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Editors: Claudia Conway (Interdisciplinary, Commercial property) T: +44 (0)20 7695 1605
E: claudiaconway@rics.org

Jan Ambrose (Residential property, Personal property) T: +44 (0)20 7695 1554
E: jambrose@rics.org

Advisory groups

Commercial property: John Baguley (RICS), Paul Bagust (RICS), Nicholas Cheffings (Hogan Lovells), Sarah Cranke (Faithful+Gould), Nicola Dixon-Brown (CBRE), Martin Francis (BNP Paribas), Vivien King (Malcolm Hollis), Nigel Sellars (RICS)

Residential property: Mike Basquill (RICS), Paul Cutbill (Countrywide), Julian Davies (Earl Kendrick), Graham Ellis (RICS), Chris Rispin (BlueBox Partners), Philip Santo (Philip Santo & Co)

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E: lweale@rics.org

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Editorial & production manager: Toni Gill

Sub-editor: Matthew Griffiths

Advertising:

Chris Cairns T:+44 (0)20 7871 0927
E: chrisc@wearesunday.com

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Economics

'Availability of leasable space in the industrial and logistics sector has been declining since 2013'

Kisa Zehra
RICS



Towards the end of last year, my colleagues from the RICS economics team looked at some of the big challenges for the high street in the face of consumers' changing habits (*Property Journal* October/November 2018, p.5). I now want to move on from what at times feels like a rather dispiriting story to consider how this is playing out in the logistics sector.

The contrasting fortunes of these two segments of the real-estate market can be most clearly viewed through the prism of the RICS UK Commercial Property Survey, which is based on feedback from professionals across the country. While showing that occupier demand for industrial space has now risen for 25 successive quarters, measured in net balance terms, it also points to the diminishing appetite for retail sites over the past two years.

Against this backdrop, RICS survey contributors are expecting industrial rental values to rise firmly both in the short and medium terms. This chimes with broader trends in the market: according to the Office for National Statistics, online

expenditure as a proportion of total retail sales has risen dramatically, now standing at almost 22 per cent compared to less than three per cent in 2006. Judging by these numbers, it was unsurprising when Marks & Spencer announced that it is planning to close at least 100 stores by 2022, and in the same time frame, increase the proportion of digital sales from a fifth to a third.

Given the shift in focus by key retail brands from bricks and mortar to online sales, a big issue for the sector is finding the right sites to fulfil this programme. According to the RICS survey, the availability of leasable space in the industrial and logistics sector has been declining since 2013. Meanwhile, Savills estimates that, in 2018, vacancy rates for such premises fell to around 5.8 per cent nationally from above 20 per cent a decade ago. There is also a regional dimension to this, with vacancy rates in London and the South East, the Midlands and East Anglia closer to 4.5 per cent.

However, despite the strong demand for well-located space, it remains to be seen whether supply can keep pace, especially

in the light of competition from other land uses, not least housing. This is likely to be particularly intense on the fringes of urban areas and large industrial hubs as firms look to save on the costly last mile of delivery.

Another key issue for the sector is the ongoing discussion about the tax regime for digital services. Mike Ashley, the owner of Sports Direct and now House of Fraser, recently made a very public call for a 20 per cent tax on online sales to protect the high street. Significantly, this reflects the shifting mood towards large digital platforms, which has manifested itself in increasing pressure over the past year for a globally coordinated approach. Both the G7 and the OECD have ventured tentatively into this contentious area, and more is likely to follow at a multilateral level.

Meanwhile, individual countries are acting. In last November's budget, the chancellor made headlines with the announcement of a two per cent tax on the revenues of online sales businesses that will come into effect in April 2020 if an international agreement can't be reached. France will implement its own digital sales tax over the coming months, India has made similar moves, and Spain and Italy should soon follow suit having passed the relevant legislation.

The introduction of a digital tax regime may provide a welcome source of new finance for hard-pressed governments in the UK and beyond, but it is difficult to envisage this having a material impact on the rising share of online consumption and the need for logistics businesses to expand their footprint. Further outperformance by this segment of the real-estate market looks highly likely over the coming years.

*Kisa Zehra is an economist at RICS
kzehra@rics.org*

Briefing

Barrier to smart home energy reviewed



Updated technical guidance by Ofgem has been released, clarifying the treatment of existing payments for homes that export solar-generated electricity to the grid and want to install battery storage and smart meters. The clarification is good news because it means such homes will continue to be eligible to keep their deemed, or estimated, payments for exports. The market had previously been hindered by conflicting guidance.

The clarification on battery storage installed alongside existing solar accredited for the feed-in tariff has taken more than a year, during which time the Solar Trade Association (STA) provided specific case studies from its members and worked alongside other industry bodies to effect change. The nascent UK domestic battery market has been impeded by two conflicting pieces of official guidance, one requiring solar homes installing smart meters to switch to export metering and thus lose their deemed, the other inhibiting homes from receiving payment for their metered export where they had installed battery storage because of the risk of rewarding power drawn from the grid, not the solar installation. The resulting confusion had therefore discouraged the installation of battery storage and smart meters.

The STA wants to see the smart meter roll-out temporarily decoupled from the requirement to move to metered export while regulatory and administrative barriers are removed and half-hourly settlement is established. Complications can arise for solar homes that install a smart meter with the push to metered export payments, a requirement that in the view of the STA should therefore not yet be enforced.

Recent analysis by Imperial College for Ovo Energy (bit.ly/ovoenergytech) estimates that the full flexibility potential from smart homes could save the power system up to £6.9bn per annum. STA members are already able to provide smart home functionality, but regulatory barriers for export metering need to be addressed and markets for local flexibility created.

bit.ly/OfgemTG
solar-trade.org.uk

Brownfield land advice

Small brownfield sites pose particular challenges to landowners, developers and builders. A guide to small brownfield sites and land contamination, prepared by CIRIA and supported by the NHBC Foundation, provides clear, practical advice to help navigate the particular barriers and issues that characterise such sites.

Brownfield land is a key part of the government's strategy to increase housebuilding across the country and, if they are planned and managed well, small sites can be developed relatively quickly, giving a faster return on investment than larger ones.

A guide to small brownfield sites and land contamination focuses on the key phases of a development, from assessing project viability and submitting planning applications through the construction process to close-out and management of dormant sites, placing an emphasis on dealing with land contamination.

The NHBC head of standards, innovation and research Neil Smith said: 'This new guide is essential reading for anyone considering the purchase of smaller brownfield sites, helping them minimise risks before, during and after development. Owners of small brownfield sites that require ongoing contaminated land management will also find the guidance beneficial.'

bit.ly/cirianhbc



London tops sustainability ranking

London has been ranked as the most sustainable city in the world in the 2018 Sustainable Cities Index, ahead of Stockholm, Frankfurt, Singapore, New York and Paris.

The capital's economic status and strong quality of life meant it performed exceptionally in Arcadis' research, which ranks 100 global cities. However, with the population set to soar to more than 10m in the next decade, it needs to act now to tackle transport congestion and the lack of affordable housing.

The index explores the three pillars of sustainability – social, environmental and economic – to develop an holistic ranking of the world's leading cities. Sitting at the centre of international trade, London ranked second on the profit index of economic performance, beaten only by Singapore. The city's ease of doing business, top tourist attractions and multiculturalism

all combined to contribute to its success. As one of the greenest capitals in the world, with more than 3,000 parks and green spaces, it reached 11th globally for environmental sustainability.

London also performed particularly well in terms of quality of life, taking the number two spot in the people rankings. This was driven largely by the increasing quality of health provision, world-leading universities and its unique cultural offering, but it was held back from the top spot by growing transport congestion and high housing costs.

London's rankings for each pillar indicate both its strengths and areas on which it will need to compete after Brexit. Other global cities will be closely monitoring the withdrawal negotiations and look at opportunities to challenge London's status as the UK leaves the EU.

bit.ly/ArcadisSCI18

Standards

Forthcoming

Comparable evidence guidance note

Conflicts of interest for members acting as dispute resolvers, 2nd edition guidance note

RICS Home Surveys Standard professional statement

Valuation of individual new build homes guidance note

rics.org/standards

Recently published

Countering bribery and corruption, money laundering and terrorist financing professional statement

rics.org/ampls

Surveying safely: health and safety principles for property professionals, 2nd edition guidance note

rics.org/surveyingsafely

Events

MIPIM 2019: Engaging the Future 12–15 March, Palais des Festivals, Cannes, France

As MIPIM celebrates its 30th anniversary, this is a unique opportunity to explore what real estate has in store for the next three decades. Join RICS as it presents its thought leadership on the future of professionalism in the built environment.

rics.org/mipim

RICS Valuation Conference 2019 26 March, 30 Euston Square, London

This full-day event has been designed for valuers in a range of professional groups. There are plenary talks on the global market and valuing iconic properties, updates on the Red Book, a panel on challenges and opportunities, and discussions on disruptive technology, attracting the next generation and reflecting on uncertainty in the profession.

rics.org/valuationconference



RICS Summit Africa 2019 29–30 May, Maslow Hotel, Johannesburg

This year's theme, investing with impact, will focus on how collaborative partnerships and effective investment is shaping the future of Sub-Saharan Africa.

Key topics will include inward investment, geopolitics and cross-border collaboration, as well as current and future investment trends in cities, renewable energy and transport infrastructure.

rics.org/summitafrica

In search of utopia

What factors make a successful city? Recent research has been taking a hard look at the future of the urban landscape

Miles Gibson

Over the summer of 2018, CBRE undertook research on what British cities would feel like in around 20 years' time. Through short, interconnected articles, our research intends to mimic the form of, and cast new light on, the complexity of the future city.

It's difficult to understand the city from a single viewpoint. Like a journey through the urban landscape itself, our research brings shifting perspectives, ambiguities and contradictions. The future of our cities will be influenced by an immense range of factors, and the inherent uncertainty of forecasting means that it's not yet known precisely what this future entails.

This is not to say that cities won't be cleaner, greener and safer by 2040; they probably will. But one of the best guides to the speed at which our cities might change in 20 years is to look at change over the past two decades. Since 1999, for example, London has acquired a metro mayor, the Jubilee Line extension, the Millennium Dome, Oyster ticketing, the congestion charge, the Overground and the Olympics. By 2019, many individual improvements have been made, though we still don't have Crossrail, and many neighbourhoods have been transformed, though not all for the better. Similar things can be said about many other British cities.

However, most of the building stock and transport arteries that existed in our cities in 1999 are still with us today. Even in the past ten years – the supposedly transformative decade of the smartphone – physical and economic change in our cities has been incremental, with the course of these urban supertankers only shifting gradually with time. In our research, we therefore aimed to tease out some ways in which the supertankers might start to turn.

According to Oscar Wilde, 'a map of the world that does not include utopia is not worth even glancing at'. What he may have meant is that, without some idea of the direction in which we should travel, we are much less likely to achieve progress. Lewis Mumford pointed out that utopia has often historically been

imagined as a city, and also suggested that many of the institutions associated with it were born in the city. In the city utopia, life is easier and healthier; there is egalitarianism alongside prosperity, and – at least according to Ebenezer Howard – town and country have reached an easy accommodation with each other. The city is greener and more pleasant, sometimes diluting the very concept of the urban into something meaningless.

