between the way in which the two surveyors' teams perceive the others is apparent. The landlord's surveyor scored between 0.42 and 0.46 for the relationship between landlord's solicitor and landlord, landlord and landlord's surveyor, landlord and tenant's surveyor and tenant's solicitor and tenant's surveyor. In contrast the tenant's surveyor rated them less than 0.28.

6.14 Discussion

From the correlation analysis there is a positive correlation between the way in which surveyor's perceive themselves and their opposing surveyor, but the tenant surveyor's sense the landlord surveyors as being closer to themselves than the landlord surveyors see the relationship between the tenant surveyors and themselves. The correlation reveals that when a party considers themselves stronger in an area, a high correlation reveal that they think the other party is also strong. It is similar to revealing strengths and weaknesses. This is true of the relationship between the two surveyors. Surprisingly, it reveals that the tenant's surveyor has no relationship with the tenant, and even less with the landlord. The landlord's surveyor has a stronger relationship with their client, but a weak relationship with the tenant.

This study provides new insight into how surveyors reflect upon themselves and the landlord, tenant and solicitor. It is also notable that both surveyors rank themselves closer to 1, the

Emergent Pole than their opposing surveyor. This accords to the language used in the interviews. The community can be seen to focus on acting entirely for landlords or tenants with some acting for both, but the analysis confirms that the burden to produce an unassailable primary schedule, which is subjected to criticism, resides with the landlord’s surveyor. There is level of respect shown between the professionals, more so from the landlord’s surveyor than tenant’s surveyor. The surveyors believe the same is true about the professional team.

6.15 Decision Tree Analysis

Decision Tree Analysis gives insight into the way in which the surveying community would answer to the same constructs. The software analysed the data as follows:

The first question is to identify the ratings from the questions and whom the answer was about. It is important to understand that the software does not know if the response is given by a landlord’s surveyor or tenant’s surveyor.

6.15.1 Analysis 1 - Identifying Ratings from Questions and Who the Answer Was About

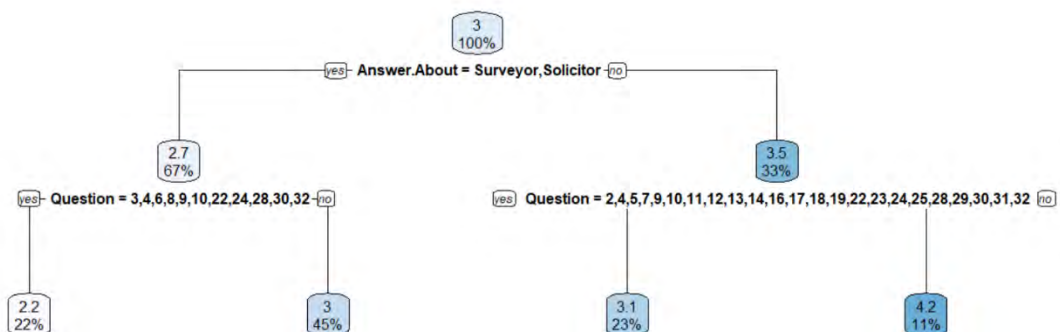


Figure 6.7 – Identify Ratings from Questions

The software asked questions about the ratings and who gave the answers.

The decision tree at Figure 6.7 identifies:

- Upper Node – the overall rating across all categories was 3. It is coincidence that 3 is also the median number between the construct rankings 1 – 5. 100% demonstrates that this node includes all data.
- The software distinguishes the professional group, surveyors and solicitors, from the landlord and tenant.

- The first left hand branch separated the ratings given about the landlord's surveyor, tenant's surveyor, landlord's solicitor, tenant's solicitor from the ratings given about the landlord or tenant. The combined rating given by the respondents about themselves, and solicitors was 2.7 (see left hand branch). The combined rating they gave the landlord and tenant was 3.5. The combined percentages of 67% and 33% demonstrates 100% of the data was analysed.
- The second question the software developed is which questions did the respondents rate at 2.2 and who rated them?

6.15.2 The Outcomes

The respondents rated themselves and solicitors closer to 1 (2.7) than they rated the landlord and tenant (3.5). If the same questions were randomly put to landlord and tenant surveyors, landlord surveyors are likely to rate themselves 2.2 or less against constructs 3,4,6,8,9,10,11,24,28,30,32. It tells us that surveyors will rate themselves and solicitors closer to 1 (on average 2.7) than they rate the landlord or tenant (3.5). It tells us that the probability that a landlord surveyors will rate themselves or a solicitor close to 1 is 22%. Whereas the probability of a tenant surveyor rating themselves or the landlord surveyor at 3 is 45%.

The average rating was 3, which was also the rating surveyors gave if they were uncertain, didn't know or felt that the answer was between 1 and 5. Of the 340 lines of construct, 32 were answered with the same numeric response i.e. all 4s or all 1s. Of these 15 were answered with all 3s. This implies that either the participant wasn't sure, had no experience (Palmeira, Spassova and Keh 2015), didn't know or they genuinely believed all 6 Elements deserved a 3.

6.15.3 Analysis 2 - Identify Surveyor Type From Ratings

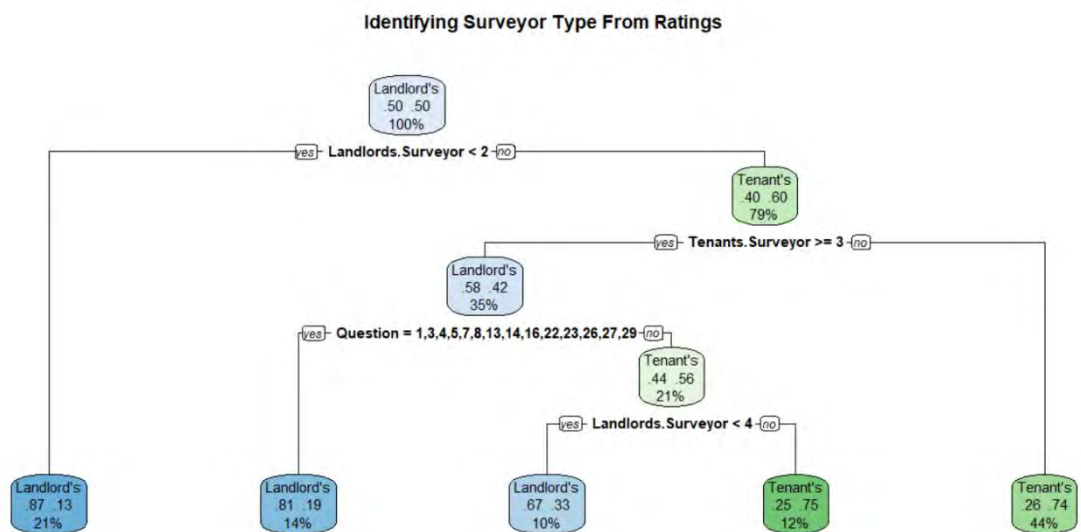


Figure 6.8 – Identify Surveyor Type From Ratings

The software asked questions about the landlord's surveyor. Did the respondent, on any given question, rate the Landlord's Surveyors less than 1.5, i.e. 1?

The Decision Tree at Figure 6.8 identifies:

- The upper node shows the data represents answers given about the landlord, and the data was generated in equal shares 50/50 landlord and tenant.
- When split, it shows that of the 21% of data which rated the landlord's surveyor as a 1, 87% were given by Landlord's Surveyors and 13% by Tenant's Surveyors.
- Of the 79% of the data which rated the landlord's surveyor greater than 2, 60% came from Tenant's Surveyors. When split further to greater than 2.5, within 35% of the data, 58% were given by Landlord's Surveyors and 42% by Tenants Surveyors.
- When asked about the ratings greater than 3, of the 35% of the data, the landlord's surveyors rated 58% and the Tenant Surveyors 42%.

6.15.4 The Outcomes

If a new participant is questioned and they rate the Landlord's Surveyor with a 1, there is an 87% probability that they are a landlord's surveyor or a 13% chance they are a tenant's surveyor. For 21% of the data sets, the landlord's surveyor was rated with a 1, meaning landlord surveyors are more likely to rate themselves closer to a 1 than the tenants' surveyors.

6.16 Discussion of Decision Tree Analysis

Decision tree analysis is an effective tool to examine probable outcomes. In this research, it validated the previous research which developed from the focus group and questionnaire, signifying that landlord and tenant surveyors respond differently to the same question. It demonstrates that landlord surveyors are considerably more outwardly confident in their own abilities and understanding, than tenant surveyors, perhaps because of an awareness of having more to lose, borne out by the first five out of six respondents wishing to answer as the tenant's surveyor.

The outcomes were similar to the correlation analysis. Both methods signified the closeness of bond and respect between the professional team and the landlord and tenant, or competent and non-competent teams. The landlord's surveyor pattern of scoring was similar in both methods and show an outward display of conviction and self-confidence. This was also confirmed in the interviews, as it is the landlord's surveyor who makes the first move in the dispute, publish their schedule and defend it. The analysis demonstrates that the tenant's

surveyor sees less relationships between the teams and although rates themselves closer to the emergent pole than the landlord, is often disparaging and vocal about landlord's surveyor's initial schedules.

The correlation analysis however told us that both landlord and tenant surveyors moved in the same direction, although the tenant surveyor's perception is that they are closer (0.67) to the landlord surveyor, than the landlord's surveyor perception of the tenant surveyor (0.43). It is of note that the tenant's surveyors have considerably lower correlations for the team, yet consider they are close to the landlord's surveyor.

It does tell us that tenants engage professionals too late in the process, are slow to take initial advice before signing leases, and have misunderstandings about the complexities of leases and how claims for dilapidations can have a negative impact on their perception of how they should be treated by the landlord.

There is further application in its use as means to evaluate disputes or actors engaged in disputes, and as an educational tool or behavioural analysis when examining prediction (Prajwala 2015).

6.17 Synthesis

The three methods used to analyse the data, the emergent and implicit pole analysis, correlation analysis and decision tree analysis make a significant contribution to our knowledge. Prior to this study there were gaps in our knowledge about our understanding about why dilapidations are difficult to resolve, and surveyor's cognition of the opposing surveyor, landlord, tenant and solicitors. The three methods converge to provide a detailed picture of how surveyors understand disputes, the foundations of which were founded on the previous stages of this enquiry. The analysis shows that not only is there an awareness of lack of knowledge in some areas, but also surveyors do not know that they do not know (Weinberg and McCann 2019).

6.18 Discussion

This research reveals that the tensions found within the literature were not coherent, united or associated with one another. There were gaps in our knowledge regarding the root causes of tensions, and associated literature did not reveal why. When discussed at the focus group further tensions emerged. When analysed, themes emerged which could be grouped.

The way in which surveyors reflected on tensions allowed them to be classified into technical, influential and behavioural issues. Surveyors revealed for the first time that they found behavioural issues the most challenging and difficult to deal and they can distinguish between external and internal influences that affect their decision making.

The Repertory Grid elicited respondents' answers to constructs put to them. Using colour coding, it is easier to see how they rated themselves, their opposite surveyor, the legal team and landlord and tenant. A pale colour signified that they are closer to the emergent pole, the exemplar answer. Both surveyors can be seen to rate themselves closer to it than their opposing surveyor. Both surveyors, signified by the darker colour, rated the landlord and tenant as closer to the implicit pole. It gave insight into individuals explanation and construal which collectively exposed themes of conduct, attitude and conscience. It can be seen that mid-colour range signified that the surveyors thought the answer was mid-range, or that they did not know the answer because they had no experience of it.

There was an acknowledgement that surveyors have gaps in their knowledge, and understanding, although they were not always aware that they lacked knowledge. The results revealed that bias is inevitable, but errors in prediction and judgement known as noise (Kahneman, Sibony and Sunstein 2021) and be reduced. It revealed that the dilapidations industry should calibrate its knowledge base.

The disparity of the results of the correlation by the tenant's surveyor confirm that they have the upper hand, and the burden lies heavily with the landlord's surveyor. The landlord's surveyor's perception is that the landlord's team is closer. The surveyor needs the support of the landlord and solicitor and that of the Protocol. The decision tree analysis supports this, as the results show a strong level of confidence by the landlord's surveyor. However, the way in which the landlord's surveyors must justify and defend their schedule is undermined by themselves by an admission that they lack training and negotiation skills, coupled with an acknowledgement that they do not seek training.

The method of analysis by proposition, is a process of judgement (Kahneman, Sibony and Sunstein 2021). The composition of the schedule may exhibit an absence of thinking, once compiled. The tenant's surveyor take advantage of this, by rebutting each line of the claim, by refuting the relevant lease clause, the breach, the remedy and cost. Because there are four variables in which to attack, it is inevitable that landlord's schedules are criticised.

Within the dilapidations community the seemingly holistic treatment of dilapidations has unwittingly omitted the important contextual human and subjective element from the model and

the journey forward will continue to focus on case law, regulation and government legislation in the built environment, with little time for reflection, training or analysis (Covey 2004). The appreciation of human behaviour in disputes (Avruch and Black 1990) and an understanding of how our judgments can be flawed (Kahneman, Sibony and Sunstein 2021) is therefore required.