This tidying-up of the future can be extremely seductive, but it is probably not accurate. Even today, artists' impressions of new city developments seem suspiciously lacking in, for example, overflowing waste bins, rough sleepers or kebab shops, things that we all know have been part of the urban experience throughout our lives as cities grapple with the challenges of expanding populations, ageing infrastructure and socio-economic fractures.

So it is best to draw the line at the fun but largely fanciful idea that the British city of the 2040s will be radically different from the way it is now. Our cities have been around for centuries, and they show their age in the heritage of their street patterns, buildings and indeed in neighbourhoods of stubborn deprivation. Our cities also have deeply embedded cultures and communities with a knack of fighting back against an unwanted utopia.

Furthermore, there's not much evidence that the problems of the city are ever truly solved, certainly not in Britain. However lyrical one might wax about creating well-planned cities such as Canberra, which amply provide for future development, there are no large cities of that type in the UK. Instead, British cities face perennial challenges that are partly problems of success – in other words, their own growth and prosperity increases the complexity of, for example, ensuring adequate infrastructure and social equity.

These problems are in-built. If a city is anything, it is denser and economically more complex than its hinterland, and with density and complexity come potential overcrowding, especially in the



centre, conflicts over land use, and — if the city is growing — the constant problem of coordinating and providing the infrastructure and services necessary to stop it collapsing under its own weight.

Some would say that the maintenance of the city as an historical artefact creates a certain aspect of utopia in which older buildings, open spaces and infrastructure are recognised as being part of its long-term future. But the more prevalent view of the utopian city is still one in which technology and modernity reign supreme, and inefficient or old-fashioned buildings have been bulldozed.

Technology and governance

There can be no doubt that technology has hugely improved our cities and brought them a little closer to our mental image of utopia. Whether it be smokeless coal — forced into existence by the Clean Air Act 1956 and subsequent legislation — or the electric vehicle — which may be similarly forced into widespread use by current UK government proposals for a ban on internal combustion engines — technology can bring some ease to city-dwellers. Mumford argued that governance and effective institutions can do the same, and we can reasonably expect that over the next 20 years technology and governance will make a similar contribution to improving cities as they have in the past 20.

But they have also brought problems of their own, and utopians often argue for the benefits while ignoring or downplaying the difficulties of progress. Nevertheless, we must always keep Wilde's advice in mind. Without some hope that the problems of the city can be solved, there is not much point beginning to build.

So what makes a successful city? There's a huge body of literature that analyses this most complex and intriguing invention of human civilisation, but our research gravitates again and again towards three key factors: culture, innovation and governance.

Successful cities are crucibles of culture: art, music, performance, food, architecture, identity and customs. Culture is a generator of success because it provides for the exchange of ideas; it offers both a challenge to and a reassurance about the city's identity. Culture is also a product of success, as educated citizens seek stimulation and relaxation. Philanthropy and patronage contribute to culture in

recognition of its contribution in turn to the good life, but also to associate their brands with it. And culture attracts the inquisitive traveller, creating benefits from tourism and interchange of ideas.

Cities are usually at the centre of innovation and technological advancement as well. They do this for their own survival, inventing ways to survive the sheer size and complexity of the urban form, whether these be building regulations after the Great Fire of London, Stephenson's Rocket and the Metropolitan Line in the 19th century, or Oyster cards today.

Smart cities and smart buildings are merely two ways of imagining the future relationship between technology and the city. But cities also have the critical mass to support the highest-quality education, which has two effects. First, this mass creates specialists, including economic specialisms and comparative advantage, such as financial services in Edinburgh or advanced manufacturing in Birmingham. Second, it allows cross-fertilisation of ideas.

The third factor is governance. After a period of urban exodus, the population of UK cities is now growing again, if not the spatial extent, and so they're becoming more complex. Boundary disputes and differing objectives make them difficult to govern: cities contain diverse political opinion and internal territories, such as the dense inner city versus the leafier suburbs. The city argues with itself about how it wishes to evolve, as can be seen in debates about social cleansing of housing estates and unease about gentrification.

The British city also often argues with its hinterland over its physical size, with the green belt seen as a largely sacrosanct way of holding back the tide. Decisions must be made over how to allocate resources to parts of the city — for example, to improve transport infrastructure, clean contaminated land or undertake regeneration programmes. The successful city is one that has the necessary power to make, coordinate and fund decisions about such issues. Who decides and distils the essence of the city's aspirations for itself, and guides it towards that goal?

The most successful UK cities in 20 years' time will be those that recognise the importance of promoting a rich culture, cutting-edge innovation and good governance. This is because, throughout history, cities that exhibit these characteristics seem to attract both people and money. As the forces of globalisation allow finance to flow ever more freely, cities are increasingly debating how they can attract it by advertising the quality and sustainability of their urban offer internationally.

Crucially, UK cities are not all at the same stage of this journey. For example, the metro mayor experiment, which confers wide powers on directly elected city politicians, is not being conducted in all major cities. Not all have been equally successful at articulating their brand, either: some are struggling to retain local talent and upgrade a relatively low-skilled workforce. So, we do perceive a race between UK cities over the next 20 years to improve their competitiveness — and not everyone will be a winner.

Miles Gibson is head of UK research, CBRE miles.gibson@cbre.com

It's difficult to understand the city from a single viewpoint, and like a journey through the urban landscape itself, research finds ambiguities and contradictions

Related competencies include: Masterplanning and urban design, Smart cities and intelligent buildings



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Positivity or pessimism on proptech?

A major report reveals surveyors' attitudes towards proptech adoption – how should professionals make sure they are ready for the changes this technology will bring?

Anthony Walker

Property technology, more commonly called proptech, is defined by RICS as a 'term that refers to all aspects of innovation and how this affects the built environment. This includes software, hardware, materials or manufacturing' ([rics.org/proptech](https://www.rics.org/proptech)).

Proptech is nothing new, and surveyors have been using it for many years to help them provide professional services. Today, though, the term has an increased visibility, and on an almost daily basis there is some new reference to proptech, innovation and disruption in professional publications or online, and concern is expressed about how these will affect the role of the surveyor.

Some of this coverage is worded in a threatening way, to shock or scare you into thinking that it won't be long before the surveyor is completely replaced by robots and artificial intelligence. But I don't believe so: proptech enables surveyors to augment their outputs, building on their professional judgement and reflective thought.

RICS celebrated its 150th anniversary in 2018, and throughout the past century and

a half, surveyors have been both proactive and reactive in solving problems. Even though surveyors today still face the same challenges as their predecessors, they now operate in an industry where advances in technology, specifically proptech, have had a significant impact on their roles.

Some find it difficult to embrace the change, but it is an opportunity for others who have the mindset and motivation to respond positively. The industry is changing at an unprecedented pace, and proptech is now more a mainstream requirement than an optional extra. Surveyors face an increasing number of opportunities that are only open to those who can demonstrate ability and experience in using proptech.

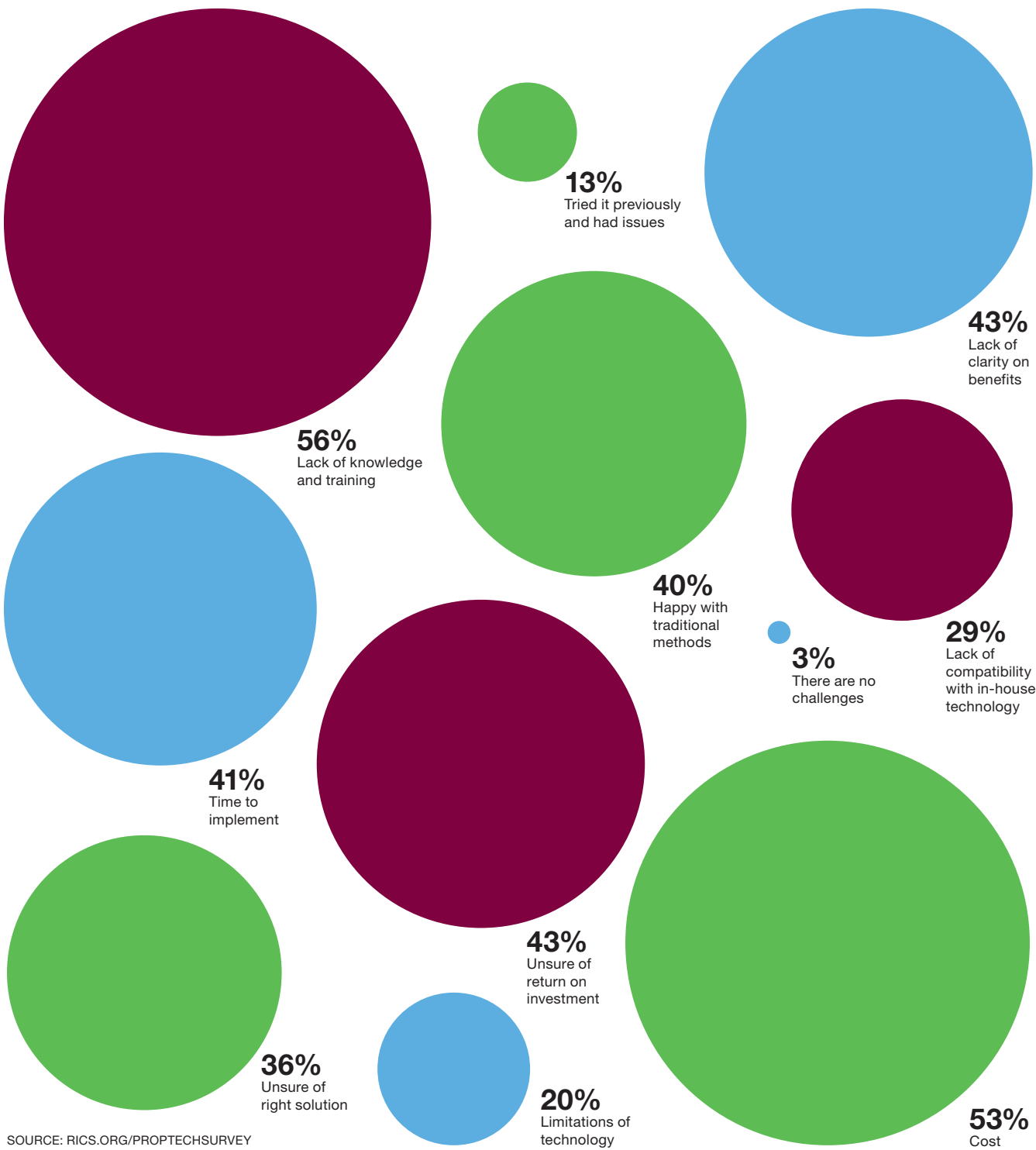
Surveyors who have not used proptech before, but who say that if they were to win the opportunity then they would do so, may be less likely to secure work. If they did, the chances of them completing that project successfully on time may be slim. Yet this is the stance some companies have taken, and still take, on adopting proptech:

they will only use it when they have an opportunity to justify doing so. But at this point there may be insufficient time for adequate training. Attempting to adopt new technology at the same time as mobilising a new project is risky to say the least.