This study reveals that surveyors consider dilapidations to mean:

- Uncertainty which affects decision making (Bachmann 2018)
- Self-esteem i.e. the need for approval and the fear of disapproval
- Making choices
- Individual behaviour
- Relationships
- Perceptions
- Our previous experiences - experience comes with meaning - unconscious incompetence, conscious incompetence, conscious competence, unconscious competence
- Bias
- Loss – actual, potential, past, present and future

The meaning is dependent on surveyor experience, although the expectation of knowledge remains constant regardless of experience.

As claims progress, surveyors unwittingly require a deeper understanding of key skills and knowledge not associated within the fields of dilapidations, and dispute resolution. It can be seen at Figure 6.9 that as the claim progresses through its 7 stages, subject matters and fields of study and enquiry develop beyond issues concerning breach of contract. Surveyors passes from the comfort of the green zone, concerning measuring, recording, material science, construction and compromise, though to the red zone of negation skills, understanding empathy, language and relationships, to reasoning, cognition, conflict psychology and philosophy. It illustrates the practical and academic agency as the foundation that lies both in training and understanding of the meaning behind disputes.

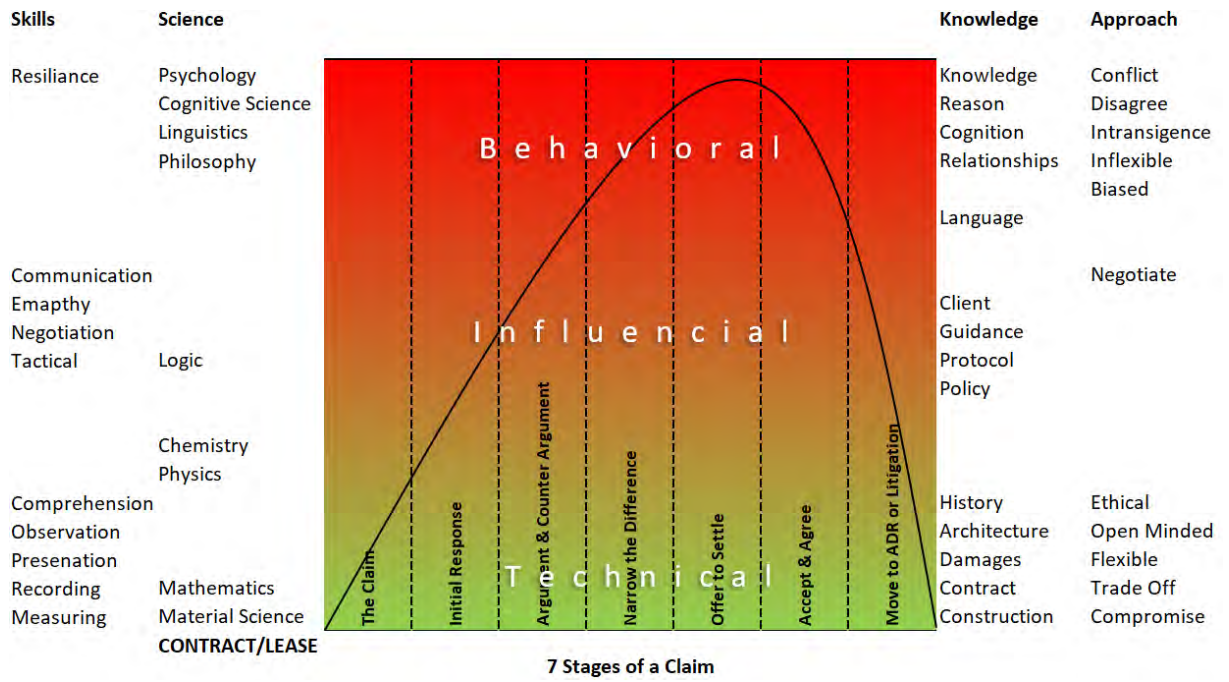


Figure 6.9 – The Stages and Effects of a Dispute

Source: The Author

The parties to the dispute are conditioned by the context of the individual’s perception, and that the truth is relative to their instructions, training, knowledge and understanding

Weinberg and McCann (2019) set out the variables and issues that arise when it is known what is known and unknown, but also unknown, what is known and unknown.

Figure 6.10 illustrates the Implicit Pole in the upper half and the Emergent Pole in the lower half. Both, elicited from the interviews, contribute towards the meaning given to tensions.

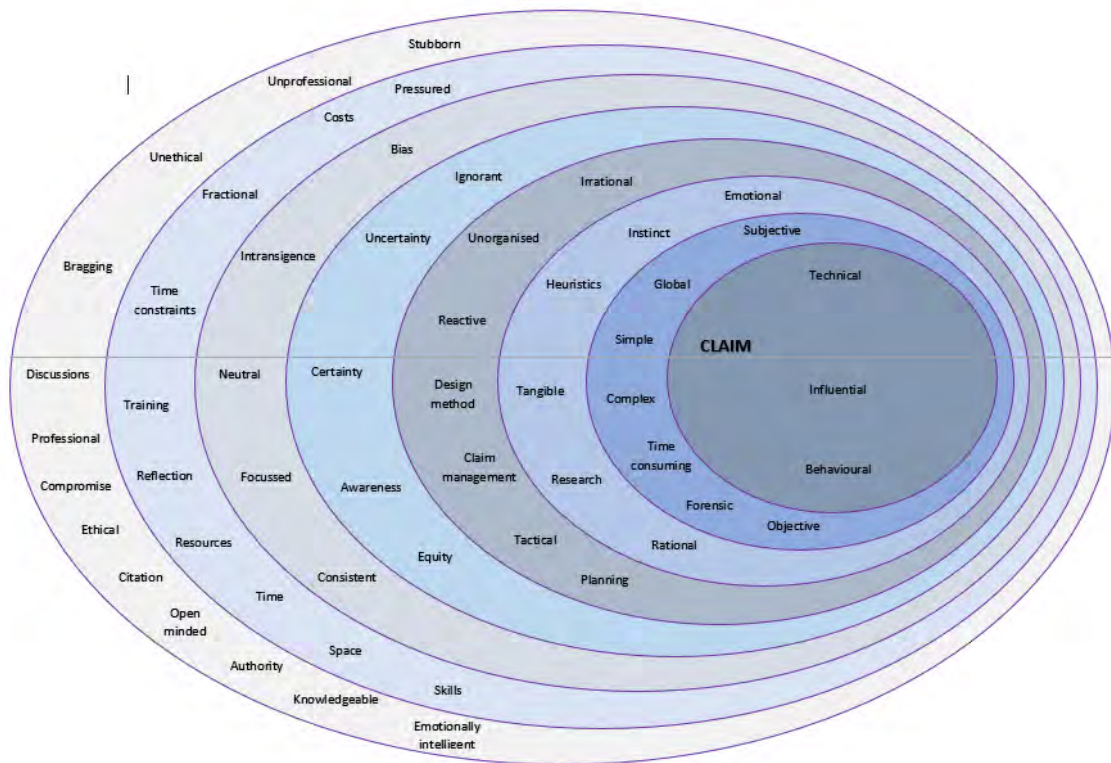


Figure 6.10 – The Root Causes of Tensions in Dilapidations.

Source: The Author

The results of this study are that the objectives to this research enquiry have been met. This study critiques our contemporary understanding of dilapidations from the published literature and identified gaps in our knowledge. The outputs of the Focus Group, questionnaire and Repertory Grid interviews have revealed our understanding of cognition and knowledge of dilapidations. This study reveals gaps in our knowledge and made suggestions for the way in which this can be changed.

6.19 Summary

The results of the analysis validate the outcomes of the literature review and our gaps in understanding why dilapidations are difficult to resolve. The correlation analysis reveals that surveyors place themselves first when evaluating their own competence and knowledge yet lack understanding of the wider issues found outside the field of dilapidations, including emotional intelligence, understanding bias, errors and negotiation.

Surveyors take longer to consider behavioural issues than technical and influential issues. Respondents took longer to consider more complex constructs during the Repertory Grid interviews, such as questions relating bias, emotional intelligence and empathy, than skills and market conditions. This is likely to be because the participants had not considered the issue before, or it had not occurred to them that these issues were in fact relevant in negotiating

disputes. There is a strong correlation between settlement outcomes and complexity which lies unheeded amongst surveyors. Difficult questions and issues are processed at different speeds and in different ways, meaning that responses vary according to previous experience or lack of experience. From this it could be said that parties to a dispute will make propositions, or respond to propositions, knowing that they have no prior experience in the matter. The proposition may be made to ensure it is captured, whether it is correct or not. It may go unchallenged or asked to be justified.

The capacity to comprehend complex issues fluctuates as does the capacity to respond to them and both are a component of experience. Experience is a significant asset in addressing disputes on numerous levels and surveyors who cannot construe issues because of having no experience were more likely to offer “3” when asked. Surveyor’s judgements however vary, and this is dependent on their experience and their ability to understand complex issues (Kahneman, Sibony and Sunstein 2021). This is different from bias, used to describe favouritism or conflict.

Both landlord and tenant surveyors rated themselves closer to the emergent pole than other stakeholders, but there is an even greater probability of the landlord’s surveyor assigning themselves closer. Both the correlation analysis and decision tree analysis confirmed this. It is suggested that this is because the expectations of the landlord’s surveyor:

- Is to take responsibility when errors occur
- Is to produce an accurate and reliable claim
- Is not to concede in the initial stages of the negotiation
- Is to demonstrate that they are skilled
- There is a burden of responsibility on the landlord’s surveyor both to produce the initial schedule and to defend it

Some issues can trigger a more immediate response than others. Heuristics may be responsible, or respondents may be experienced. Issues which may have been problematic are recalled, leading to anecdotal evidence as discussed in the literature review. Surveyors acknowledge that their opposite surveyor may differ in the way in which they respond and behave, therefore conflicts to them may appear to vary and sequencing or patterns of behaviour are unlikely to be replicated. However, this research demonstrates that there are patterns and themes in disputes. The art of communication is also key to dispute management. All participants agreed that the first piece of correspondence can be the catalyst to a successful or sour relationship between the surveyors.

Surveyors take the middle ground when they do not know the answer to a question or problem in the wider sense. This approach may frequently occur. The reasons may be:

- Tactical – not responding or being vague displayed to suppress ignorance
- Tactical – to cause delay
- To remain neutral
- They cannot construe the answer and have no experience

Respondents to a dispute may be unmotivated to address time consuming and detailed analysis and may rely on instinct as opposed to tangible facts. Although the aim to reach a swift conclusion is a prime motivator, delays are caused because detailed analysis is undertaken which dissuades progress. This coupled with complex technical and legal issues compounds disputes as they are often difficult to unpack. Paradoxically, disputes themselves are time consuming and expose the parties to temporality resulting in little time for reflection in what may otherwise be a transient dispute.

Approaches to questions can be evaluated within the space of risk v benefit. The anatomy of the dispute may however be sacrificed in lieu of a more efficient approach which may develop into a confident resolution, but conversely into a delay.

External guidance influences. Guidance is both respected and valued because :

- It provides equity between the parties
- It provides configuration, presentation and instruction which can be replicated, resulting in consistency
- It provides citation and authority

Guidance stimulates discussion, even after consultation. The Protocol is frequently a reference juncture which can occasionally cause disparity. The landlord's surveyor placed greater importance on the protocol than the tenant's surveyors, and reflects that initial schedules are endorsed, whereas tenant's surveyor responses may be less likely to be endorsed. The intrinsic nature of guidance is that it is commonly produced after a significant event or contemporary reasoning but pending revision it may become obsolete or impractical.

Tactics are to be expected and include:

- Time delays
- Applying pressure
- Disclosure of documents in a fractional fashion
- Affordability

- Obtaining further quotations, advice

Strategy, claim management and tactics are comparable but distinctive. Strategy includes methodology, design, planning, appraising resources. Claim management includes administration, compliance, communication, governance. Tactics lie within the array of devices and tools actionable to claim management and strategy and include analysis, communication, form of response, employing time.

Access to resources is governed by cost, capacity, desire, obliviousness. Resources are derived externally and internally but barriers include the cost of access including subscriptions or publications. Barriers also include self, meaning that surveyors may disincentivise themselves, be unindustrious or unenthusiastic.

Any party may stereotype another. All stakeholders will articulate their philosophy on another stakeholder, and this repeatedly manifests itself to such an extent that it becomes customary. This contributes towards tensions, but does suggest that the concept is erroneous, although a characteristic of disputes.

The first instance of moderation (checking) follows the serving of the prime (initial) schedule. A characteristic of dilapidations is the role of the landlord's surveyor as single prime advisor, predicts outcomes, often without access to all information and historical data. Single because the landlord's surveyor may work alone, or part of a small team and be responsible for the initial or prime schedule, resulting in dilapidations being idiosyncratic. The surveyor carries the burden of advising on the lease, the condition of the property, the breaches of covenant, remedy, cost and consequential losses. Having obtained the evidence often unassisted, the surveyor presents and then defends their claim. This method of working devoid of critical scrutiny creates noise but is commonplace, and some landlords are unlikely to know the property as well and trust their surveyor.