In my role as proptech lead on the RICS Building Surveying Professional Group Board, I meet surveyors who say their employers will not invest in proptech until they have secured a fee first. The analogy I use in response to this is that it's a little like not learning to drive until you have to make a journey by car yourself. The only option you then have is to learn to drive at the same time as you make your first journey – what could possibly go wrong? Probably quite a lot, and it is doubtful you would be approached to make a second trip.

What is in no doubt is that proptech does require some upfront investment, although in most cases this will be relatively small. This would cover not only hardware and software, but also allow time for training before winning your first instruction.

Figure 1. Reported barriers to adoption of proptech in surveying



SOURCE: RICS.ORG/PROPTECHSURVEY

I believe this is critical. Without it you are likely to find that staff will struggle and outputs are unlikely to be acceptable to you or the client. The argument some make for taking this approach is that they simply don't have the time at the start to dedicate to training, but they will probably then spend extra time resolving problems at the end of the surveying work that could have been avoided. In this elongated process, the instruction may miss the completion deadline, fail to satisfy the client and generate no profit.

It does not have to be this way. You do not need to invest in cutting-edge technology, which would not be realistic for most surveyors. Starting small will reduce risk but also enable you to begin the learning process.

Surveying the surveyors

RICS reports on technology for surveyors ([rics.org/emergingtech](https://www.rics.org/emergingtech)) and valuers ([rics.org/futureofvaluations](https://www.rics.org/futureofvaluations)) have already looked into professionals' experiences and views on what is to come. Last year, I also ran a proptech questionnaire with input from RICS, GoReport, Teesside University and Trident Building Consultancy, to better understand the challenges and opportunities ([rics.org/proptechsurvey](https://www.rics.org/proptechsurvey)). The results have helped RICS target future support for members that will enable them to take proptech opportunities.

The questionnaire received 303 responses from surveying professionals, 88 per cent of which were UK-based, and 81 per cent of them came from RICS members. Small and medium-sized enterprises employed 59 per cent, and the other 41 per cent worked for large organisations. The headline figures paint a favourable picture for the profession – 92 per cent feel that proptech is having a positive effect on surveying, and 95 per cent are of the view that it is an opportunity rather than a threat.

In terms of adoption, more use it – 59 per cent – than understand it – 43 per cent. An even smaller number – 40 per cent – do not feel they have the skills or expertise to do so, and there could be a range of reasons for this. They may be competent with what is required but want to be more skilled, or they could have been

Proptech enables surveyors to augment their outputs, building on their professional judgement and reflective thought

asked to start to use proptech with little training. This latter view is reinforced by the fact that just 27 per cent say their company had invested heavily in proptech.

There is still some way to go before we see wider adoption across the profession. Asked to score their company's progress on proptech use on a scale of one to ten, 23 per cent opted for one, indicating it had not been adopted at all. In total, 65 per cent gave a score of one to five, compared to 35 per cent who answered six to ten. In terms of the barriers to take-up, 56 per cent cited a lack of knowledge and training, 53 per cent doubts about cost, 43 per cent a lack of clarity on the benefits, and 41 per cent the time required to implement proptech. A full breakdown of perceived barriers is provided in Figure 1.

So it is clear that many still do not feel they have a full understanding of proptech, or the advantages and benefits it can offer their organisation and clients. This will hold back the speed of adoption; yet, with most organisations now using proptech, the direction of travel is encouraging.

A number of those who responded to the proptech questionnaire gave detailed qualitative comments, which provided greater intelligence on issues. A specific remark – 'Tough to get the old boys using smartphones let alone new software' – was one of several comments that highlighted the apparent frustration of surveyors who were working for an organisation or individual that would not support proptech adoption, and who found that this is personally holding them back. The risk this presents is that these surveyors – the ones that organisations need the most in order to

help them embrace proptech – may leave to seek a role elsewhere that would give them greater exposure to the technology.

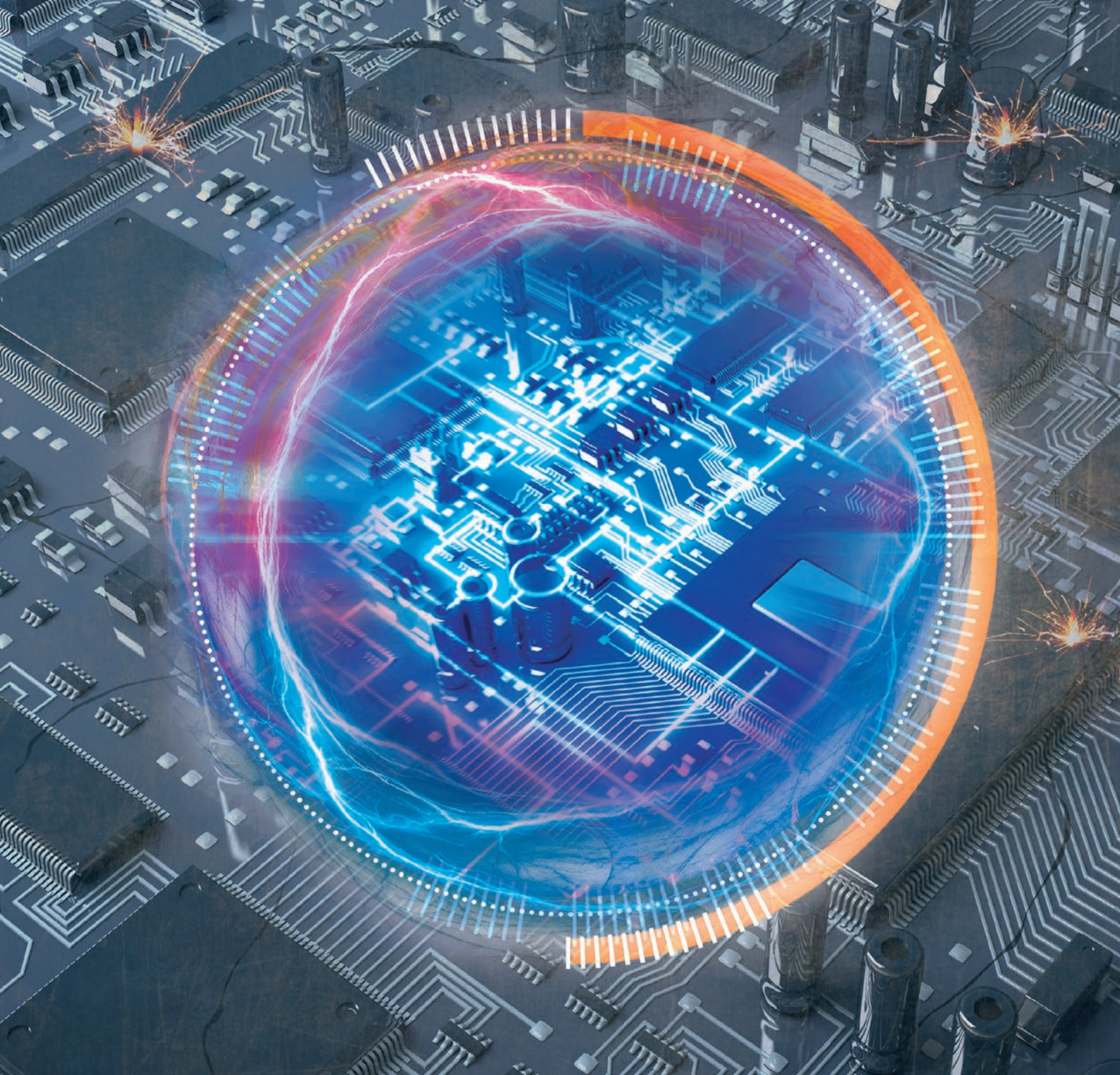
Recruiting and retaining talented staff is one of the biggest challenges the profession is facing. Add to this the need to train the existing workforce to meet the current and future demands of proptech and other digital technologies, and it highlights that as a profession we need to be able to respond positively and more swiftly to proptech than we have in the past. Proptech can help redefine and increase the profile of the profession by catching the attention of young people who are looking for a technology-related career, rather than one still associated with hard hats, high-vis jackets and muddy boots.

Positive next steps

There is a saying that goes: 'A pessimist sees the difficulty in every opportunity; an optimist sees the opportunity in every difficulty.' As the responses to the questionnaire evidenced, surveyors are optimistic, and almost all – 95 per cent – view proptech as an opportunity. We now have solutions to long-standing difficulties, solutions that only a few years ago were unimaginable. With the proptech available, I believe there has never been a better time to be a surveyor.

Anthony Walker is chief executive officer at GoReport and chair of the RICS Building Surveying Professional Board Group
anthony.walker@goreport.com

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Tax

‘Non-UK residents will be subject to UK tax on all gains on direct and certain indirect disposals of UK property’

Robert Walker

PricewaterhouseCoopers LLP



Unlike many other major jurisdictions, the UK doesn't currently tax non-residents on direct or indirect disposals of UK commercial property, notwithstanding their right to do so under most double tax treaties. This is set to change, however.

On 7 November 2018, the government published the provisions of the new regime in the Finance Bill. The bill is expected to be enacted early this year, and the provisions will then take effect from 6 April. In addition to the core provisions, there are others dealing with collective investment vehicles (CIVs).

Non-UK residents will be subject to UK tax on all gains on direct and certain indirect disposals of UK property. In the latter case, the rules will apply where a person makes a disposal of a company in which it has at least a 25 per cent interest and that company derives 75 per cent or more of its gross asset value from UK land.

The gain is calculated by reference to the 5 April 2019 value of the asset, that is, the property or the shares, with the option of using original cost, but not so as to result in a loss in the case of an indirect disposal.

There will be a trading exemption, so that disposals of interests in property-rich entities where the property is used in a trade by a connected person such as a retailer are excluded from the charge. Non-UK resident companies will be charged corporation tax, and individuals and trusts capital gains tax. Existing exemptions available for bodies such as pension funds and charities will continue to be available.

In respect of investments in, and disposals by, UK property-rich CIVs, the 25 per cent de minimis holding requirement does not apply, so even disposals of lower interests will be caught. For this purpose, a CIV is either a collective investment scheme, an authorised investment fund, a UK real-estate investment trust (REIT), or a non-UK company that has many of the characteristics of a UK REIT.

The CIV itself will be subject to the new tax regime outlined above. However, in response to concerns over multiple levels of tax and preserving the tax-favoured status of certain investors, modifications apply.

The first of these is the ability for certain offshore CIVs — such as unit trusts

— to elect to be 'looked through' for the purposes of UK tax on capital gains. The effect will be that the CIV is not subject to UK tax on gains in its own right; instead, the investors are taxed directly on any property disposals by the CIV. The election will therefore be attractive where all the investors are tax-exempt.

Given that disposals by the CIV will trigger a disposal at investor level, the look-through election may not be appropriate where there are also taxable investors. In those cases, the exemption election may be more appropriate: this may be made for certain CIVs or companies they own, so they are exempt on direct and indirect disposals of UK property.