Pre-formulated formats may diminish creativity but optimise consistency. They may diminish an existentialist world view of free thinking in order to yield to conventional practice and this includes not making attempts to engage with the other party, or their surveyor, prior to sending the initial schedule.

The take up of targeted training including negotiation, is low. Although surveyors are aware that they do not know everything they appear do little to reduce this gap in knowledge. They rely on guidance as a reference document, adopting recognised formats for their schedules. The respondents showed disparity in responses, but they have unfettered discretion, which is

unchallenged, perhaps because the costs of legal actions are dissuasive and creates uncertainty and scrutiny.

Bias is to be expected both in formulating a coherent case and as a means of safeguarding. It also occurs to champion a client's case and is extremely difficult to change. Coupled with noise, errors are to be expected. Bias, in the form of heuristics and anchoring (Kahneman and Tversky 1979) is also to be expected although unconscious. Empathy is overlooked, and responses on this and emotional intelligence take longer to answer. There is little appetite to understand the emotions of others or their subjective experiences. However, the root of disputes may be revealed if parties are allowed to display emotion.

Other costs may be included in a claim which may or may not be recoverable, described as "trip wires". These include misguided claims loss of rent or negotiation fees. Exaggerated claims are to be expected as are diminished responses together with criticism of incentivised fees. This polarised belief through the lens of either surveyor is unremarkable and prevalent. This research identifies that this is one of several stereotypical challenges faced in the industry.

This research reveals that dilapidations is a process of proposition, made apparent by the way in which the presentation of the schedule is tabled. There are four propositions:

Plausible - A suggestion, idea or proposal that is capable of being plausible, it could happen, it is imaginable, it could be accepted as being true

Persuasive - A suggestion, idea or proposal that is convincing, compelling, powerful, forceful

Perfect - A suggestion, idea or proposal that is capable of being proven, unchallengeable, undeniable, conclusive, is true

Problematic - A suggestion, idea or proposal that is incapable of being true, unsubstantial, without substance

Surveyors are not experts until instructed. Behaving like an expert, as opposed to being an instructed expert are mutually exclusive. Surveyors can however advocate their client's case. Surveyors are loss averse, and fearful of making choices that lead to loss, fear, condemnation or humiliation. This manifests itself in so called exaggerated claims, but there is less discourse on understated offers. Self-esteem plays an important role in how those in disputes wish to be seen and behave.

The concept of damages could be conceptualised as the vendor and purchaser. The vendor, the landlord, makes an offer to sell the claim to the purchaser, the tenant. The vendor may be culpable of exaggerating its offer, or over-selling, for fear of selling it too cheaply, and the purchaser may be culpable of under-selling, by offering to a low price. In dilapidations this harvests much attention yet is accepted in other areas in the built environment including real estate transactions.

CHAPTER SEVEN

CONCLUSIONS

7.0 Introduction

This research sought to reveal why dilapidations are sometimes difficult to resolve. The previous chapters set out the sources of literature, tensions and surveyors cognition when undertaking dilapidations. This chapter provides an overview of the research enquiry, outcomes and findings and gives insight into the practical and academic applications and further research enquiries.

7.1 Summary of Research Objectives

The aim of this enquiry is to understand why dilapidations are frequently difficult to resolve. This was achieved by the objectives to:

7.1.1 Critically examine and review the literature on dilapidations and its importance in today's business environment

To achieve this objective, the author reviewed both the historical and contemporary literature in the field of dilapidations, and how guidance has shaped best practice in the field of surveying. The results of the review showed that the literature falls into three clusters, Surveying, Law and Regulation, and that each cluster interacts with the other two. A further analysis revealed that the issues discussed in the literature could be grouped into tensions, each tension comprising several related and similar issues. Gaps in our knowledge showed why dilapidations are difficult to resolve. Literature often focused on case law but was silent on the causes of delays in resolving disputes. A philosophical analysis of the schedule of dilapidations revealed a process driven approach, whereby each proposition relied on the preceding proposition in order to succeed. Any attempt to discredit the proposition resulted in failure of the whole proposition. Business risk was examined, and internal and external factors influencing decision making were revealed. The key findings included a mismatch in resources, skills and knowledge between surveyors, leading to delays in resolving disputes.

7.1.2 Understand the current practices and the surveyor's cognition, knowledge of dilapidations and decision making

The research study showed that there is a consistent approach to the way in which dilapidations are presented. The presentation in tabular form is undertaken in accordance with RICS Guidance and the Protocol. The semi-structured interviews revealed a spectrum of knowledge, with consistencies regarding guidance and the protocol, but disparity regarding an understanding of either party's motivations for investing in property or taking on a lease. Using correlation analysis it could be seen that when surveyors moved towards the implicit pole, their opposing surveyor moved with them. But the study also showed a poor understanding of empathy and comprehension of bias.

7.1.3 Evaluate knowledge gaps and improve surveyors awareness of critical factors impacting on decision making

The study showed by way of questionnaire and repertory grid interviews that surveyors unconsciously move away from their core skills and knowledge base into areas not associated with dilapidations. These include negotiation skills, psychology, philosophy, approaches to conflict, intransigence, empathy, communication and tactical skills and knowledge. As the technical issues of the dispute move towards influencing and behavioural issues, the ability to comprehend issues becomes more complex and challenging. These unknown factors cause delays and frustrations to the parties, so much so that the issues concerning the facts of the claim are dwarfed by the inability of the parties to communicate and trust one another.

7.1.4 Develop a framework for lifelong learning to assist surveyors in a deeper understanding of business approaches

The study has shown that to develop a framework for lifelong learning, a change in the way dilapidations is taught and understood is required. The focus on the tenants breaches, without a comprehensive understanding of the law of breach of contract and the remedy by way of damages proves to be a significant factor in resolving the dispute, complicated further by a mismatch in skills and experience between the parties.

7.2 Key Findings

This enquiry reveals significant findings. The outputs of a claim for dilapidations is the schedule of dilapidations. The sequential approach is process driven relying on statements that must be true in order for them to be reliable. This research shows that analysis by proposition reveals

a more rigorous approach but concedes that the truth to a claim may never be reached. External influences provide professional and ethical guidance and serve as a reference and example of best practise. This research demonstrates that despite this, tensions exist between the parties. The literature primarily focuses on technical and influential issues. The causes of behavioural issues are not found in the subject matter but are found when broader enquiries are made.

Technical issues must be left to the individual. The literature and anecdotal evidence are filled with examples, but influential issues arise within or external to an organisation. Behavioural issues affect both technical and influential issues. Although tensions can be categorised and ranked, surveyors revealed that behavioural issues are more difficult to deal with than technical issues, and yet training in negotiation and understanding human behaviour is significantly lacking.

The probability of tensions increasing is related to the concept of propositions of truth. This research exposes that tensions are unavoidable because the responding party can resist the proposition, with or without grounds or evidence to do so. An argument to do so may be made when the landlord's claim also lacks evidence to support the claim. A first order form of thinking, whereby the consequences of what we do are considered, implies that the landlord's surveyor expects to receive a robust defence and a low offer to settle, similar to a tenant expecting to receive a claim that may be considered excessive. A second order form of thinking, in this case about the meaning of truth in the context of proposition, makes it easier to understand why the tension develops, as it becomes clear that in order for the schedule to be successful, each line must demonstrate a consequential truth, and free from the risk of receiving a robust defence. This causes the landlord's surveyor to have consider their schedule in greater detail in order to justify it (Dalio 2018).

7.3 Practical Implications

To bring about change in practice, surveyors and companies should recognise their own strengths and weaknesses when dealing with dilapidations and in the wider context of dispute resolution. An understanding that root causes of a dispute can be categorised into technical, influential and behavioural issues is necessary in order to formulate a strategic plan for improvement and to help understand why delays and frustrations may be occurring. Technical issues may themselves cause delay in ascertaining if they are true or not but require further research and enquiry. They are based on fact or previous judgement or are tested in the legal system.

An analysis should include self-reflection, or metacognition, appreciating that often the first time individuals reflect on their schedule is when they are criticised by others. How do surveyors recalibrate their thinking when challenged, and reflect on personal and constructive criticism? The notion to improve however is not new (Rowling 2012).

Individuals and organisations can take practical steps to:

- Measure and monitor their performance and emotional intelligence
- Take steps to train staff in advanced skills including negotiation and behavioural analysis
- Introduce mentoring, so that surveyors can be guided from their early careers
- Introduce the balanced scorecard (see Figure 3.1) as a method to monitor performance, review and reflect on the approach and commitment to life-long learning, reviewed against how well listening and reflecting is achieved and perceived.
- Undertake noise audits, in order to understand the extent of variable judgments within the same organisation (Kahneman, Sibony and Sunstein 2021) and introduce training to reduce its effect
- Promote joint surveyor inspections, so that both surveyors meet and inspect the property before the schedule is sent

The learning environment for dilapidations does not reflect the outcomes of this study. Training courses focus on procedure and the community of practice focus on case developments. It should be recognised by the community that the publication of guidance and the Protocol, comes with a responsibility to train surveyors in its application.

The diversity of training courses requires further enquiry in order to introduce them to surveyors on subject matters outside of dilapidations. This will include human behaviour, negotiation skills and the concepts of actual loss. The literature appears to imply that surveyors understand concepts of loss when this study demonstrates otherwise.

This enquiry confirms that to achieve greater awareness, organisations must embrace the fact, that we do not know what we do not know. Training should include understanding :

How do we concede?

How should we listen?

How do we recognise a compromise or defeasibility?

How do we learn to think for ourselves, as well as follow guidance?

Will we achieve more if we work harder to win our own arguments?

How do we augment our knowledge, skills and understanding?

Two significant related issues arose during the interviews. The first is that surveyors have little or no training in negotiation or understanding human behaviour. None of the participants explored this further or admitted the reasons. The second related issue was that surveyors receive little in the way of high level training in dilapidations, despite the training course available. There is an opportunity to provide training to practicing organisations which blends classroom, remote or virtual experiences to overcome the challenges of barriers to physical inspection. Structured virtual training to augment classroom or work experience is critical, resulting in inclusive and flexible programmes. It is clear from this enquiry that the starting point is within the academic establishments and not the market place.

The research reveals a distinction between those who desire life-long learning, and those who do not. However, barriers to learning, which include affordability and accessibility were not referred to, although the scarceness of high quality training was.

In summary, there is a need to:

- Develop the desire to motivate and inspire learning
- Develop blended cognitive training programmes in dilapidations, communication and negotiation
- Develop a philosophical understanding of disputes
- Increase the awareness of human behaviour in disputes
- Understand that dilapidations means:
 - a. A prediction
 - b. Negotiation
 - c. Horse trade
 - d. A Sale and Purchase
 - e. A compromise
 - f. Collaboration and co-operation
 - g. Advocacy
 - h. A set of scales, balanced and unbalanced
- Advocate a long term, planned combined strategy between landlords and tenants, and to undertake joint inspections with the landlord, tenant or their advisors, prior to serving the primary schedule.
- Develop an awareness between dispute negotiation, and deal making negotiation

7.4 Academic Implications

Students are introduced to dilapidations during their study (Hoxley 2000) and unlikely to encounter it again until in practice, but only if their workplace undertakes dilapidations. The concept of loss is challenging to understand and yet is the foundation of the claim. A reverse approach, whereby the concept of loss is first understood followed by the creation of the claim, will bring about greater focus on the primary issues of damages and loss, supported secondly by its method of calculation. Secondly, an understanding that landlords seek compensation by way of damages for breach of contract is critical, yet the issues which arise to cause frustration and delay may be unrelated. This can be illustrated at Figure 6.9. As the 7 stages of a claim unfold, the skills, application of science, knowledge and approach becomes more significant yet travels further away from the substance of the claim, returning if litigation is commenced. This concept should be understood at the beginning of surveyor training.

This research confirms that dilapidations is a complex matter, the outcome of which is the resolution of a prediction. The prediction is the epitome of technical, influential and behavioural issues which actors are consciously and unconsciously in conflict with themselves and others. The cause of the conflict manifests itself in tensions which the author synergises as tactical and behavioural. An understanding at the commencement of academic training is required in order to be better prepared when dilapidations are experienced in practice.

The outcomes of this study are therefore significant, have implication to both academic and commercial fields of dilapidations and makes a significant contribution to our knowledge of dilapidations disputes; but has a wider application to dispute management and cognition in the built environment and perhaps other disciplines.

In the same way that communication skills are taught, either by language or drawing, the art of understanding of behaviour in disputes and how agreement can be reached by negotiation and compromise could have beneficial academic implications.