As you would expect, there are several conditions. These include the requirement that the CIV is widely held or marketed to a wide range of investors, is listed on a recognised stock exchange, or is 'not close' and does not have more than 25 per cent of investors who are exempt from tax treaties.

It's worth bearing in mind that the exemption regime is only available to the CIV on the basis that the UK is able to tax gains at the investor level; the intention is to prevent multiple levels of UK tax arising — but not that no such tax be collected, unless the investors are tax-exempt. In addition, there are other existing reliefs such as the substantial shareholdings exemption, and other special tax regimes such as REITs and property-authorised investment funds that can apply.

The April 2019 changes represent a transformation of the tax landscape for non-resident investors in UK property. Careful consideration of the new regime will be needed in order to ensure multiple layers of tax do not arise and that investors with special status pay no more tax than they need to where they invest indirectly.

Robert Walker is partner and real-estate tax UK network leader at PricewaterhouseCoopers LLP robert.j.walker@uk.pwc.com

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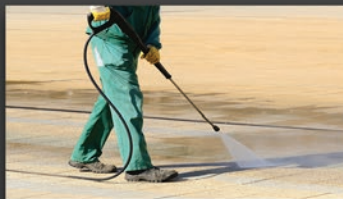
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Ending the code deadlock

The new Electronic Communications Code was supposed to bring clarity on digital infrastructure, but has this been the case in practice?

Sue Doane and Mark Talbot

The Electronic Communications Code provides a statutory framework for agreements covering the installation and maintenance of communications apparatus on land and property in the UK. Introduced in the Telecommunications Act 1984 and extended in the Communications Act 2003, the code was reformed as part of the Digital Economy Act 2017 and came into force on 28 December 2017, being incorporated as Schedule 3A to the 2003 Act.

Reform had been necessary to reflect the profound changes in technology and demand for services since 1984. People now expect to have access to fast broadband anywhere, including at home, irrespective of where they live. The government's aim therefore was to give full support to the installation and maintenance of high-quality digital communications infrastructure.

The new code applies currently to the networks that support fixed broadband connections to premises, mobile broadband, voice and text services, and cable television, as well as landlines. It also looks to ensure the provision of future services to the fifth generation – 5G – and beyond (see box, right). It provides the legal framework for the roll-out and maintenance of physical networks that support the provision of these electronic communications services across the UK. Importantly, the code focuses on underpinning consensual commercial relationships with regulation.

There are provisions that aim to ensure property owners are fairly remunerated for use of their land, but that also explicitly recognise the economic value of investment in digital infrastructure for everyone. With this in mind, the reforms seek to make it easier for communications providers to deploy and maintain their infrastructure through new rights to upgrade and share apparatus. From the property owner's perspective, there is recognition that obtaining vacant possession at the end of a contractual term is imperative, particularly where redevelopment is to take place.

In addition, robust changes to court processes and jurisdictions aim to improve dispute resolution, ensuring that disagreements between communications providers and landowners do not hold up investment and create uncertainty. This has been achieved through more clearly defined processes that closely mirror those found in landlord and tenant legislation, and by the engagement of the Lands Chamber of the Upper Tribunal.

The government concluded that the reforms struck the right balance between the interests of site owners, communications providers and, most importantly, the public, supporting enhanced investment in digital infrastructure. Unfortunately, its hopes that the new code would offer greater clarity have not been realised, particularly in relation to paying site providers to grant agreements.

This was one of the key points of contention under the original code, and a good portion of the stakeholder consultation focused on addressing both site providers' and operators' concerns about this.

In justifying the new policy, the government stated that site providers should continue to receive fair payment – a consideration – for the use of their land, and that this should be in addition to simple compensation for any damage or loss of value. The definition of both consideration and compensation was set out by the Law Commission in its report *The Electronic Communications Code*, Law Com No 336, February 2013 (bit.ly/ECC336) at paragraph 5.4, which states that compensation is a payment compensating for a loss, and 5.5, which explains that consideration is something more than compensation, best described as a price for the grant of rights.

However, recognising the government's emphasis on the role of digital communications in economic growth, productivity gains and social interaction, the commission also expressed concern that the cost for 'rents' in the telecommunications industry was significantly higher than those enjoyed by utilities and providers of essential services. The Impact Assessment published by the Department for Digital, Culture, Media & Sport (DCMS) in 2016, RPC-3329(1)-DCMS (bit.ly/RPC3329), sets out the evidence for its view, and cites the Nordicity Report, *Modelling the Economic Impacts of Alternative Wayleave Regimes* (bit.ly/Nordicity13), and *Financial impact of ECC changes* (bit.ly/FinImp16), produced for the DCMS in October 2013 and May 2016 respectively. The government thus felt that, while site providers should get fair value for the use of their land, this should not as a principle include a share of the economic value created by high public demand for the operator's services.

So the government sought a balance in the new code by defining a basis for payment somewhere between a compensation-based regime akin to compulsory purchase on the one hand, and the potentially higher levels of rents under the previous version of the code on the other. In aiming for a middle ground, the basis of payment defined in paragraph 24 of part 4 of the new code shares similarities with the market value defined in the RICS Valuation and Professional Standards – the Red Book – but with very distinct disregards, in particular the assumption that the right to which the transaction relates is not concerned with the provision

or use of an electronic communications network. It is also important to understand that this is not a compulsory purchase regime; nevertheless section 118, Schedule 4 of the 2003 Act does provide for a route for compulsory purchase.

As such, a new hypothetical scenario, the new valuation basis and the dearth of evidence of agreements transacted on the new basis appears to have led to a paralysis in activity. Understandably, representatives of all parties directly involved in negotiating agreements want to ensure that such transactions correctly reflect the new code's rules and achieve a fair outcome in this respect. However, the legal interpretations of paragraph 24 vary extensively in what is currently an absence of evidence reflecting the new code, and this has a direct impact on the potential valuation parameters. In turn, this has resulted in parties taking widely divergent positions, which are in turn exacerbating delays in reaching agreement thanks to a reluctance to set a market precedent.

RICS recognises the need for substantive best practice guidance to support the government's vision for the digital economy. Reflecting the public interest principles of the RICS charter, a guidance note would redress the current absence of any neutral professional advice on the valuation principles and best practice under the new code. Such a professional interpretation of the valuation elements by RICS would benefit its immediate membership as well as other professionals. In bringing some clarity to this issue, the interests of all stakeholders would be addressed. The legal interpretation will be developed by case law and precedent where there is a fundamental requirement to do so. Development of the guidance note has begun and information about the consultation and publication dates will be provided through the RICS Telecoms Forum when the time comes.

Apart from this, RICS always supports professional discussion of emerging and challenging matters by members representing all parties involved. In this respect, Ofcom has emphasised the importance of positive, productive engagement and, as a complement to the new code, it has published a *Code of Practice* following public consultation (bit.ly/OfcomCoP17). This provides a framework to support landowners and operators in establishing, developing and maintaining effective working relationships across a range of issues, roles and responsibilities. It is important to note that, while Ofcom's code provides some examples of best practice, it does not aim to be exhaustive. As such, there is an expectation that members will always act in accordance with RICS' ethical and professional standards, and that conduct during the negotiation process will reflect the principles of the *Code of Practice*.

Sue Doane FRICS is a consultant chartered surveyor and RICS Telecoms Forum Board Member sue.doane@outlook.com

Mark Talbot FRICS is partner, head of telecommunications, Carter Jonas LLP and chair, RICS Telecoms Forum Board mark.talbot@carterjonas.co.uk

Related competencies include: Legal/regulatory compliance, Smart cities and intelligent buildings, Valuation

A 5G and full-fibre future

The government's Future Telecoms Infrastructure Review sets out plans for fifth-generation (5G) mobile technology to be available in the majority of the UK by 2027, and for homes and businesses nationwide to have access to full-fibre broadband networks by 2033, with 15m by 2025. The government says it is clear that a mix of full-fibre and 5G broadband networks is the long-term answer to ensuring that the speed, resilience and reliability demanded by consumers and businesses are all provided.

bit.ly/PMUKff5g

A firm foundation for future finance

Small business owners can support their future finances by using the business itself as a planning tool

Marc Burman

Many business owners are so busy with work they miss opportunities to use those businesses for financial planning. There are two powerful, and often overlooked, ways in which a business can be used as such a tool; the business can also be used as the engine room for a family's finances, and there are ways that this vehicle can be protected.

The first way is contributing to pensions from the firm, which offers many benefits.

- The pension contributions will be treated as a company expense and subsequently reduce the corporation tax bill.
- It is a tax-efficient way to extract funds from the firm to use for personal benefit.
- By paying into a pension, business owners are creating a separate vehicle to fund their retirement that does not rely solely on the business's success – especially important in periods of possible uncertainty.
- Unless someone can retire on the grounds of ill health or has been diagnosed with serious ill health – having less than 12 months to live – a pension fund cannot be accessed until the owner is 55 years old. Depending on the age of the owner now and their intended retirement age, there could potentially be many years for the fund to benefit from compounding growth – that is, growth on the growth of the fund – before withdrawals are made.

If you are a company director or an employee and already pay personally for life assurance, you could save up to 49 per cent by putting your premiums on expenses as well. This means the company pays for the policy and it is fully tax-deductible.

The company takes out the policy on behalf of an employee or director, and in the event of their death a tax-free payment will be made to their designated beneficiaries. This is a specialist form of life assurance known as relevant life cover.

There are a couple of conditions: the policy can only be in place until the person assured reaches the age of 75; and the sum assured must be no more than 30 times salary if the person is under the age of 35, according to recent figures from Aviva.

The benefits of this are as follows.

- The premiums are not considered a benefit in kind for the employee or director.
- They are also considered a company expense, and so will reduce corporation tax.

It's important to insure the people who are crucial to the continuing success of a business

- The sum assured is received free of tax.
- The sum assured is paid into a trust that does not create an inheritance tax liability for the estate of the person assured.
- A trust can also be used to preserve the funds for future generations and safeguard against potential claims by third parties.
- The employer premiums will not count towards the annual pension allowance.
- There will be no test against the pension lifetime allowance.
- The policy cannot invalidate enhanced or fixed protection.

As an example of this expense, insurance and pension provider Aegon calculates the cost of a policy taken out by a 40-year-old non-smoker in good health, which would pay out £500,000 on their death, up to the age of 65, at £34.68 per month.

Company directors and employees can also extract funds from the business as salaries and dividends received. These can be used to meet their current costs of living and support their future financial plans.

But in addition, the business may employ other family members, including the children once they have grown up. The long-term strategy may on the other hand be to build up the business and sell it to fund the owner's retirement or provide an inheritance for their children or grandchildren. Whatever the plan, it is clear that its success is crucial to meeting future financial goals and objectives. It is therefore imperative that the business is protected.

Arguably the most important part of a business is its staff. If a company relies on a single sales rep to bring in all new business, how would the business cope if they were unable to work for six months, or even if they were to die unexpectedly? Not only would the company suffer a reduction in turnover but customers may seek to

establish new relations with competitors that could further damage the business.

To minimise the impact of this, it's important to insure the people who are crucial to the continuing success of a business. Businesses already insure buildings, contents and machinery, and these items are much more easily replaced than a key member of staff. If something unexpected were to happen to such a person and they were insured, the business would then receive a cash injection when it is most needed. This could be used to keep the business afloat while new staff members are recruited and trained.

I believe that business owners also tend to overestimate the cost of such insurance. For example, the cost of insuring the death of a non-smoker in good health between the age of 40 and 65 for a sum of £250,000 would be just £19.35 per month, according to the insurer AIG. The cost of the premiums would also be tax-deductible and reduce the company's corporation tax bill.

Marc Burman is a financial planner and partner at financial advisory firm Foster Denovo marc.burman@fosterdenovo.com

Further information: Levels and bases of reliefs from taxation are subject to change and their value depends on the individual circumstances of the investor. The value of your investments can fall as well as rise and you may not get back the full amount invested. What you get back at retirement cannot be guaranteed and will depend on how much you pay in, investment performance and interest rates when you retire. Foster Denovo Limited is authorised and regulated by the Financial Conduct Authority (FCA). The FCA does not regulate taxation and trust advice.

The effectiveness equation

Creating a productive workplace is of increasing interest to asset owners and facilities managers. What can the findings of a recent research project tell us about the most effective spaces?

Tim Oldman

Workplace effectiveness is a slippery subject for property professionals. Where the conversation once obsessed over the productivity problem, it has now pivoted in an experiential direction to reflect a growing understanding that, in the workplace, experience and effectiveness are inextricably linked.

The standard definition of effectiveness states that it is the degree to which something is successful in producing a desired result. But before we can hope to quantify the level of success, we need to know what it is we are measuring. One could argue, generally speaking, that the chief objective of most property functions is neither to enhance the employee experience nor improve the workforce's performance. Rather, the desired result tends to be weighted towards reducing

operating costs, regardless of whether doing so is at the expense of employees' workplace experience.

Rising property prices and technological advancement, which has made it possible to work anywhere, have prompted organisations to reduce their overheads and, in turn, shrink their workspaces. There is a tendency to conflate cutting space with creating efficiency, a cost-effective initiative in its own right, and there are still finance directors today who believe sacrificing property is the key to improving the bottom line. On paper this might make sense. For those on the ground, however, it does not.

Acknowledging that employees respond to their surroundings shouldn't prove that difficult for most leadership teams; but accepting that poor-quality workplaces

may be bad for employees and thus bad for productivity may be hard to swallow for those who see cost reduction as the only path to greater effectiveness. Smart organisations are beginning to challenge this view, and sophisticated, savvy real-estate leaders are refining and finessing the meaning of effectiveness in the process. True effectiveness must be a balance between cost efficiencies and higher outputs, so if you can increase the output and reduce the cost you're on to a winner.

Measuring effectiveness is a balancing act between the cost and the value of output. What's more, it's not just about empowering employees to increase output, it's about empowering them to increase the quality of output. For example, a software developer's performance shouldn't simply

be measured by how much code they write because value must be attributed to the quality of the code in question.

Intelligent organisations recognise that workplace effectiveness involves setting the right objectives, collecting the right data and making the right decisions. Property professionals in these firms know they can only transform their organisations for the better by understanding their employees' experience.

This approach supports the analysis of traditional metrics that have been collected and measured over the years, but without neglecting the most important dimension – the employees themselves. It's not just about how many people can fit into the space, it's about the impact that space has on the people using it.

Most organisations are considering this impact on business operations. To that end, many look at floor space, lease lengths, rents and rates and the number of workstations to try to understand whether a space is being used appropriately. It's important to measure these areas, but to gauge fully how the portfolio is performing organisations need to understand the user experience. Sentiment data can help such organisations ascertain whether employees are satisfied with the workplace and whether the physical, virtual and social infrastructures meet their needs. If not, employers should ask themselves what needs to be improved.

To build a case for change, it's vital that the insight gleaned from conversations, surveys and observations paints a true picture of the employee experience. Designers may offer their own tools for measuring the impact of a transformation after the workplace is in use, but it's important to remember that they're essentially assessing their own performance. Some organisations have their own tailored employee experience surveys, which is a great way of engaging staff, but there's a risk that they will still hold back even if this is anonymous. By engaging with employees through an independent third party, organisations can begin to create workplaces with effective real estate and technical infrastructure that support the needs of their workforce.

The workplace revolution

Successful brands such as Apple, Strava, Uber and Sonos now offer immersive, participatory experiences, and, as consumers, we are getting used to special treatment of this kind. We expect products and services that cater to our needs and daily lives, address our concerns and make us feel good.

Employees' expectations are being heightened by what they experience in their lives outside work, and in effect are becoming workplace consumers. Intelligent organisations are responding to this shift in expectations because they recognise that a failure to cater to their employees will see them lose out in the war for talent.

The most recent research report from workplace effectiveness assessors Leesman, *The Workplace Experience*

Revolution (bit.ly/WkExRev), is based on a sample of 401,362 employees worldwide from a variety of organisations and reveals the business-critical factors on which employee sentiment hinges. Leesman's analysis, which was conducted by independent statisticians, reveals that the strongest influences on employee experience are the factors that aid individual, focused work, so quiet areas where people can get their head down and concentrate are important.

While our sense of personal productivity is principally governed by our ability to concentrate, employees also rate learning from others and accessibility of colleagues as being particularly important. From this we can deduce that organisations must provide both quiet and collaborative areas if they are to empower workers with more



complex activity profiles. Interestingly, the findings show that personalisation of space affects employees' ability to work, too, suggesting that people work more productively in spaces where they feel comfortable and at home.

Leesman has surveyed more than 3,500 workspaces worldwide since the turn of the decade, and to date, just six per cent of the buildings we've surveyed have achieved the prestigious Leesman+ accreditation that recognises the world's best workplaces. In addition to offering features, services and infrastructures that comprehensively meet the needs of their employees, Leesman+ buildings all offer a variety of spaces.

Our research has found that nearly half of workers participate in ten or more activities in their day-to-day roles, and those who conduct a multitude of activities over the course of a working day are more likely to identify variety as a crucial component of the workspace. Such variety has a number of benefits.

First, people can choose the right environment for the specific task in hand and, second, an array of spaces can drastically reduce the impact of noise. Considering that only 31 per cent of employees are satisfied with the level of variety in their office, this gives property and facilities managers grounds to argue for a budget that will allow for a range of spaces

to accommodate the people with more complex and multifaceted responsibilities.

Perhaps most importantly, the Leesman+ spaces all provide an outstanding employee experience. Our research has revealed that the employee workplace experience clusters around three distinct emotional responses: doing, seeing and feeling. The first relates to whether the workplace supports getting work done, while 'seeing' concerns how employees view their workplace — does it embody a strong corporate image and reflect well on the employer? 'Feeling' then comes down to whether the workplace evokes any sense of pride.

There are 13 so-called super drivers that have a positive effect across these three specific outcomes. The Leesman+ winners are not only providing infrastructures that support key activities but are also offering physical features and services that are prime drivers of overall performance.

An effective blueprint

Effective workplaces that provide an outstanding employee experience enjoy an array of benefits — everything from competitive employee attraction and retention rates to improved creative collaboration and team work.

Some of the benefits can even provide an immediate return on investment. According to research by PricewaterhouseCoopers,

sick leave costs UK employers £29bn a year. One of the world's leading construction companies compared its headline Leesman index score (Lmi) across five locations to the average number of days lost per employee to sick leave per quarter, and its analysis found that the most effective building out of the five surveyed had the lowest level of absenteeism.

The people occupying this particular workplace, which had an Lmi of 78.9, only claimed 0.2 days every three months. The absenteeism number for the building that scored an Lmi of 39 was 1.8 sick days in the same period. Over the course of a year, then, individuals in the ineffective workplace would be off sick from work for around 6.4 days, compared to 0.8 days for those in the highest-scoring workplace certified to Leesman+. For an organisation with 100 employees, this figure equates to an additional 640 days lost every year to sick leave; whether those days were the result of actual sickness or not is by the by, the correlation speaks volumes for a workplace's impact on its occupants.

Despite appraising employees every year to see whether they are fulfilling the requirements of their roles, organisations rarely appraise the business space to find out whether it is effectively supporting the employees in question. That said, businesses are waking up to the idea that the modern workspace can improve collaboration, increase innovation, boost productivity and, ultimately, have an impact on overall business performance. These organisations have realised the competitive advantages their workplaces provide — and that's why data is becoming so important.

Big data is the new oil, but it is currently in its crude form and needs to be processed if it is to be used to fuel change. When businesses are able to exploit its full potential, data will help organisations and their design teams create effective workplaces that provide an outstanding employee experience.

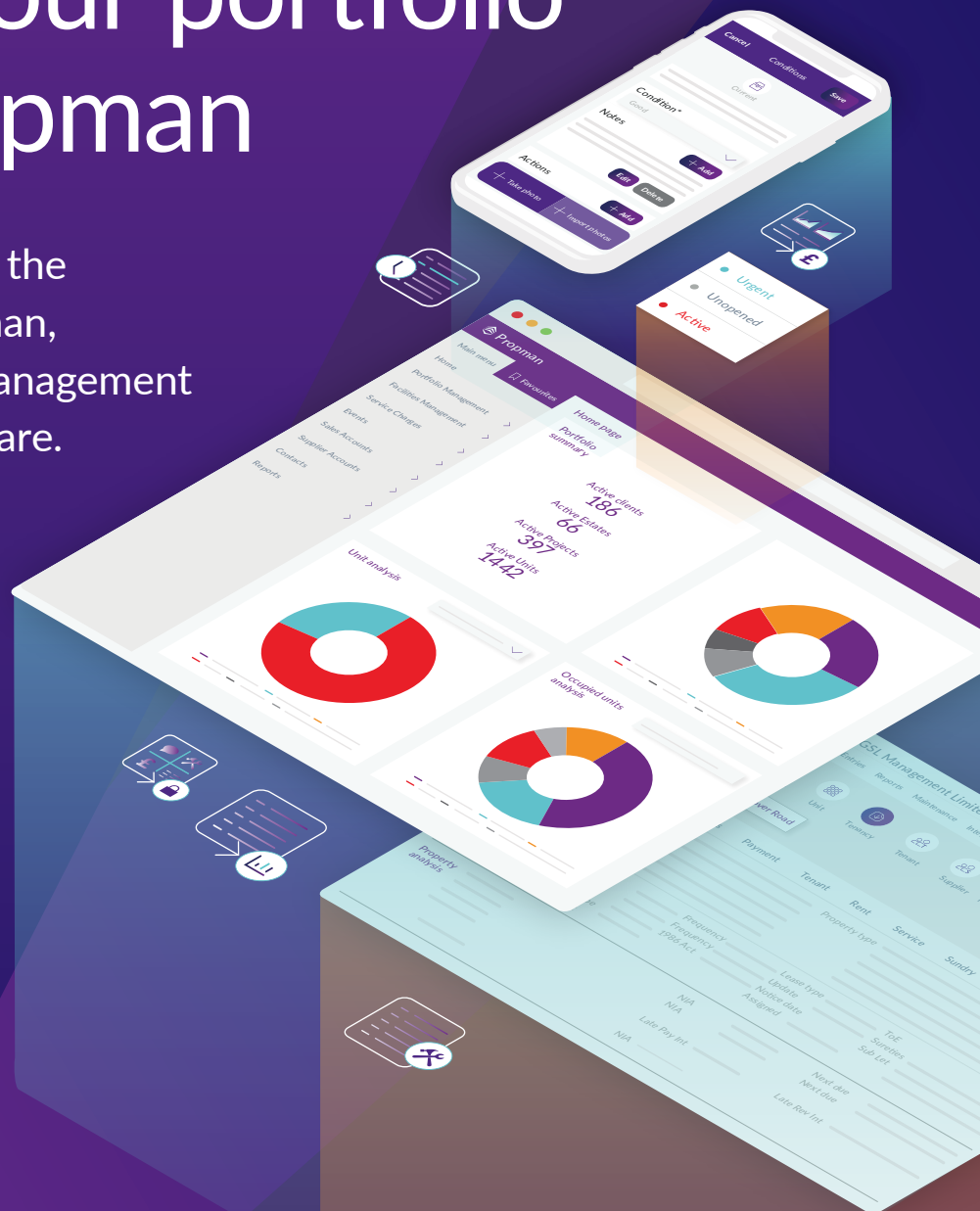
Tim Oldman is CEO of Leesman
tim.oldman@leesmanindex.com