7.5 Originality and Contribution to Knowledge

Seeking the source of the reasons why dilapidations are difficult to resolve is original and contributes to the understanding of human behaviour in disputes. The convening of a Focus Group and the analysis of questionnaires and Repertory Grids is new in the field of dilapidations, as were the elicitation of tensions that arise during the process. For the first time tensions were ranked in order of difficulty to manage and the understanding that the areas of knowledge required to understand the reasons why they are difficult to resolve is found outside

the literature of dilapidations. Further, the more protracted and complex disputes become, the parties move further away from the contractual issues and closer to issues of psychology, philosophy, reasoning and different forms of approaches to negotiation and conciliation, See Figure 6.9.

7.6 Limitations

This research enquiry is founded in the field of dilapidations. It is unknown if the outcomes and findings apply equally to other disputes in the built environment or the wider field of disputes. This research is founded on dilapidations in England and Wales only. It is not known if the findings apply elsewhere including Scotland or elsewhere.

7.7 Further Research

There are gaps in our knowledge on legal and influential issues within dilapidations, as the meaning and application to surveying professionals is often overlooked in favour of a legal summary of the events describing the dispute. This research reveals further lines of enquiry to interview landlords, tenants and their legal advisors using the same or modified Repertory Grid, in order to triangulate the elements.

The method of this enquiry can be applied to other disputes within the built environment concerning for example design, quantum, extensions of time, workmanship, quality and design changes, and neighbourly issues such as boundary disputes, party wall disputes and over sail disputes. Further research is required to ascertain if the summary of findings, and in particular the categorisation of tensions into technical, influential and behavioural issues can be applied. It is thought that disputes concerning primarily technical issues are less likely to apply if the resources required to resolve it are primarily one of fact or based on data. The author is certain that the learning outcomes from this research have a wider scope of contributing to knowledge in the built environment in matters of dispute. Further, there is an opportunity to see if the concept of technical, influential and behavioural issues can be applied to disputes outside of the built environment, in all other industries.

7.8 Summary

Despite developing a comprehensive understanding of dilapidations and the reasons why they are difficult to resolve, this enquiry establishes that the landscape of the unknown is more immense than perhaps first thought, giving opportunities for further research. This research shows that claim management and the presentation and negotiation of the schedule can

become the primary issue of tension, and the breaches of covenant pushed into second place. By reflection, an understanding of ourselves will help to bring about a greater understanding of how we may inadvertently contribute to the intransigence of the dispute.

Dilapidations are idiosyncratic, but the foundations of presentation and approach are formulaic. This mismatch manifests itself in the negotiation stage as the opportunity to engage with the other side prior to serving the schedule is overlooked. Dilapidations surveyors should attempt to engage their opposing surveyor and inspect the property together prior to serving the schedule.

The idiosyncrasies of dilapidations manifest themselves in the following ways:

1. The individual who inspects the property purposefully collects their own evidence and prepares, defends and negotiates the claim.
2. The probability of error increases in line with the size and complexity of the claim. The error is not bias.
3. Training is not perceived as being required, and an understanding of dilapidations may be perceived as being axiomatic.
4. The negotiator is also the instigator.
5. The landlord and tenant's paradox is the path laid for them, not by them.

This research benefits those engaged to unpack disputes or act as an expert. Understanding the meaning behind the dispute will help to categorise the issues to a dispute, the support materials and influences and why claims may have stalled or reached litigation. Ascertaining if the issue is technical or influenced by behaviour, or the conduct of the parties, shed light on why claims stall.

Dilapidations has an ordinary meaning, a first order way to think of it as a claim for damages; but the real outcome of the issue is a development of the tensions that arise and they are determined by motivation, bias, noise, knowledge, truth, experience, numerous skills including negotiation, listening, emotional intelligence - a second order way to think of it. Secondly, as the claim progresses, the contractual dispute becomes more distant and concerns science (including thermodynamics, gravity, forces and the science of pathology) philosophy and psychology, but in dilapidations the process is moulded around guidance and improvisation. Thirdly, tensions can be codified and ranked in order of difficulty to manage. Fourthly, that despite our knowledge and understanding, we do not know what we do not know. This research reveals that surveyors know there are areas of knowledge beyond their reach, but do not know what they are, and appear to have little appetite to find them and this research demonstrates that they are concerned with behaviour, as established by authors such as

Kahneman (2021). Dispute resolution is misunderstood and often take a micro approach to the problem as opposed to a longitudinal approach which considers the life of the building and the desires of the landlord and tenant. This research deconstructs this obstruction and advocates a holistic approach to dispute clarification.

REFERENCES

- Aliakbari, M., Sadeghdaghighi, A., (2012) *Teachers' perception of the barriers to critical thinking*. Procedia - Social and Behavioural Sciences 70 1 – 5
- Amanatullah, E.T., Tinsley C.H., (2013) *Punishing Female Negotiators for Asserting Too Much...or Not enough : Exploring Why Advocacy Moderates Backlash Against Assertive Female Negotiators*. Organisational Behaviour and Human Decision Process. Vol.120 Issue 1 pp110-122
- Andrews, K., (2021) Dilapidations update: *The effect of the COVID-19 pandemic on insolvency claims and landlord and tenant disputes*. Journal of Building Survey, Appraisal & Valuation Vol 10 No. 3 Henry Stewart Publications
- Argyris, C., (1977) *Double loop learning in organisations*. Harvard Business Review. Sept-Oct. 1977
- Arnold, J.C., (1929) *Landlord and Tenant, 1927*. Review by J. C. Clarke. The Town Planning Review Vol.13, No.4 pp268-274. Liverpool University Press
- Avruch, K., Black, P. W., (1990) *Ideas of Human Nature in Contemporary Conflict Resolution Theory*. Plenum Publishing Corporation
- Bachmann, K., (2018) *Can Advisors Eliminate the Outcome Bias in Judgements and Outcome-Based Emotions*. Review of Behavioural Finance Vol. 10 No.4 pp336-352 Emerald Publishing Limited
- Baker, C.E.S., (1924) *The Law of Dilapidations* (Macer's) 7th Edition Ed. Pocock The Estates Gazette
- Barosa, P.A.M., (2016-2017) *The Significance of Emotional Intelligence to Trial Lawyers*. United Nations Interregional Crime and Justice Research institute. International Expert Programme in Investigative and Legal Psychology Research Institute
- Barroso-Castro, C., Villegas-Perinan, M., Casillas-Bueno, J. C., (2016) *How Boards' Internal and External Social Capital Interact to Affect Firm Performance*. Strategic Organisational Vol, 14 No. 1. Sage Publications Ltd
- Beatt, A., (2010) *Walking the Line: Advocate or Expert*. Canadian Property Valuation
- Beckett, P., (2014) *Diminution in the value of the reversion in dilapidations: Some misconceptions*. Journal of Building Survey and Appraisal Volume 3 No. 4 Henry Stewart Publications
- Beckett, P., *Uncertainty in Dilapidations* [online]. Available at: <http://beckettandkay.co.uk/uncertainty-in-dilapidations/> [Accessed 21 June 2016]
- Bilek, J., Nedoma, J., Jirasek, M., (2018) *Representativeness heuristics: A literature review of its impacts on the quality of decision-making*. Journal of Civil Engineering 26(2) pp29-38
- Blackburn, S., (2017) *Truth*. Profile Books Ltd
- Blaikie, N., (2007). *Approaches to Social Inquiry*. 2nd ed. Cambridge Polity

- Brett, J. M., Olekalns, M., Friedman, R., Goates, N., Anderson, C., & Lisco, G. C., (2007) *Sticks and Stones: Language, Face and Online Dispute Resolution*. Academy of Management Journal Vol, 50 No.1 pp85-99.
- Bridgman, R., (1828) *An Analytical Digest of the Reported Case in the Court of Equity and the High Court of Parliament from the Earliest Authentic Period to the Present Time*. Gould and Banks, New York
- Brink, P.J., Wood, J.M., (1998) *Advanced Design in Nursing Research*. Sage
- Brinkman, S., Kvale, S., (2015) *Interviews Learning the Craft of Qualitative Research Interviewing*. Sage Publications
- Buetow, S., (2013) *The Traveller, miner, cleaner and conductor: idealized role of the qualitative interviewer*. Journal of Health Services Research and Policy Vol, 18, No. 1. Sage Publications.
- Burn, S., (1999) *The Civil Justice Reforms in England and Wales: Will Lord Woolf Succeed Where Others Have Failed*. Windsor YB Access Just., 17, p.221.
- Busby, J.S., Hughes, E.J., (2004) *Projects, pathogens and incubation periods*. International Journal of Project Management 22 pp425-434
- Cakmak, E., Cakmak, P.I., (2014) *An analysis of causes of disputes in the construction industry using analytical network process*. 2nd World Conference on Business, Economics and Management. Procedia – Social and Behavioural Sciences Vol 109 pp183-187
- Carmeli, A., Gelbard, R., & Reiter-Palmon, R., (2013). *Leadership, creative problem-solving capacity, and creative performance: The importance of knowledge sharing*. Human Resource Management, 52(1), 95–121.
- Cartwright, S., (2002) *Double-Loop Learning : A Concept and Process for Leadership Educators*. Journal of Leadership Education Vol 1 Issue 1
- Chambers, T. and Tattersall, G., (1845) *The Laws relating to buildings: comprising the Metropolitan Buildings Act, fixtures, insurance against fire, actions of builder's bills', dilapidations and a copious glossary of technical terms peculiar to building*. Lumley, London
- Charlesworth, A., (2015) *Why are Dilapidations Claims So Complex and Costly?* Cushman & Wakefield accessed 22.10.17
- Checkley, K., (1997) *The First Seven...and the Eight: A Conversation with Howard Gardner*. Educational Leadership Vol 55 No. 1 pp8-13
- Cobb, L., (2014) *Recent case law on contractual disputes : Practical tips and advice for surveyors when managing a dispute*. Journal of Building Survey, Appraisal and Valuation Vol. 3 No. 2 Henry Stewart Publications
- Collingwood, M., (2017) *Consequential loss – what does it mean?* Journal of Building Survey, Appraisal and Valuation Vol. 6 No. 1 Henry Stewart Publications
- Coshall, J, T., (2000) *Measurement of Tourists' Images: The Repertory Grid Approach*. Sage Publications
- Covey, S.R., (2004) *The 7 Habits of Highly Effective People*. Simon & Schuster

- Craig, G., (2017) *Applying the repairing covenant : The what, the why and the how*. Journal of Building Survey, Appraisal and Valuation Vol. 5 No. 4 Henry Stewart Publications
- Creswell, J.W., (2014) *Research Design, Qualitative, Quantitative and Mixed Methods Approaches*. 4th Edition. Sage
- Dalio, R., (2018) *Principles*. Simon and Schuter
- Davies, N., (2018) *Fundamental principles surrounding negotiations*. Journal of Building Survey, Appraisal & Valuation Vol 7 No. 4 Henry Stewart Publications
- Doody, O. and Doody, C., (2015) *Conducting a pilot study: case study of a novice researcher*. British Journal of Nursing 24(21)pp1074-1078
- Dowden, M., (2010) *If the cap fits*. The New Law Journal 30 July 2010
- Dowding, N. and Reynolds, K. and Oakes, A., (2022) *Dilapidations: The Modern Law and Practice*. 7th Edition. Sweet and Maxwell
- Duncan, M., (2021) *Interim repairs : Remedies and relief*. Journal of Building Survey, Appraisal & Valuation Vol 10 No. 2 pp132-142 Henry Stewart Publications
- Eden, N., (2010) *Take Command; Damages and Dilapidations*. Estates Gazette 7 August 2010
- Edwards. S, Stell. P, Firm K., (2008) *Dilapidations and Service Charge Disputes: A Practical Guide*. EG Books
- Edwards, R., Holland, J., (2013) *What is Qualitative Interviewing?* Bloomsbury Publishing
- Festinger, L., & Carlsmith, J. M., (1959) *Cognitive consequences of forced compliance*. The Journal of Abnormal and Social Psychology, 58(2), 203–210
- Fetherstonhaugh, G., (2009) *Winning the costs game in dilapidations*. Estates Gazette 29 October 2009
- Fetherstonhaugh, G., (2010) *Dilapidation Claims: the relevance of post-termination events*. Falcon Chambers
- Fetherstonhaugh, G., (2011) *Dilapidations - heresy or dogma?* PLA conference 2011
- Fetherstonhaugh, G., (2012) *Repair and reinstatement: Beware the elephant trap?* Journal of Building Survey, Appraisal & Valuation Vol 1. No. 2 Henry Stewart Publications
- Fetherstonhaugh, G., (2015) *Never mind quantum -what about liability?* Journal of Building Survey, Appraisal & Valuation Vol 4. No. 4 pp 212-217. Henry Stewart Publications
- Firn, K., Stell, P., (2008) *Dilapidations: Community in Conflict*. Landlord and Tenant Review Volume 12, Issue 6
- Firn, K. I., Watson, M.R., (2009) *Engaging with Dilapidations: A Question of Ethics*. Landlord and Tenant Review Issue 4
- Firn, K. I., Stell, P. and Watson, M.R., (2011) *Dilapidations - Landlord's Costs and Fees*. Landlord and Tenant Review Issue 3
- Fisher, C., (2017) *"True Believer," "Legal Advocate," or "Committed Expert": Parliamentary Media Advising and Practitioner Conceptions of Partisanship*. Journalism and Mass Communication Quarterly Vol 94 Issue 3
- Fisher, F., Ury, W., (2012) *Getting to yes*. Random House Business Books