Effective workplaces that provide an outstanding employee experience provide benefits ranging from competitive employee attraction and retention rates to better team work

Related competencies include: Asset management, Corporate real estate



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Lease offering

The Model Commercial Lease should reduce the time spent negotiating lettings in a market with an increasing appetite for standardisation

Peter Williams

Speeding up real-estate deals and reducing their cost is increasingly important. Commercial letting transactions are no different: landlords want to see rent coming in at the earliest opportunity, and tenants want to start trading from their new premises. There have been various attempts over the past 25 years or so to speed up the process by using standard documents, but they have not proved popular for various reasons. However, a new product – the Model Commercial Lease (MCL) – may well succeed.

The MCL was originally proposed by the British Property Federation (BPF)'s commercial committee, which noted that a lack of standardisation in both lease structure and content mean that commercial lettings still take longer to conclude than necessary. A working party of property lawyers and landlord representatives was formed in 2011 with the remit of producing a modern document that could be used as a fair starting point for most commercial letting transactions in England and Wales. As part of the process, the working group consulted widely with BPF members and most of the major law firms.

The MCL family of documents was launched in 2014. It consists of templates for letting a variety of different

The MCL has been drafted to avoid much of the unnecessary negotiation on most routine letting transactions

types of commercial building, together with additional bolt-on clauses and a series of asset management documents including a rent deposit deed. A full list of the MCL documents is set out in the box, left. All are available free of charge to download (bit.ly/MCLsuite).

The Law Society has adopted the concept as well to provide its own short-form model commercial leases in two variants for office buildings, covering the whole of and part of a building. Work is also under way to produce short-form leases for other types of building. These leases are intended to be suitable for lettings of up to ten years that include at most one rent review, and are also free to use. Versions of the MCL that take account of landlord and tenant law in Scotland are likewise now available free of charge from the Property Standardisation Group (psglegal.co.uk).

The MCL has been drafted to avoid much of the unnecessary negotiation on most routine letting transactions. The aim has been to remove the ritual dance between lawyers at the start of a transaction, with routinely agreed amendments included in the draft lease from the outset. This frees up the parties to address the issues that are specific to their deal and those that actually matter to them.

Having said that, the MCL contains all the protections that landlords need that are found in any typical full repairing and insuring institutional lease; the box overleaf highlights some of the key provisions. However, a key feature of the MCL is that it does not have to be used in its unamended form straight from the website.

Every building is different, so the MCL can be tailored to fit the premises being let and the wishes of the particular landlord. Users are also free to take the MCL suite as the starting point for their own precedent documents, and amend or delete the wording in places as they wish. There is no need to brand the resulting documents as having been derived from the MCL.

The MCL complies in most respects with the current, third edition of the *Code for Leasing Business Premises*,

MCL documents

The following leases are included:

- office premises – whole and part
- office premises on an office park – whole and part
- retail premises – whole and part
- retail premises on a retail park – whole and part
- shopping centre unit (with optional turnover rent provisions)
- industrial/logistics unit
- unit on an industrial park.

There are also bolt-on clauses for:

- turnover rent provisions
- offer-back clause
- A3/A4/A5 use clauses (food and drink)
- index-linked rent review provisions
- option to renew
- service charge cap.

Asset management documents include:

- rent deposit deed
- licences to assign, underlet, change use and alter
- licences allowing undertenant to assign, underlet, change use and alter.

though a chart on the MCL website highlights where its terms depart from the code's recommendations.

Experience to date

Landlords and tenants, together with their agents and lawyers, have understandably been asking why the MCL should succeed when past attempts to standardise leases have not. Expectations at the start of this project were high for a number of reasons.

- The concept of standardised documents is now widely accepted by both the property industry and lawyers.
- Landlords and tenants are no longer willing to pay their lawyers to argue about points that have proved largely unimportant in practice.
- Landlords are keen to use artificial intelligence, and a standardised lease will make it easier to introduce this.

But perhaps most importantly, the days of landlords issuing 100-page 25-year leases on a take-it-or-leave-it basis have now gone for good. Landlords are encouraged to treat their tenants as customers not just rent-payers, and the confrontation that used to characterise a lease negotiation has now largely disappeared.

Initial signs have been extremely encouraging. Given that the documents can be downloaded free of charge and many law firms have stored copies on their own systems, there are no statistics to show how frequently the MCL documents are used. But we do know that several leading law firms have adopted new precedent leases based on the MCL or are in the course of doing so, and at least two leading institutional investors have recently done the same. We have also heard many times that the MCL provisions tend to be adopted during lease negotiations when compromise is necessary.

The original working group, now joined by representatives from more law firms, is continuing to keep the MCL up-to-date. There have been updated versions of the leases each year, with another expected to be issued this spring. Many of the drafting changes have been suggested by users themselves – there is a feedback form on the MCL website, and users can sign up there to be notified about new versions.

Please do have a look at the MCL, and recommend it to your clients; it is becoming increasingly likely that it will be adopted as the standard for the majority of commercial letting transactions.

Peter Williams is a professional support lawyer in the real-estate division at Shoosmiths LLP. This article is written on behalf of the MCL working group, of which he is a member peter.williams@shoosmiths.co.uk

Related competencies include: Landlord and tenant, Leasing/letting

Further information: modelcommerciallease.co.uk

The days of landlords issuing 100-page 25-year leases on a take-it-or-leave-it basis have now gone

Key MCL provisions

- **Assignment:** assignment of the whole premises is permitted with the landlord's consent other than from a tenant to its guarantor, to avoid the uncertainty of the outcome in *K/S Victoria Street v House of Fraser (Stores Management) Ltd* [2011] EWCA Civ 904. The landlord is entitled to require an authorised guarantee agreement on all assignments, rather than only where it is reasonable to do so, reflecting institutional landlords' standard requirements; this is one of the few places where the MCL does not follow the *Code for Leasing Business Premises*.
- **Underletting:** this is dealt with in a separate schedule and can be adapted to suit the building being let.
- **Break clause:** this follows the *Code for Leasing Business Premises* recommendation, and so the only conditions are that the tenant is not in arrears with the main rent and returns the premises free from occupation by a third party. A separate provision requires the landlord to repay any rent that the tenant has paid in respect of any period after the break date.
- **Alterations:** the MCL contains a schedule of covenants for tenant's works, meaning that the landlord can authorise minor works by letter rather than requiring a formal licence, although a licence is recommended in the case of more complex alterations.
- **Sustainability:** the MCL includes an optional schedule containing relatively light sustainability provisions to promote the building's environmental performance.

Maintenance across borders

What does best practice look like when it comes to international handover of engineering and manufacturing facilities from construction to facilities managers?

Dave Friar

Whether it is safety tests for your electrical switchgear, efficiency tests for your boiler or upkeep for parts and equipment, the need for ongoing maintenance is vital. But how can you ensure a maintenance plan continues to be observed when completing international projects and the management of a facility is transferred to a local team?

Planning for ongoing maintenance of a new facility or plant is important, especially before operation. According to *Efficient Plant* (bit.ly/EfficientPlantCosts), a badly maintained ten-year-old facility can cost more to upkeep than a properly maintained 25-year-old one. A comprehensive maintenance plan can save time and money.

However, when handing over the ongoing management of a new overseas facility, working closely with your local counterpart is vital. It is essential for the plant's construction team to ensure the maintenance plan is considered as a significant element of the project from the outset. Whether that means training on-site staff in using and maintaining facilities and installing replacement parts or simply offering them manuals, the more information they have the more likely it is that they can keep things running smoothly.

At Boulting, we always provide recommendations for ongoing maintenance before we hand over a facility. This can keep maintenance needs at the forefront of the facilities management team's attention when they begin work. On-site teams also

The maintenance plan must be considered as a significant element of the project from the outset

receive manuals to have on hand should any equipment need emergency upkeep.

If local teams request maintenance help, this provides a chance to scope out the plant and offer suggestions or efficiency ideas for its future upkeep. Developing your relationship so that you become a trusted adviser rather than simply a supplier may also bring new business opportunities. Of course, travelling across the globe just to change a switch is not only costly but also leads to a lot of downtime. Many providers offer wireless transmitters for some key components, enabling them to monitor and supervise the system remotely.

This means that vital elements such as generators and switchgears can be assessed for cost- and energy-saving opportunities without international travel – an approach essential for parts that have much shorter lifespans due to climate and the conditions in which they are operating. Switchgears, for instance, are tested to EU standards, where circuit breakers are typically designed

to complete 10,000 operations. As climate and altitude conditions vary it is impossible to test equipment for all eventualities, and working in extreme conditions can greatly affect operational life expectancy.

Ensuring local monitoring teams are not only aware of the need for regular upkeep and replacement from the beginning of the project but are also reminded of it through remote monitoring can help them predict maintenance needs before components unexpectedly break. Offering your support and ongoing services will not only maintain your relationship but the plant too.

Having a sudden boiler failure can leave you out in the cold, and facilities managers should not be left feeling the same when ownership of plant is transferred to them.

Dave Friar is international operations director at Boulting Ltd davefriar@boulting.co.uk

Related competencies include:
Asset management

Innovation on the high street

An imaginative approach to empty high-street locations could inspire property owners looking to make a positive contribution to their community

Jon Hope

Soaring business rates, rising regulatory costs and weakening consumer demand are presenting some particularly challenging trading conditions for UK retailers at present. A recent survey (bit.ly/highstES) revealed that high-street shops closed at a rate of 14 a day in the first half of 2018, when we saw the collapse of some major retail brands.

This leaves commercial landlords in an unusual position. Faced with a plethora of empty properties to fill, many may find themselves having to think creatively about new ways to use their space. While Barclays is not normally seen as a landlord, it has recently converted some of its properties – or worked with partners to take up new ones – in a way that has injected some life back into the high street and wider community.

This was achieved with the roll-out of a network of Eagle Labs, Barclays spaces designed to help entrepreneurs and ambitious businesses work together, innovate and grow. Through its experience of creating and running Eagle Labs, Barclays found that one space need not necessarily house one tenant. Rather, hosting multiple businesses at once and creating a hub that is open to the wider community could be the key to spurring exponential growth in the areas where it operates.

One space need not necessarily house one tenant but can host multiple businesses at once, creating a hub that is open to the wider community

The concept of the labs was born in 2015 from a desire to cultivate a community of like-minded entrepreneurs and provide them with access to a collaborative environment, peer networks and opportunities to maximise growth. By helping Eagle Lab ‘residents’ develop their initial concepts into wealth-generating businesses, the bank could play a part in creating local jobs and stimulating economic growth.

In addition to supporting businesses and connecting them to a powerful network, Eagle Labs also provide digital empowerment. Residents are granted access to and training on technologies such as artificial intelligence, blockchain, 3D printing and the internet of things to prepare them for the immediate future.

Some of the labs also offer ‘maker spaces’, which include 3D printers and laser cutters, giving businesses the tools they need to engage in rapid prototyping and reducing the time and cost to get their ideas to market. There are now 19 sites across the UK, collectively supporting more than 400 businesses and more than 1,300 workers.

The Eagle Labs came about as a result of some creative thinking: Barclays wanted to repurpose some of its spaces and reinvigorate high streets and the wider community, engaging with local businesses and residents. While it builds each lab in a way that best suits the start-ups and community, it tries to incorporate three ingredients for success into each.

For Eagle Labs to create long-term value for communities by developing local businesses and creating new jobs, it needs to offer start-ups the room to scale. Entrepreneur Lucy Hitchcock took advantage of this when she moved her social media business, Sassy Digital, to Bournemouth Eagle Lab last year. Thanks to the co-working area, she was able to hire more employees and expand her enterprise.

Community collaboration

The lab has also provided a more professional environment for Hitchcock and her team to meet clients and run social media classes for other residents. This showcases the second ingredient: the ability of labs to connect like-minded people who can learn from each other and drive their businesses forward.

The bank’s third imperative is to ensure that residents are not the only ones who benefit from the incubators. The labs have a ripple effect on local businesses, which can take advantage of the events and workshops that are run there. Residents and visitors to such collaborative working spaces help to support other businesses in the surrounding area: they may order local food for meetings, grab a drink together at a nearby bar or organise a company social in the neighbourhood.

In addition, each lab is designed so that the outside community – regardless of their gender, age or background – is able to connect to the expertise within. This helps bust the myth that emerging technologies and business start-ups are only for a select few. The labs do this by educating as many people as possible about new developments in our rapidly changing world; many of the labs, for instance, offer coding classes for young people, allowing budding entrepreneurs and future local businesses to develop.

Through its practical workshops, seminars and networking events, Barclays has also leveraged a much-discussed method of revitalising the local community: creating an experience and giving people other reasons to visit. For example, when an Eagle Lab opened in Manchester in 2018, it included a coffee shop accessible to members of the public, encouraging them to come and relax or work remotely in a buzzy, collaborative environment.

When considering how to make the most of the unused spaces in different communities, there is a need for flexibility. The face of the high street is changing, and landlords are being driven to think creatively, and adopt a longer-term view when it comes to filling their properties.

Barclays’ experience in designing and running the Eagle Lab network has shown an alternative way to use a physical space. By opening doors to more than one traditional tenant, connecting like-minded people and being as inclusive as possible, it has been able to create a lively, unique hub for businesses and the community to come together.

Jon Hope is head of Eagle Labs, Barclays eaglelabs@barclays.com



Case study: Brighton

A Barclays branch conversion into an Eagle Lab with a co-working area, office and maker space in Brighton saw footfall shoot up from 500 to 10,000 visitors a year.

The lab on Preston Road was previously occupied by squatters but has been transformed into a thriving hub for local businesses with notable benefits for the local community, such as the following.

- **Helping local businesses:** given the increased footfall to the building, the Eagle Lab has encouraged visitors to make use of other local businesses on the high street. Residents often hire space in a café over the road for catered events.
- **Offering expertise:** local shops have been able to create artwork and signs using the internal workshop. A jewellery designer learnt how to hallmark his creations, while a local businesswoman was able to design and print sustainable, tailored shoes on the 3D printer offered in the Eagle Lab’s dedicated maker space.
- **Supporting local events and charities:** lab residents ran a cyclathon for homeless people, even creating the medals in the maker space.

At this rate

More than a year into the new process for appealing business rates in England, what is the professional experience of the check, challenge, appeal process?

Chris Morrow

Business rates are a considerable burden for many companies. Whether it occupies a small chain of corner shops or a number of prime office blocks, the company could face difficulty when it wants to challenge the value of the property it leases to get an accurate rates bill reflecting correct values.

Effective from the 1990 revaluation, the Local Government Finance Act 1988 replaced the General Rate Act of 1967 and resulted, among other changes, in the introduction of the antecedent valuation date (AVD), where the antecedent valuation is the hypothetical rental value from which rates payable would be calculated on every separately assessed unit of property.

These would be based on the economic circumstances or market conditions two years before the list became live. Where there has been no correction to the list by a valuation officer – for example, to reflect physical changes or on appeal – the ratepayer remains liable for bills that, recently at least, could have been derived from rental levels up to eight years earlier.

On 1 November last year, new primary legislation, the Rating (Property in Common

Occupation) and Council Tax (Empty Dwellings) Act 2018, received Royal Assent (bit.ly/RPCOenact). Where applied it could reverse the valuation implications of the Supreme Court's decision in *Woolway (Appellant) v Mazars (Respondent)* [2015] UKSC 53. This case is considered the most relevant precedent in determining the correct unit of assessment, which is otherwise known as the hereditament, and which gave rise to the term 'staircase tax'. The Act aims to allow premises that, while physically contiguous, would under the decision form separate hereditaments, to be treated as a single assessment.

The accompanying regulations therefore provide, under specific circumstances, for further appeal under the 2010 rating list as result of the Act coming into force. This ability to lodge new appeals under a rating list that had been closed is, as far as I am aware, unprecedented. Following the recent switch to three-yearly revaluations in England, it is likely to result in the valuation officer maintaining three rating lists at once by 2021 and simultaneously gearing up for a fourth. This underlines the

importance of ensuring the Valuation Office Agency (VOA) has adequate resources.

The commencement of the 2017 revaluation in England also introduced an entirely new appeal system – check, challenge, appeal (CCA) – that necessitated significant regulatory amendment by way of the statutory instrument the Non-Domestic Rating (Alteration of Lists and Appeals) (England) (Amendment) Regulations 2017 and the Valuation Tribunal for England (Council Tax and Rating Appeals) (Procedure) (Amendment) Regulations 2017.

Although the fundamental single right of appeal under the same specific grounds remains, CCA was ostensibly conceived to fix what was perceived by many toward the end of the previous 2010 rating list to be a broken system because a large percentage of appeals or proposals lodged with the VOA were not being settled without involvement of the Valuation Tribunal. Under the previous system, appeals would be listed for hearing automatically once a statutory time period expired. Consequently, the burden of administering appeals, most of which

would not result in a hearing, was being felt too keenly for what was only intended as a recourse after proper negotiation between parties had been exhausted.

In order to stem the flow of unnecessary cases, the new process therefore aims to:

- streamline the procedure
- check the appellant is an interested party
- reduce potential for ambiguities of fact
- require an appeal to the Valuation Tribunal if dissatisfied with a challenge's outcome, at a small, refundable cost.

As a result, the ratepayer must register with the VOA via an online portal using a Government Gateway ID, which requires a National Insurance number and leads to delays when ratepayers and landlords are based outside the UK. The ratepayer is then required to provide proof of their interest in the relevant property – usually a copy of the rate demand – allowing them to claim the corresponding assessment. Only when the VOA processes this can the ratepayer nominate a professional adviser, should they wish to, using a unique agent code. The adviser can then take formal action in respect of their client's assessment.

After factual matters pertaining to the hereditament in question and the wider property have been confirmed, a challenge can be lodged; in most cases this must be done within four months. At this stage, the statute directs that the valuation officer receive a fully developed case citing all relevant evidence. The ratepayer still has to prove that their assessment is inaccurate. However, the VOA has up to 18 months to consider a challenge, in which time they might ask for further information or enter into discussion with the relevant party, before issuing a decision notice. This may or may not result in a rating list alteration.

Only when a decision notice has been issued – or failed to be issued – within 18 months can a formal appeal be made to the Valuation Tribunal. The unrepresented ratepayer may thus think the requirements of CCA are at best off-putting and at worst an almost insurmountable hurdle; though it should be noted that a decision notice may be forthcoming far sooner.

Thus far, VOA statistics indicate that many checks are being resolved swiftly (bit.ly/VOAstats0918) although the system

The unrepresented ratepayer may think the requirements of CCA to be at best off-putting and at worst an almost insurmountable hurdle

is still at an early stage of operation so it may be hard to draw conclusions. The complexity of the mandatory electronic interfaces and regulation that underpins them remains, but the VOA is working to speed up data input (bit.ly/VOAUpdate). Users should check the agency's targets and give feedback when it does not meet them.

Expectations and effectiveness

Clearly, the effectiveness of the new system will depend on the professionalism, responsiveness and diligence of all parties, but it remains too early to draw any firm conclusion about whether it can. The government, keen to reduce the number of appeals, seems so far to have done so. According to VOA figures, in the first year of the 2017 rating list only 23,770 checks were submitted in England, compared with 222,960 appeals in the first year of the 2010 list. This contrasts with Scotland, where the system has not been altered and where there has been a slight increase in appeals. However, the first year's figures for England probably reflect the more tentative approach taken by advisers.

It has been two years since the 2017 list was introduced, and bearing in mind that a check can be lodged at any time by an interested party before the list expires, it is possible that a flood has yet to come as experience with and confidence in the CCA process gains momentum. A recent update to the process announced in December 2018 (bit.ly/BRVHelper) may also increase the number of checks lodged in future.

The RICS Rating and Local Taxation Group and wider organisation, the Institute of Revenues Rating and Valuation, the Rating Surveyors' Association and the VOA

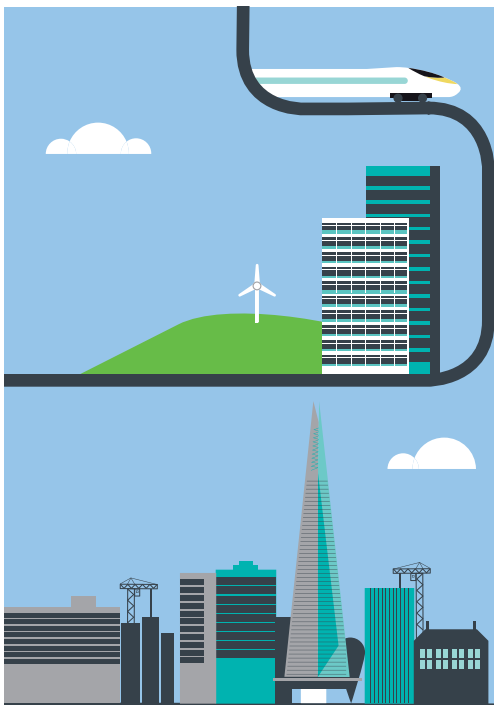
continue to work closely together to help simplify the process; but one particular concern was for those who could not engage with the online platform due to a lack of identity credentials. As a result of this collaboration, the VOA has allowed the option of appointing a person or company to trusted helper status, making the process simpler and more accessible.