- FitzGerald, C., Hurst, S., (2017) *Implicit bias in healthcare professionals- A Systematic Review*. BMC Med Ethics
- Fletcher, B., (1872) Edited Pocock, S., *Dilapidations: A Text-Book for Architects and Surveyors in Tabulated Form*. Leopold Classic Library
- Friedman, R.A., Tidd, S.T., Currall, S.C., Tsai, J.C., (2000) *What goes around comes around: The impact of personal conflict style on work conflict and stress*. The International Journal of Conflict Management. Vol 11, No. 1 pp32-55
- Foo, M.D., Elfenbein, H. A., Tan, H.H., Aik, V.C., (2004) *Emotional Intelligence and Negotiation : The tension between Creating and Claiming Value*. International Journal of Conflict Resolution
- Fulmer, I.S., Barry, B., (2004) *The Smart Negotiator : Cognitive Ability and Emotional Intelligence in Negotiation*. International Journal of Conflict Management 15(3), 245–272.
- Gerzon, M., (2018) *Emotional Intelligence : Dealing with difficult people. To Resolve a Conflict, First Decide: Is it Hot or Cold?* Harvard Business Review
- Gilbert, D., (2009) *Section 18 Valuations: Wisdom or Witchcraft?* Journal of Building Appraisal Vol 4. No 3. pp169-180
- Gilbert, D., (2013) *Diminution valuations for building surveyors*. Journal of Building Survey, Appraisal and Valuation Vol 2. No 2. Henry Stewart Publications
- Gilbert, D., (2015) *Dilapidations in the UK - diminution valuations*. Journal of Property, Investment & Finance Vol 33, No. 3 pp282-290
- Goleman, D., (2019) *Emotional Intelligence Self Awareness. The First Component of Emotional Intelligence*. Harvard Business Review
- Hinnells, M., Bright, S. , Langley, A., Woodford, L., Schiellerup, P., Bosteels, T., (2008) *The greening of commercial leases*. Journal of Property Investment & Finance, Vol. 26 Issue: 6, pp.541-551
- Hannabuss, S., (1996) *Research interviews*. New Library World, Vol. 97 No. 5, pp. 22-30.
- Helmholz, R.H., (2021) *The law of waste and the law of dilapidations: A comparative history*. Comparative Legal History Vol. 9 No.2
- Holland, J. and Webb, J., (2016) *Learning Legal Rules*. Oxford University Press 9th Edition
- Hollis, M. (1998) *Surveying for Dilapidations a Practical Guide to the Law and its Application*. Estates Gazette
- Hollis, M. and Bright, K., (1999) *Surveying the surveyors*. Structural Survey Volume 17 No. 2 pp 65-73
- Hollis, M. and Bright, K., (1999) *Surveying the survey*. In: Hughes, W (Ed.), *Proceedings 15th Annual ARCOM Conference*. 15-17 September 1999, Liverpool, UK. Association of Researchers in Construction Management, Vol. 1, 265–74
- Hollis, M., Gibson, C., (2000) *Surveying Buildings*. RICS Books
- Holloway, I., (1997) *Basic Concepts for Qualitative Research*. Oxford: Blackwell Science

- Horley, J., (2012) *Personal Construct Theory and Human Values*. Journal of Human Values Sage Publications.
- Hoxley, M. (2000) *Are competitive fee tendering and construction professionals services quality mutually exclusive*. Construction Management and Economics 18 (5) pp599-605
- Hoxley, M., (2012) *UK building surveying education: the graduates' view*. Facilities, Vol. 30 Iss 5/6 pp. 218 – 233
- H.S.E., (2013) *Managing and working with asbestos. Control of Asbestos Regulations 2012*. Approved Code of Practice and Guidance. Health and Safety Executive
- Hunter, J., (2006) *Dilapidations*. RICS Books
- Hutchings, (2014) *Damages at the end of the lease term: Is S18 (1) Iniquitous for Landlords?* Wilberforce Chambers
- Jankowicz, D., (2001) *Why does subjectivity make us nervous?* Journal of Intellectual Capital Vol 2. No 1 2001 pp 61-73
- Jankowicz, D., (2004) *The Easy Guide To Repertory Grids*. John Wiley & Sons
- Jansen, M., (2008) *Dilapidations Fault Lines*. Property Week 16 May 2008
- Jesson, J., Lacey, F., (2006) *How to do (or not to do) a critical literature review*. Pharmacy Education June 2006; 6(2) : 139-148
- Johnson, E., (2009) *Problems and Solutions in Enforcing Duties to Repair in Leases of Commercial Property*. Maitland Chambers
- Johnstone, A., Holyoake, C., (2019) *Landlords and tenants must work together to meet net zero carbon targets*. Journal of Building Survey, Appraisal and Valuation. Vol 9 Number 1. Henry Stewart Publications
- Jones, M.G., Brader-Araje, L., (2002) *The Impact of Constructivism on Education: Language, Discourse and Meaning*. American Communication Journal Volume 5, Issue 3 Spring 2002
- Joyce, J., (2008) *The Dilapidations Protocol: Third edition*. Journal of Building Appraisal (2008) Vol. 4, No. 2 pp 55 – 58 Palgrave Macmillan
- Jourdan, S., (2014) *Battles About Chattels*. Falcon Chambers
- Kahneman, D., Tversky, A., (1979) *Prospect Theory: An Analysis of Decision under Risk*. The Economic Society Vol. 47, No. 2, pp. 263-291
- Kahneman, D., Rosenfield, M., Gandhi, L., Blaser, L., (2016) *Noise. How to Overcome the High, Hidden Cost of Inconsistent Decision Making*. Harvard Business Review October 2016.
- Kahneman, D., (2011) *Thinking , fast and slow*. Farrar, Straus and Giroux
- Kahneman, D., Sibony, O., Sunstein, C.R., (2021) *Noise A Flaw in Human Judgement*. William Collins.
- Kaplan, R.S., Norton, D.P., (1992) *The Balanced Scorecard- Measures that Drive Performance*. Harvard Business Review January – February 1992
- Karas, J. and Woodman, J., (2010) *In a state of disrepair: Dilapidations* Estates Gazette

- Kawaf, F. and Tagg, S., (2017) *The construction of on-line shopping experience: A repertory grid approach*. Computers in Human Behaviour 72 222-232
- Kelly, G., (1955) *The Psychology of Personal Constructs* (New York)
- Kelly, G. A., (1970) *A Brief Introduction to Personal Theory*. Edited version of an essay written in 1966, later published on E, Bannister (ed) 1907 Perspectives in Personal Construct Theory. London Academic Press
- Kempton, J. A., (2003) *Surveyor Variability: Judgement Policy Elicitation*. PhD thesis University of Portsmouth
- Kelley, H. H., & Stahelski, A. J., (1970) *Social interaction basis of cooperators' and competitors' beliefs about others*. Journal of Personality and Social Psychology, 16(1), 66–91.
- King, V., Woodman, J., (2009) *Know your statutory requirements*. Building Surveying Journal May-June 2009
- Kotze. M. , Venter, I., (2011) *Differences in emotional intelligence between effective and ineffective leaders in the public sector: an empirical study*. International al Review of Administrative Sciences
- Kruger, J., Dunning, D., (1999) *Unskilled and Unaware of It: How Difficulties in Recognising One's Own Incompetence Lead to Inflated Self -Assessment*. Journal of Personality and Social Psychology Vol. 77 No. 6 pp 1121-1134
- Kumaraswamy, M., (1997) *Conflicts, claims and disputes*. Engineering, Construction and Architectural Management. 4(2) pp 95-111
- Laurie, I., (2012) Journal of Building Survey, Appraisal and Valuation Vol, 1 No. 3
- Larsen, G., (2005) *A Polymorphic Framework for Understanding the Diffusion of Innovations*. PhD thesis. School of Construction Management and Engineering. University of Reading
- Levine, R. A., (2016) *Repairing the Fractured Social Sciences: An Introduction form a Historical Point of View Part One within Methods That Matter Integrating Mixed Methods for More Effective Social Science Research*. Ed M Cameron Hay University of Chicago Press
- Lemmon, S., (2023) *MEES may benefit tenants in dilapidation claims*. RICS Built Environment Journal
- Towns and The Land (1923-1925) *Urban Report of the Liberal Land Committee*. Hodder and Stoughton Ltd. London
- Lancaster, G.A., Dodd, S., Williamson, P.R., (2004) *Design and analysis of pilot studies: recommendations for good practice*. Journal of Evaluation in Clinical Practice, 10,2
- Love, P., Davis, P., London, K., Jasper, T., (2008) *Causal Modelling of Construction Disputes*. Procs 24th Annual ARCOM Conference, Cardiff, UK.
- Love, P. , Edwards, D. , Wood, E., (2011) *Loosening the Gordian knot : the role of emotional intelligence in construction*. Engineering, Construction and Architectural Management Vol, 18, No1
- Lune, H., Berg, B.L., (2017) *Qualitative Research Methods For the Social Sciences*. 9th Ed. Pearson

- Mahony, C., (2004) *How building pathology affects you*. RICS Building Surveying Journal October-November 2004
- Mahony, C., (2013) *The bigger picture*. RICS Building Surveying Journal March-April 2013
- Mahony, C., (2013) *Dilapidations claims at lease end: Sunlife Europe Properties Limited and Tiger Aspect Holdings Limited and Tiger Television Limited [2013] EWHC 463 (TCC)*. Journal of Building Appraisal and Valuation Volume 2 Number 3
- Marsden D., Littler, D., (1998) *Repertory Grid Technique: An Interpretive Research Framework*. MCB University Press
- Marshal, H. Q.C., (2008) *RICS Dilapidations Forum Annual Conference*. RICS
- McMillan, A., (2016) *Negotiating dilapidations claims : What is really going on?* Journal of Building Survey, Appraisal & Valuation Vol 5 No. 3 Henry Stewart Publications
- McChesney, M., (2013) *Negotiation skills: the missing link*. Estates Gazette
- Menkel-Meadow, C., (1997) *When Dispute Resolution Begets Disputes of Its Own: Conflicts Among Dispute Professionals*. UCLA Law Review 44 UCLA L. Rev. 1871
- Mo, Y., Dainty, A. , Price, A., (2007) *An Assessment of the Emotional Intelligence of Construction Students : An Empirical Investigation*. Annual ARCOM Conference, Belfast
- Murphy, M. , Burns, J., Kilbey, E., (2017) *Using personal construct methodology to explore relationships with adolescents with Autism Spectrum Disorder. Research in Developmental Disabilities*. Res Dev Dis
- Musashi, M., (2016) *The 25 Cognitive Biases*. Lightning Source UK Ltd
- Nagtegaal, R., Tummers, L., Noordegraaf, M., Bekkers, V., (2020) *Designing to Debias : Measuring and Reducing Public Manager's Anchoring Bias*. Public Administration Review Vol. 80, Iss 4, pp565-567
- Novemsky, N., Kahneman, (2005) *The Boundaries of Loss Aversion*. The Journal of Marketing Research Vol 42 pp 119-128
- Oppenheim, A.N., (1992) *Questionnaire Design, Interviewing and Attitude Measurement*. Pinter, London
- Ormston, R., Spence, L., Barnard, M., Shape, D., (2014) *Foundations of Qualitative Research*, Sage Publications
- Palmeira, M., Spassova, G. and Keh, H, T., (2015) *Other-serving Bias in Advice-taking-When Advisors Receive More Credit Than Blame*. Organisational Behaviour and Human Decision Processes Vol 130
- Pearce, J.,(1926) *Leasehold Injustices*. Letters to the editor The Saturday Review September 11 1926
- Peirce, C. S., (1878) *How to Make Our Ideas Clear*. Popular Science Monthly 12 (January 1878), 286-302.
- Peters, E., (2013) *Casing the joint*. The New Law Journal
- Pickrell, S.W., (1999) *A Surveyor's World-View : Decision-making in Building Surveying*. Doctor of Philosophy Thesis, University of Reading.

Pre-Action Protocol for Claims for Damages in Relation to the Physical State of Commercial Property at the Termination of A Tenancy (The Dilapidations Protocol)
<https://www.justice.gov.uk/courts/procedure-rules/civil/protocol/pre-action-protocol-for-claims-for-damages-in-relation-to-the-physical-state-of-commercial-property-at-termination-of-a-tenancy-the-dilapidations-protocol>

Prajwala, T.R., (2015) *A Comparative Study on Decision Tree and Random Forest Using R Tool*. International Journal of Advanced Research in Computer and Communication Engineering Vol.4 Issue 1

Qu, S.Q. and Dumay, J., (2011), "The qualitative research interview", *Qualitative Research in Accounting & Management*, Vol. 8 No. 3, pp. 238-264.

Qu, S.Q., (2011) *The Qualitative Research Interview*. Emerald Publishing Group

Raiffa, H., (2003) *The art of science and negotiation*. Harvard University Press

Randolph, P., (2016) *The Psychology of Conflict. Mediating in a Diverse World*. Bloomsbury

Ratner, B., (2009) *The correlation coefficient: Its values range between +1/-1, or do they?* Journal of Targeting, Measurement and Analysis for Marketing.

Reece, C.S., (1996) *All You Wanted to Know About Dilapidations But Were Afraid to Ask*. Part I Structural Survey Vol 14. Iss 3 pp4-9

Reece, C.S., (1996) *All you wanted to know about dilapidations but were afraid to ask: Part II*. Structural Survey Vol. 15 No. 3 pp122-126

Regan, E., (2020) *Department of Finance and Dilapidations Claims – An Overview*. Northern Ireland Assembly Research and Information Service Briefing Paper

Report from the Select Committee of Business Premises (1920). House of Commons. HMSO, London

Reynolds, D. and Gilbert, D., (2011) *Looming Large: Dilapidations*. Estates Gazette 26 March 2011

Ritchie, J., Lewis, J., Nicholls, C.McN., Ormston, R., (2014) *Qualitative Research Practice*. Sage Publications

RICS (2016) *Dilapidations in England and Wales*. Guidance Note 7th Edition, Royal Institution of Chartered Surveyors.
https://www.rics.org/content/dam/ricsglobal/documents/standards/Dilapidations_rebrand_2024.pdf

RICS (2022) *Dilapidations in England and Wales. A clear, impartial guide*. RICS Consumer Guides

Roberts, R.D., Zeidner, M., Matthews, G., (2001) *Does Emotional intelligence Meet Traditional Standards for an Intelligence? Some New Data and Conclusions*. Emotion 2001. Vol 1 No. 3 pp196-231

Robertson, A., (2020) *Independent expert determination in dilapidations cases*. Journal of Building Survey, Appraisal and Valuation Vol. 9 No. 4

- Rollwage, M., Fleming, S.M., (2021) *Confirmation bias is adaptive when coupled with efficient metacognition*. Philosophical Transactions. Royal Society Publishing
- Roscoe, T., (2012) *Dilapidations: Section 18(1) and a Landlord's Subsequent Works*. Wilberforce Chambers
- Rosenthal, A. and Ollech, J., 2011 *Dilapidations Claims; An Overview* Facon Chambers
- Ross, J., (2013) *Why are dilapidations Claims so Prevalent?* Forsters LLP
- Rowling, J., (2011) *Painting the perfect picture*. Estates Gazette
- Rowling, J., (2012) *Can dilapidations be improved?* Journal of Building Survey, Appraisal and Valuation Vol. 1 No. 2
- Rowling, J., (2013) *Dilapidations : Repairs and the supersession thereof*. Journal of Building Survey, Appraisal and Valuation Vol. 3 No. 1
- Rowling, J., (2009) *PLA Dilapidations Protocol supported by surveyors, but they're still revolting*. Malcolm Hollis accessed 22.10.17
- Rowling, J., (2017) *An evolutionary document*. RICS Building Surveying Journal
- Rowling, J., (2017) *Alternative dispute resolution of dilapidations disputes in the United Kingdom*. Journal of Building Survey, Appraisal & Valuation Vol 6 No. 2 pp112-117 Henry Stewart Publications
- Rowling, J., (2018) *The TFT Purple Book, A Guide to Dilapidations in the UK*. New Generation Publishing
- Rowling, J., (2020) *Tenant's alterations made to UK office property in the age of net carbon and of minimised waste : The end of the "single-use fit-out"?* Journal of Building Survey, Appraisal & Valuation Vol 9 No. 2 Henry Stewart Publications
- Rushton, T., (2007) *Investigating Hazardous and Deleterious Materials*. RICS Books
- Rushton, T., (2009) *Investigating Defects in Commercial and Industrial Buildings*. RICS Books
- Salacuse, J.W., (2016) *The Effect of Advice on Negotiations: How Advisors Influence What Negotiators Do*. Negotiation Journal April 2016
- Sampson, P., (1972) *Using the Repertory Grid Test*. Journal of Marketing Research
- Saunders, M.N.K., (2015) *Research Methods for Business Students*. 7th Ed. Pearson
- Schon, D., (2003) *The Reflective Practitioner*. Ashgate
- Schiffman, S., (2010) *Negotiation Techniques (That really work!)*. Adams Business
- Shapiro, M., (1979) *Compromise and Litigation*. American Society for Political and Legal Philosophy
- Shaw, E., (2014) *Resolve to resolve : A review of the RICS Dilapidations Scheme for expert determination*. Journal of Building Survey, Appraisal and Valuation Vol, 3 No, 4
- Shaw, E., Poole, K., (2023) *Consequential loss in dilapidations: Direct and indirect consequences of consequential loss claims*. Journal of Building Survey, Appraisal & Valuation, 12(3), pp.218-227.
- Shelton, M., (2022) *A Practical Guide to the Law of Dilapidations*. Law Brief Publishing

- Shepperd, J., Malone, W., Sweeny, K., (2008) *Exploring Causes of the Self-serving Bias*. Social and Personality Psychology Compass 2/2 Blackwell Publishing Ltd
- Shorthall, D., (2009) *Dilapidations Damage To The Reversion*. Alexandra Reece Thomson Accessed 22.10.17
- Soffer, J., (1993) *Jean Piaget and George Kelly - Toward a Stronger Constructivism*. Routledge Taylor & Francis Group
- Solas, J., (1992) *Investigating Teacher and Student Thinking about the Process of Teaching and Learning Using Autobiography and Repertory Grid*. American Educational Research Association
- Song, Y., Lu, Y., (2015) *Decision Tree methods: applications for classification and prediction*. Shanghai Archives of Psychiatry, 2015, Vol 27. No.2
- Sorabji, J., (2014) *English Civil Justice after the Woolf and Jackson reforms: A critical analysis*. Cambridge University Press
- Stell, P. and Tugwell, A., (2006) *Dilapidations - No Easy Answer*. The Journal
- Strange, B., Wood, N., Pickard, H. and Drummond-Brassington, D., (2017) *Don't Get Caught Out* Estates Gazette
- Strasburger, L.H., Gutheil, T.G., Brodsky, A., (1997) *On Wearing Two Hats: Role Conflict in Serving as Both Psychotherapist and Expert Witness*. Am J Psychiatry 154.4
- Study of Lease Codes in the UK*. Emerald Group Publishing Limited
- Swap, W., Leonard, D., Shields, M., Abrams, L., (2001) *Using Mentoring and Storytelling to Transfer Knowledge in the Workplace*. Journal of Management Information Systems, 18:1, 95-114
- Sweet, S.A., (1999) *Judicialisation and the Construction of Governance*. Sage Publications
- Taggart, N., (2015) *Darkness of the Edge of Town*. Part 1 Journal of Building Survey and Appraisal Vol 4. No 3
- Taggart, N., (2015) *Darkness of the Edge of Town*. Part 2 Journal of Building Survey and Appraisal Vol 4. No 4
- Tan, F. B., Hunter, M. G., (2002) *The Repertory Grid Technique: A Method for the Study of Cognition in Information Systems*. JSTOR
- Tanney, A., (2014) *Landlord's disrepair claims: essential guidance for tenants*. Falcon Chambers
- Tanney, A., Taskis, C., (2019) *Dilapidations claims and consecutive leases : Problems and possible solutions*. Journal of Building Survey, Appraisal and Valuation Vol. 8 No. 1 pp 61-68. Henry Stewart Publications.
- Teijlingen van, E., Hundley, V., (2001) *The importance of pilot studies*. Social Research Update Issue 35, University of Surry
- Thabane, L., Ma, J., Chu, R., Cheng, J., Ismaila, A., Rios, L.P., Robson, R., Thabane, M., Goldsmith, C.H., (2010) *A tutorial on pilot studies: The what, why and How*. BMC Medical Research Methodology.

- The Law Commission (1996) *Landlord and Tenant : Responsibility for State and Condition of Property*. HMSO London.
- Thompson, L. , Nadler, J. , Lount, R.B., (2006) *Judgmental biases in conflict resolution and how to overcome them*. The Handbook of Conflict Resolution: Theory and Practice (pp243-267) Wiley Publishing
- Toth, E., Gibbs, D., Moczygemba, J., McLeod, A., (2021) Decision tree modelling in R software to aid clinical decision making. *Health and Technology* 11.535-545 Springer.
- Tseng, F.-C., Kuo, F.-Y., (2010). *The way we share and learn: An exploratory study of the self-regulatory mechanisms in the professional online learning community*. *Computers in Human Behaviour*, 26(5), 1043–1053
- Tufford, L. and Newman, P., (2010) *Bracketing in Qualitative Research*. Sage Publications
- Turley, M. , Sayce, S., (2015) *Energy performance certificates in the context of sustainability and the impact on valuations*. *Journal of Property Investment & Finance*, Vol. 33 Issue: 5, pp.446-455
- Tversky, A. and Kahneman, D., (1974) *Judgment under Uncertainty: Heuristics and Biases: Biases in judgments reveal some heuristics of thinking under uncertainty*. *Science*, 185 (4157), pp.1124-1131.
- Victor, M.B., (2015) *Decision Tree Analysis: A Means of Reducing Litigation Uncertainty and Facilitating Good Settlements*. 31 GA. ST. U. L. REV. (2015).
- Walsh, J. P., Seward, J. K., (1990) *On the Efficiency of Internal and External Corporate Control Mechanisms*. *Academy of Management*
- Ward, A.D., (2016) *Development of a contextualized understanding of the diffusion of innovation among quantity surveyors in the UK construction industry*. PhD Thesis, Nottingham Trent University
- Webber, R., (2014) *Behaviour and costs in dilapidations and valuation claims*. *Building Survey, Appraisal and valuation* Volume 3 No. 2
- Weinberg, G., McCann, L., (2019) *Super Thinking*. Portfolio/Penguin
- West, W., (1997) Edited Smith P. *The Law of Dilapidations*. *Estates Gazette*
- Whelehan, D. , Conlon, K. , Ridgway, P., (2020) *Medicine and heuristics : cognitive biases and medical decision making*. *Irish Journal if Medical Science* Vol 189 pp 1477-1484
- Wilkie, M., Luxton, P., Morgan, J., Cole, G., (2006) *Landlord and tenant law*. Palgrave Macmillan
- Winter, D., (2012) *Still radical after all these years: George Kelly's The psychology of personal constructs*. *Clinical Child Psychology and Psychiatry* Sage Publications
- Woodhouse, B., (2012) *The Dilapidations Protocol (almost) one year in*. *Journal of Building Survey, Appraisal and Valuation* Vol. 2 Number 1. Henry Stewart Publications
- Yakub, H., (1992) *Buildings at Risk Registers: Their Influence in reducing Risk of Dilapidation*. PhD Thesis Oxford Brookes University.

APPENDICES

Appendix 1	Questionnaire
Appendix 2	First Pilot Study Repertory Grid
Appendix 3	Second Pilot Study Repertory Grid

**DILAPIDATIONS
QUESTIONNAIRE**

The Nottingham Trent University is currently engaged in several research projects involving building surveying practices. This questionnaire has been designed to ascertain a building surveyor's perception on identifying critical factors affecting dilapidations. All answers will be treated in absolute confidence and used only for academic purposes. You are free to skip any question considered 'inquisitive' by putting a line across it. Extra space is provided to enable you to expand your answers to the questions where necessary

Questionnaire Survey

Thank you. Please tick ✓ as appropriate

PART A – Background

8 How many years have you been a chartered surveyor?

1-5	
6-10	
11-15	
16 -20	
21 +	

9 Are you?

A sole trader	
Work within a small team but you carry out all or nearly all the dilapidations instructions	
Work with a team that specialises in dilapidations	

10 If you consider *all* of the instructions you personally undertook over the last 12 months, approximately what percentage were concerned with dilapidations, acting either for landlord or tenant?

11

Up to 25%	
26% - 50%	
51%-75%	
76% - 100%	

12 Within those dilapidations instructions what is the approximate split between acting for tenants or landlords?

100 % Tenant	0 % Landlord	
Nearly always tenant	Occasionally Landlord	
Tenant 75%	Landlord 25%	
Tenant 50 %	Landlord 50%	
Tenant 25 %	Landlord 75%	
Occasionally tenant	Nearly always landlord	
0% Tenant	100% landlord	

13 Which geographical region is most of your work?

London	
South East	
East Midlands	
West Midlands	
East of England	
East Midlands	
South West	
Yorkshire and Humberside	
North West	
Wales	

PART B – Dilapidation Issues

The research discovered which issues arise in dilapidations. The outcomes were divided into three categories. See Table 1.

Category 1 Issues Issues for example relating to technical matters, cost of repair, pathology, legal matters or interpretation. They might be matters which require professional advice from others. They may be matters of fact but in all cases can be the subject of disagreement.

Category 2 Issues Issues caused by external and internal influences. External influences for example include mandatory or professional guidance, or influence from clients. Internal influences for example include compliance with company policy, procedure, methodology, format, in-house resources.

Category 3 Issues Issues concerning behaviour of self and others. Behaviour includes for example acting in a conciliatory or stubborn way. It includes for example how one party conducts themselves, resolves the issue, eases the issue or makes matters worse.

QUESTION A

Using the table below, and from *your own personal experience*, please circle which of the above categories each issue falls under. You may circle one or more categories for each issue.

Table 1

	Issue	Examples taken from the research	Your Category Rating		
			1	2	3
1	Knowledge	Building pathology, basic legal principles, cost of repair, unaware of guidance note, poor advice, LL & T Act 1927, case law	1	2	3
2	Legal knowledge	Evolution of the lease, case law, statutes	1	2	3
3	Tactics	Wait and see what the other party does, do the work, do nothing, delay responding	1	2	3
4	Landlord	Poor knowledge of their own building, wants to prolong the life of the building, most expensive repair, investment property	1	2	3
5	Market Conditions	Buoyant or poor market, break clauses, lease cycle, supply and demand, primary and secondary markets, life cycle	1	2	3
6	Tenant	Concerned about their business not the lease, signs poor lease, least expensive repair, may sign poor lease,	1	2	3

	Issue	Examples taken from the research	Your Category Rating		
		landlord makes money from the lease, desperate tenants sign, cheap repair v expensive repair			
7	Procedure	Surveyor not engaged early in the lease drafting, large firm v small firms, tenants not procuring a survey prior to signing	1	2	3
8	The Lease	Clauses at odds with drafting solicitor, cut and paste, remoteness of law firm from the property, inflexible words,	1	2	3
9	Skills	Ability to read and comprehend a lease, strategy of values	1	2	3
10	Interpretation	Legal issues, repair v replacement	1	2	3
11	Negotiation	Horse trade, skills, all about the deal, Part 36 offers, getting the deal not the technical solution	1	2	3
12	Affordability	How much can each side afford? Access to legal assistance, professional assistance before lease signing	1	2	3
13	Bias	Own interests, mistrust, prejudice, heuristics, anchoring, gearing of lease	1	2	3
14	Subjective	Valuation, standard of repair, costs	1	2	3
15	Ethical	Unjust enrichment, exaggerated claims	1	2	3
16	Approach Taken	Combative, conciliatory	1	2	3
17	Diminution in Value	Misconception, valuation methods, objective/subjective, S18(1) meaning, supersession	1	2	3
18	Legal Process	Part 36 offers, proceedings,	1	2	3
19	Legal Doctrines or concepts	Mitigation, damages v debt.	1	2	3
20	Standard of Repair	5 stage test, materials, pathology, schedules of condition	1	2	3
21	Behaviour	Stubbornness, aggressiveness, cooperative, reasonable	1	2	3
22	PLA Protocol	Quantified demand, when to apply ADR	1	2	3
23	RICS Guidance Note	Instructions, fees, legal concepts	1	2	3

	Issue	Examples taken from the research	Your Category Rating		
			1	2	3
24	Professional	Advocate v expert, conflicts of interest, fraud/dishonesty, excessive claims, fee basis	1	2	3
Any others you wish to add?					
25			1	2	3
26			1	2	3
27			1	2	3
28			1	2	3

QUESTION B

In Table 2 circle the frequency you come across these issues. You may underline examples if you wish.

5. Very frequently
6. Frequently
7. Occasionally
8. Never

Table 2

	Issue	Examples given in the literature review and focus group	Frequency			
			1	2	3	4
1	Knowledge	Building pathology, basic legal principles, cost of repair, unaware of guidance note, poor advice, LL & T Act 1927, case law	1	2	3	4
2	Legal knowledge	Evolution of the lease, case law, statutes	1	2	3	4
3	Tactics	Wait and see what the other party does, do the work, do nothing, delay responding	1	2	3	4
4	Landlord	Poor knowledge of their own building, wants to prolong the life of the building, most expensive repair, investment property	1	2	3	4
5	Market Conditions	Buoyant or poor market, break clauses, lease cycle, supply and demand, primary and secondary markets, life cycle	1	2	3	4
6	Tenant	Concerned about their business not the lease, signs poor lease, least expensive repair, may sign poor lease, landlord makes money from the lease, desperate tenants sign, cheap repair v expensive repair	1	2	3	4
7	Procedure	Surveyor not engaged early in the lease drafting, large firm v small firms, tenants not procuring a survey prior to signing	1	2	3	4
8	The Lease	Clauses at odds with drafting solicitor, cut and paste, remoteness of law firm from the property, inflexible words,	1	2	3	4
9	Skills	Ability to read and comprehend a lease, strategy of values	1	2	3	4
10	Interpretation	Legal issues, repair v replacement	1	2	3	4

	Issue	Examples given in the literature review and focus group	Frequency			
			1	2	3	4
11	Negotiation	Horse trade, skills, all about the deal, Part 36 offers, getting the deal not the technical solution	1	2	3	4
12	Affordability	How much can each side afford? Access to legal assistance, professional assistance before lease signing	1	2	3	4
13	Bias	Own interests, mistrust, prejudice, heuristics, anchoring, gearing of lease	1	2	3	4
14	Subjective	Valuation, standard of repair, costs	1	2	3	4
15	Ethical	Unjust enrichment, exaggerated claims	1	2	3	4
16	Approach Taken	Combative, conciliatory	1	2	3	4
17	Diminution in Value	Misconception, valuation methods, objective/subjective, S18(1) meaning, supersession	1	2	3	4
18	Legal Process	Part 36 offers, proceedings	1	2	3	4
19	Legal Doctrines or concepts	Mitigation, damages v debt	1	2	3	4
20	Standard of Repair	5 stage test, materials, pathology, schedules of condition	1	2	3	4
21	Behaviour	Stubbornness, aggressiveness, cooperative, reasonable	1	2	3	4
22	PLA Protocol	Quantified demand, when to apply ADR	1	2	3	4
23	RICS Guidance Note	Instructions, fees, legal concepts	1	2	3	4
24	Professional	Advocate v expert, conflicts of interest, fraud/dishonesty, excessive claims, fee basis	1	2	3	4
Any others you wish to add?						
25			1	2	3	4

	Issue	Examples given in the literature review and focus group	Frequency			
			1	2	3	4
26						
27						
28						

QUESTION C

Evidence suggests that virtually all dilapidations claims are resolved without the need for court action. Although they are resolved, issues may sometimes be difficult to deal with. Whilst it is accepted that claims for dilapidations take time to resolve, some issues may cause further delays.

In Table 3, rank how difficult *you sometimes personally find the issue to deal with*. You do not have to rank all issues, or indeed any issue. You may underline examples if you wish.

4. I sometimes find this issue very difficult to deal with
5. I sometimes find this issue difficult to deal with
6. I find this issue OK to deal with

Table 3

	Issue	Examples given in the literature review and focus group	Your Ranking		
			1	2	3
1	Knowledge	Building pathology, basic legal principles, cost of repair, unaware of guidance note, poor advice, LL & T Act 1927, case law			
2	Legal knowledge	Evolution of the lease, case law, statutes			
3	Tactics	Wait and see what the other party does, do the work, do nothing, delay responding			

	Issue	Examples given in the literature review and focus group	Your Ranking		
			1	2	3
4	Landlord	Poor knowledge of their own building, wants to prolong the life of the building, most expensive repair, investment property	1	2	3
5	Market Conditions	Buoyant or poor market, break clauses, lease cycle, supply and demand, primary and secondary markets, life cycle	1	2	3
6	Tenant	Concerned about their business not the lease, signs poor lease, least expensive repair, may sign poor lease, landlord makes money from the lease, desperate tenants sign, cheap repair v expensive repair	1	2	3
7	Procedure	Surveyor not engaged early in the lease drafting, large firm v small firms, tenants not procuring a survey prior to signing	1	2	3
8	The Lease	Clauses at odds with drafting solicitor, cut and paste, remoteness of law firm from the property, inflexible words,	1	2	3
9	Skills	Ability to read and comprehend a lease, strategy of values	1	2	3
10	Interpretation	Legal issues, repair v replacement	1	2	3
11	Negotiation	Horse trade, skills, all about the deal, Part 36 offers, getting the deal not the technical solution	1	2	3
12	Affordability	How much can each side afford? Access to legal assistance, professional assistance before lease signing	1	2	3
13	Bias	Own interests, mistrust, prejudice, heuristics, anchoring, gearing of lease	1	2	3
14	Subjective	Valuation, standard of repair, costs	1	2	3
15	Ethical	Unjust enrichment, exaggerated claims	1	2	3
16	Approach Taken	Combative, conciliatory	1	2	3
17	Diminution in Value	Misconception, valuation methods, objective/subjective, S18(1) meaning, supersession	1	2	3

	Issue	Examples given in the literature review and focus group	Your Ranking		
			1	2	3
18	Legal Process	Part 36 offers, proceedings	1	2	3
19	Legal Doctrines or concepts	Mitigation, damages v debt.	1	2	3
20	Standard of Repair	5 stage test, materials, pathology, schedules of condition	1	2	3
21	Behaviour	Stubbornness, aggressiveness, cooperative, reasonable	1	2	3
22	PLA Protocol	Quantified demand, when to apply ADR	1	2	3
23	RICS Guidance Note	Instructions, fees, legal concepts	1	2	3
24	Professional	Advocate v expert, conflicts of interest, fraud/dishonesty, excessive claims, fee basis	1	2	3
Any others you wish to add?					
25			1	2	3
26			1	2	3
27			1	2	3
28			1	2	3

QUESTION D

From *your personal experience*, please tick which outcomes you feel most strongly represents your view

Outcomes or implications of the issues	Strongly disagree	Disagree	Neither disagree nor agree	Agree	Strongly agree
The claim for dilapidations could take longer to resolve					
The costs associated with resolving the claim could increase					
Any costs associated with resolving the claim are normally borne by the instructing party, until such time as costs are reserved					
The conduct of the parties can in itself contribute to further delays					
It doesn't really matter					
Any others you wish to add?					

QUESTION E

Dilapidations is complex and requires knowledge and understanding of a significant number of technical and legal issues, combined with skills in several areas. Reflecting on your responses above, please circle your *personal experience* of the three categories below. (The categories are those set out on page 2)

1. I have control
2. I have less control
3. I have no control

Category 1	Technical	1	2	3
Category 2	Influential	1	2	3
Category 3	Behavioural	1	2	3

Thank you for your time and co-operation in completing this study.

Chris Mahony

Dr Amrit Sagoo

APPENDIX 2

			Tenant's Surveyor	Tenant	Tenant's Solicitor	Landlord's Surveyor	Landlord	Landlord's Solicitor	
		Supplied Construct -1							Supplied Construct -5
TECHNICAL									
1	Standard of Repair	Aware of and uses the 5 stage test for disrepair							Unaware of 5 stage test for disrepair or considers it irrelevant
2	Standard of Repair	Understands obligations to repair or decorate							Poor understanding of obligations to repair or decorate
3	Legal Knowledge	Excellent understanding of common law and statutes							Disregard of common law and the application of statutes
4	Legal Knowledge	Understands the concept and meaning of damages							Poor and/or confused understanding of damages
5	Legal Knowledge	Excels in the analysis of covenant construction and their consequences							Poor and/or confused understanding when construing covenant construction
6	Legal Knowledge	Accepts that some clauses within a lease may be open to interpretation							Is unwilling to understand different meanings
7	Legal Doctrines or Concepts	Legal doctrines are explained first to others							Legal doctrines are poorly understood
8	Legal Doctrines or Concepts	Legal doctrines are advocated							Legal doctrines are irrelevant
9	Legal meaning	Transparent about the subjective nature of poor drafting							Oblivious to the subjective nature of poor drafting
10	Knowledge	Comprehends shortfalls in their own knowledge							Ignorant to shortfalls in their own knowledge
11	Knowledge	An understanding of the issues influences the way in which the dispute is resolved							Understanding the issues has little relevance to resolving the dispute
12	Skills	Proficient in observation, recording, measuring							Haphazard, uncoordinated, incompetent in observation, recording, measuring
13	Skills	Knows when to seek assistance from others							Will avoid obtaining further advice
14	Skills	Listens to others first							Doesn't listen and promotes their own case
15	Loss	Understands the principles of damages							The cost of the works is the loss
16	Loss	Will set out what they genuinely believe to be the loss							Will exaggerate or downplay the claim
17	Loss	If the final settlement reflects the actual loss, it is still fair, even if less than the original claim							If the settlement is less than the original claim, it is seen as a loss
18	Interpretation	Ability to comprehend a range of interpretations or meanings							Is dogmatic

			Tenant's Surveyor	Tenant	Tenant's Solicitor	Landlord's Surveyor	Landlord	Landlord's Solicitor	
		Supplied Construct -1							Supplied Construct -5
19	Subjective	Appreciates that different meanings and opinions will be made							Argues black and white
20	Subjective	Appreciates uncertainty in approach and negotiation							Little uncertainty, objective approach taken
21	Subjective	Uncertainty creates risk to the outcome							Poor understanding of risk due to uncertainty
22	Subjective	Uncertainty can be appropriately managed							Poor understanding of guidance and technique
23	Diminution in Value	Understands the meaning of diminution and its interpretation							Has little or no understanding of diminution
24	Diminution in Value	Is continually aware of the relevance and importance of diminution in value							Aware but chooses to ignore it or takes a simpler approach towards the cost of the works
25	Diminution in Value	Understands the principles and different approaches to the calculation of diminution in value							Does not wish to understand it
26	Procedure	Follows logical sequences and industry recognised procedures							Has little regard to industry procedures
27	PLA Protocol	Adopts the structure and spirit of the Protocol to make progress towards settlement							Uses the Protocol as a means to cause unnecessary delay
28	RICS Guidance Note	Understands the RICS Dilapidations GN and keeps a copy for reference							May be aware of the GN but adopts their own practices
INFLUENTIAL									
29	Market Conditions	Will actively research market data and/or make enquiries from others							Will rely on instinct or personal knowledge and will not make enquiries
30	Market Conditions	Understands how market conditions can influence loss							Ignores market conditions
31	Affordability	Creditworthiness is considered at the outset							The risk of nil settlement or bankruptcy is not considered or is ignored
32	Affordability	The ability to settle will affect the time it takes to settle							The ability to settle does not affect the time it takes to settle
33	Resources	Makes use of internal and external resources, literature, papers, cases							Relies on experience and intuition
34	Resources	Company size, strength and resources is an asset							Company size, strength and resources can have a negative influence
35	Legal Process	Comprehends the legal process but acknowledges weakness in some areas							Ignores legal process or purports to understand it
36	Skills	Continues to learn, update, train, reflect							Indifferent to life-long learning

			Tenant's Surveyor	Tenant	Tenant's Solicitor	Landlord's Surveyor	Landlord	Landlord's Solicitor	
		Supplied Construct -1							Supplied Construct -5
37	Interpretation	Impartial in interpreting the lease							Interpretation is partial towards their client
38	Interpretation	Interprets issues objectively							Interprets issues subjectively
39	Interpretation	Objective means what the market place would do							Objective means what they would do
BEHAVIOUR									
40	Tactics	Tactical yet professional							Tactical but unprofessional
41	Tactics	Persuasively reminds others of the risk of litigation							Quick to use the threat of litigation as a stick
42	Tactics	Responsive, proactive							Unresponsive, delaying
43	Tenant	Listens first to understand the opposing view							The other side's view is irrelevant and pushes their own view
44	Bias	Is committed to saving time and costs							Is unconcerned and indifferent towards time and costs
45	Bias	Cooperative, helpful							Belligerent, hostile
46	Bias	The facts remain the same regardless of legal influence							Legal doctrines and case law are used to threaten
47	Self-serving bias	Client's instructions can be relied upon							Client's instructions are often inaccurate and self-motivated
48	Self-serving bias	Understands they may have failed							Quick to blame someone else for failures
49	Self-serving bias	Understands that success may be a team effort							Considers that success is usually down to them
50	Self-serving bias	Rejects and challenges inaccurate, unproven or unsubstantiated information even if it helps their case							Accepts inaccurate, unproven or unsubstantiated information as it helps their case
51	Self-serving bias	Defends or challenges each line but recognises a broader approach to the claim is likely to bring about a more timely settlement							Belligerently defends or challenges each line forensically, leading to delays
52	Self-serving bias	Incentivised fees make little difference to the outcome							Incentivised fees can influence the outcome
53	Self-serving bias	Well written and accurate schedules should be expected							Exaggerated claims are to be expected
54	Self-serving bias	The initial schedule is usually accurate							The initial schedule is usually exaggerated
55	Self-serving bias	Counter responses to schedules are usually accurate							Counter responses to schedules continue to be inaccurate
56	Fundamental Attribution error	Experienced and usually correct							Inexperienced and have little knowledge of dilapidations
57	Fundamental Attribution error	Instructed because of their expertise							Instructed because the client already knows them

			Tenant's Surveyor	Tenant	Tenant's Solicitor	Landlord's Surveyor	Landlord	Landlord's Solicitor	
		Supplied Construct -1							Supplied Construct -5
58	Fundamental Attribution error	Schedules should not contain inaccurate information							Schedules and responses are simplified and items entered for ease
59	Fundamental Attribution error	Does not link behaviour to the process							Blames the process on others behaviour
60	Confirmation Bias	Quick to point out or acknowledge misconceptions or unproven events							Led too much by others or try to influence others
61	Confirmation Bias	Not influenced by their previous approaches							Follows patterns based on their previous experience
62	Confirmation Bias	It's about challenging to understand actual loss							It's easier to put everything in the schedule than challenge and take time to evaluate and test it
63	Confirmation Bias	Looks for alternative meanings and raises doubts about information they are given							Construes and uses data that tends to confirm their case
64	Confirmation Bias	Are unprejudiced towards their client							Are biased towards their client
65	Confirmation Bias	Seeks to, or encourage others to discover for themselves items in disrepair							Routinely asks for proof that items are not in disrepair
66	Heuristics	Reviews remedies based on its merits							Will adopt a previous approach
67	Negotiation	Is trained in negotiation skills							Has no bespoke training
68	Negotiation	Works in a logical, systematic manner							Jumps around, delays responding
69	Negotiation	A systematic approach is taken giving meaning to each argument							It's all about the end figure
70	Negotiation	Having high emotional intelligence can help to resolve the dispute, even with poor technical skills or knowledge							Emotional intelligence is irrelevant
71	Behaviour	Initial behaviour is very important and can ease or increase tensions							Initial behaviour is irrelevant
72	Behaviour	The initial response to a schedule is usually professional and courteous							The initial response is usually defensive, raises questions and issues of professionalism
73	Behaviour	It is understood that unethical behaviour may cause delays							Unethical behaviour is to be expected
74	Optimistic overconfidence	Is very confident in their ability and outcomes							Is probably nervous about the outcome
75	Certainty effect	Able to comprehend outcomes which are certain as opposed to probable							Poor understanding of outcomes

			Tenant's Surveyor	Tenant	Tenant's Solicitor	Landlord's Surveyor	Landlord	Landlord's Solicitor	
		Supplied Construct -1							Supplied Construct -5
76	Certainty effect	Is confident from beginning to end							Loses confidence once response is received
77	Loss aversion	Is able to access defeat on any issue and final settlement figure							Unable to take the loss
78	Loss aversion	References to legal assistance is perfectly normal							Will refer to legal escalation to get what they want
79	Loss aversion	They know they are right and will argue their case							They know they are wrong, but will continue to argue their case
80	Procedure	Formulated, logical, methodical							Erratic, contradictory
81	Approach Taken	A more flexible approach to communication may lead to less tension							The approach and format taken is scripted
82	Approach Taken	Can differentiate between an objective and subjective issue							Is ambivalent to objective and subjective issues
83	Approach Taken	Takes a global approach to forecasting loss, including data from similar projects							Takes an insider approach to forecasting and predicts the loss
84	Approach Taken	Doesn't propose issues if unsure							Tries it on and waits for response
85	Approach Taken	Surveyors are always experts							Surveyors are at liberty to be advocates
86	Approach Taken	Are like minded							Are disagreeable
87	The Lease	Will work within the meaning of the covenant							Will try to introduce new terms
88	The Lease	Provides accurate information							Is it for the other side to reject an item
89	The Lease	Does not include items that are ambiguous or unproven							Tries it on and waits for response
90	The Lease	Acknowledges missing information or poor drafting							Fills in the gaps
91	Professionalism	Maintains professionalism throughout							Unprofessional, discourteous, disregard for professional status

		Elements							
		Supplied Construct -1	Tenants Surveyor	Tenant	Tenants Solicitor	Landlords Surveyor	Landlord	Landlord's Solicitor	Supplied Construct -5
TECHNICAL									
1	Standard of Repair	Aware of the 5 stage test for disrepair							Unaware of 5 stage test for disrepair or considers it irrelevant
2	Standard of Repair	Understands obligations to repair or decorate							Poor understanding of obligations to repair or decorate
3	Legal Knowledge	Excellent understanding of common law and statutes							Disregard of common law and statutes
4	Legal Knowledge	Understands the concept and meaning of damages							Poor and/or confused understanding of damages
5	Legal Knowledge	Excels in the analysis of covenant construction and their consequences							Poor and/or confused understanding when construing covenant construction
6	Legal Knowledge	Accepts that some clauses within a lease may be open to interpretation							Is unwilling to understand different meanings
7	Legal Doctrines or Concepts	Legal doctrines are understood							Legal doctrines are poorly understood
8	Legal meaning	Honest about poor lease drafting							Oblivious to poor lease drafting
9	Knowledge	Comprehends shortfalls in their own knowledge							Ignorant to shortfalls in their own knowledge
10	Knowledge	An understanding of the issues influences the way in which the dispute is resolved							Understanding the issues has little relevance to resolving the dispute
11	Skills	Proficient in observation, recording, measuring							Haphazard, uncoordinated, incompetent in observation, recording, measuring
12	Skills	Knows when to seek assistance from others							Will avoid obtaining further advice from others
13	Skills	Listens to others first							Doesn't listen and promotes their own case
14	Loss & Diminution	The cost of the works might not equate to the loss							The cost of the works is the loss
15	Loss	Will set out what they genuinely believe to be the loss							Will exaggerate or downplay the claim
16	Subjective	Appreciates the subjective nature of dilapidations							Argues black and white
17	Procedure	Follows logical sequences and industry							Has little regard to industry procedures

		recognised procedures							
18	PLA Protocol	Adopts the structure and spirit of the Protocol to make progress towards settlement							Uses the Protocol as a means to cause unnecessary delay
19	RICS Guidance Note	Understands the RICS Dilapidations GN and keeps a copy for reference							May be aware of the GN but adopts their own practices

INFLUENTIAL									
20	Market Conditions	Will actively research market data and/or make enquiries from others							Will rely on instinct or personal knowledge and will not make enquiries
21	Market Conditions	Understands how market conditions can influence loss							Ignores market conditions
22	Affordability	Creditworthiness is considered at the outset							The risk of nil settlement or bankruptcy is not considered or is ignored
23	Affordability	The ability to settle will affect the time it takes to settle							The ability to settle does not affect the time it takes to settle
24	Resources	Makes use of internal and external resources, literature, papers, cases							Relies on experience and intuition
25	Legal Process	Comprehends the legal process but acknowledges weakness in some areas							Ignores legal process or purports to understand it
26	Skills	Continues to learn, update, train, reflect							Indifferent to life-long learning
27	Interpretation	Impartial in interpreting the lease							Partial when interpreting the lease

BEHAVIOUR									
28	Tactics	Reminds others of the potential risk of litigation							Quick to use the threat of litigation
29	Tactics	Responsive, proactive							Unresponsive, delaying
30	Bias	Saving time and cost is important							Unconcerned and indifferent towards time and costs
31	Bias	Cooperative, helpful							Belligerent, hostile
32	Self-serving bias	Client's instructions can be relied upon							Client's instructions are often inaccurate and self-motivated
33	Self-serving bias	Understands they may have failed							Quick to blame someone else for failures
34	Self-serving bias	Understands that success may be a team effort							Considers that success is usually down to them
35	Self-serving bias	Accepts viable information even if unfavourable							Rejects viable information because it doesn't help their case
36	Self-serving bias	Incentivised fees make little difference to the outcome							Incentivised fees can influence the outcome
37	Self-serving bias	Well written and accurate schedules should be expected							Exaggerated claims are to be expected

38	Fundamental Attribution error	When things go wrong they take ownership								When things go wrong they blame others
39	Confirmation Bias	Open minded about information received								Influenced by others
40	Heuristics	Reviews remedies based on its merits								Will adopt a previous approach
41	Negotiation	Is trained in negotiation skills								Has no bespoke training
42	Negotiation	A systematic approach is taken giving meaning to each argument								It's all about the end figure
43	Behaviour	Initial behaviour is important and can ease tensions								Initial behaviour is irrelevant
44	Certainty effect	Can differentiate between certain and probable outcomes								Poor understanding of outcomes
45	Loss aversion	Ability to acknowledge losses								Unable to accept loss
46	Procedure	Formulated, logical, methodical								Erratic, contradictory
47	Approach Taken	A more flexible approach to communication may lead to less tension								The approach and format taken is scripted
48	Approach Taken	Can differentiate between an objective and subjective issue								Is ambivalent to objective and subjective issues
49	Approach Taken	Takes a global approach to forecasting loss, including data from similar projects								Takes an insider approach to forecasting and predicts the loss
50	Approach Taken	Doesn't propose issues if unsure								Tries it on and waits for response
51	Approach Taken	Surveyors are always experts								Surveyors are at liberty to be advocates
52	The Lease	Will work within the meaning of the covenant								Will try to introduce new terms
53	The Lease	Does not include items that are ambiguous or unproven								Tries it on and waits for response
54	Professionalism	Maintains professionalism throughout								Unprofessional, discourteous, disregard for professional status