The chancellor addressed the concerns of high-street retailers in his 2018 autumn budget. He announced that their bills will now be cut by a third for the next two rate years on qualifying premises, provided the rateable value falls below £51,000. The relief is subject to state aid limits. While this relief – and the intention to grant 100 per cent relief for all stand-alone public conveniences – will no doubt be welcomed by those likely to benefit, I believe it demonstrates that in the medium term at least there are no plans to alter the appeal system any further, much less the fundamental basis of the tax.

Therefore, although it is probable that CCA is still largely too untested to form a view on whether it improves on the old procedures, it is important to recognise the role of the individual and how they work within the legislative framework. Surely any system will only be as effective as those who use it, so only by approaching it in an honest and professional manner can we expect other parties to do the same.

Chris Morrow is a partner at commercial property advisers Matthews & Goodman LLP
cmorrow@matthews-goodman.co.uk

Related competencies include:
Capital taxation, Valuation



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A token gesture with real effect

Blockchain technology is moving closer to becoming an acceptable medium for transactions on the property market – but the challenges will be more legal and legislative than technological

Jane Dockeray and Jessica Thompson

Blockchain has the potential to transform the real-estate market; in particular, tokenisation could enable new ways of conducting business and investing. The concept has been long anticipated by more technological players in the property profession. We have seen it used, for instance, for trophy properties including Lord's cricket ground and 103 Mount Street, Mayfair, and many predict its uptake will increase as it successfully sources funding for developments.

Blockchain is a type of distributed ledger, comprising digitally recorded data in packages called blocks linked in chronological order in a manner that makes the data highly resistant to alteration. Using blockchain technology, people can conduct business with unknown third parties without intermediaries. The data structure also offers speed, certainty, security and accuracy of information, and enables greater flexibility in structuring and executing transactions. HM Land Registry is actively looking into the potential use of blockchain as part of its Digital Street project with the aim of making property transactions simpler, quicker and cheaper.

In this context, tokenisation refers to the digitisation of an asset. An entity that owns a property can use blockchain to create tokens representing the ownership of a real-estate interest. A token can represent various interests: for example, ownership of the underlying property, an equity interest in a legal entity that owns the asset, an interest in a debt secured by the asset, or a right to share in profits arising from the use of the asset. Tokens can be traded on blockchain in a similar fashion to the way shares and bonds are traded on secondary markets.

Widespread use of tokenisation would, arguably, create greater liquidity in the property market. This is because investment in property typically requires a significant capital payment and a long-term commitment, whereas if the asset were unitised and traded on blockchain, investors would be able to buy a percentage interest at a lower price and then sell it with ease. This would open up the property market to investors who do not have sufficient capital to purchase an entire asset, and may broaden the market's appeal to investors looking to diversify.

The conveyancing process could also be streamlined, potentially increasing transaction frequency. By cutting out the intermediaries, trades could be made quickly and regularly, with purchase and sale of tokens by using standardised smart contracts whose terms are implemented automatically. Ultimately, this may remove the need for lengthy, complex and costly paper transactions in many cases.

Blockchain is considered secure and, if used in transactions across the real-estate market, could significantly reduce the instance of property fraud. Records are cryptographically protected, with each property given a unique code and linked to a smart key held by the owner, and the database is distributed across a network of computers so it is difficult to hack. After a transaction has been recorded and confirmed on the blockchain, it is also very difficult to change. This should inspire confidence in investors as it is virtually impossible to falsify transactions after they have taken place.

Blockchain is on the radar of both the Financial Conduct Authority and the government. Tighter oversight and regulation is anticipated, although it is not yet clear what form that will take as various issues need to be considered, including how tokenisation will interact with established securities and land law principles. However, assuming a pragmatic approach is taken, it is hoped that such matters will start to be resolved in the near term.

While tokenisation is an unconventional way of raising money, the real-estate market is in a prime position to take advantage of it. The tangible, unique nature of real estate is readily understood by the general public, and trophy assets in particular carry premium appeal. As such, blockchain presents a significant opportunity for sourcing new money to invest in property – an opportunity that should be embraced.

Jane Dockeray is counsel knowledge lawyer and Jessica Thompson is trainee solicitor at Hogan Lovells jane.dockeray@hoganlovells.com
jessica.thompson@hoganlovells.com

Related competencies include: Big data, Data management

Six phases for better buildings

An updated edition of the *Soft Landings Framework* is now available and may affect the work of facilities managers of new developments. How has it changed, and why?

Dr Michelle Agha-Hossein

Soft landings – the process of ensuring a smooth handover to occupiers following construction – constitute an outcome-based approach to building projects, although the principles detailed below can be applied to any type of construction. As a process, this requires a small change in the way the construction industry does things but a big change in the way it thinks and interacts. Soft landings need members of the project team to improve collaboration so as to provide a building that meets the original expectations.

The purposes of some of the client's specified requirements are often forgotten through the building process, mainly due to the fragmentation of the industry. This issue contributes to a substantial gap between the design intention and the actual performance of many new and refurbished buildings.

Adopting a soft-landing approach will help clients to establish success criteria for their projects, and will assist the project team in ensuring these are protected

during work on the project and met once the building is in operation. When working on a soft landings project, the delivery team should ensure all decisions made during the project focus on meeting these criteria. Soft landings can be used for new construction, refurbishment and fit-out projects, and as a concept are designed to work easily with all forms of procurement.

Since 2008, consultancy BSRIA has been developing and promoting soft landings and been running the Soft Landings Network – formerly known as a user group – comprising clients, architects, designers, contractors and facilities managers, who meet regularly to compare experience and share knowledge. The Soft Landings Network Panel (SLNP) supports BSRIA in producing practical guidance, of which BSRIA has published a range. Most of this is available to download free of charge, to raise awareness about soft landings and their benefits, and help construction industry professionals understand the process and implement it successfully.

As a result, the concept has gained significant traction over the past ten years, and is required by many private and public-sector clients.

One of the key guides is the *Soft Landings Framework*. The first framework was published by BSRIA in 2009 and went through minor revisions in 2014. The intention of the guide was to explain how soft landings could be implemented by five stages of activity throughout the project.

The 2018 edition of the *Soft Landings Framework* includes a number of major changes, however, to reflect feedback received from the industry over the past decade of implementation. The main aim of the guide is to help the construction industry provide buildings that meet clients' expectations, as well as satisfying users' needs and supporting their well-being.

The main objectives of the guide are to help the project team to:

- set success criteria at the outset and protect them through the project with better collaboration
- focus more closely on the outcomes of any decisions that it makes during the project
- enable a smooth transition for the building from construction into use
- evaluate the success of the project at some point no sooner than 12 months after occupancy
- disseminate the lessons learned.

One of the changes in the framework was replacing the term 'stage' with 'phase', mainly to emphasise that soft landings are not tied to any specific plan of work, but are instead about groups of activities that may occur at certain phases of a project.

The most noticeable change is the adoption of six phases to replace the previous five stages; this was to address feedback received that stage 2, design and construction, was too lengthy and thus causing confusion and reducing enthusiasm for soft landings. It was therefore decided that the design and construction activities would be separated, and the content for the latter strengthened.

The resulting six phases are as follows:

1. inception and briefing
2. design
3. construction
4. pre-handover
5. initial aftercare
6. extended aftercare and post-occupancy evaluation.

The *Soft Landings Framework 2018* describes the objectives for each and explains how they can be achieved through a series of suggested activities. A checklist has also been added to the framework to help the project team, especially the soft landings champion, to track the activities and ensure the objectives of each phase are met.

The framework highlights the importance of having the end users and the facilities manager involved in the project from the beginning

The framework requires this champion to be nominated by the client from their side, and a soft landings lead to be identified by the project delivery team. The champion should be a person with the authority to make things happen or stop them happening; if the client does not have the resources needed to carry out the activities, a third party can be appointed to do the job on their behalf.

The soft landings champion should ensure all agreed activities are carried out at the right time by the right people, and that the set success criteria are protected throughout the project. The lead should support the champion in coordinating soft landings activities and, ideally, both should stay with the project throughout. Where this is not possible, a proper handover process should be in place to ensure continuity.

Commissioning is often squeezed out in the rush to practical completion, and, consequently, the building in operation may fail to meet the original expectations and success criteria. The framework requires a building readiness programme to be prepared well ahead of the start of commissioning work to ensure sufficient time is allocated to this, however.

The *Soft Landings Framework 2018* highlights the importance of having the end users and the facilities manager, where known, involved in the project from the beginning, to articulate their needs and use their past experience to inform better design. It is also important that sufficient training is provided to facilities team members at the pre-handover phase to ensure they are fully competent to manage and control the building.

Dr Michelle Agha-Hossein is soft landings operational lead at BSRIA michelle-gha-hossein@bsria.co.uk

Related competencies include:

Facilities management

Further information: www.softlandings.co.uk

Good for business

While quantifying environmental performance is not without its difficulties, real-estate managers and investors are increasingly interested in sustainability as part of a broader agenda

Roxana Isaiu

Over the past ten years, the Global Real Estate Sustainability Board (GRESB) benchmark has developed into the one most widely applied for environmental, social and governance (ESG) factors in real-estate assets, with strong support from the sector and global reach.

In 2018, the benchmark covered 903 real-estate firms and funds valued at more than \$3.5tr, and now almost 80 institutional investors, representing in excess of \$18tr use GRESB as the main source of ESG data in due diligence and stewardship. During this time, real-estate investors have become more aware that ESG considerations make for good business practice, and started to track their ESG performance in a systematic way to shape future investment strategies.

The BREEAM-certified Bloomberg London Building: RICS research has shown that properties thus certified can command a premium over those that are not

Yet despite the progress that we're seeing in the market, ESG factors remain difficult to price, and it is not always possible to find a linear cause-effect relationship between overall ESG performance and financial performance. There are several reasons for this. Not only do many factors influence the performance of an asset but, by definition, a good ESG programme encompasses a broad range of indicators, and touches, directly or indirectly, on all parts of the business.

Leading ESG programmes are based on risk assessments and detailed resilience planning, both financial and non-financial, and require engagement planning with

the main stakeholder groups. In addition, they recognise ESG issues as a matter of fiduciary duty, addressing the derived risks through corporate stewardship, research, innovation and public commitments.

Adding to this complexity, some sustainability-related issues play out over the long term and are tied to future trends that can have a major impact on real-estate investments. Take climate change for example. With the growing number of weather-related disasters occurring around the world – another one-in-100-year flood has hit Sydney as I write, causing an estimated A\$10m in

damage — there is a growing realisation that property investors are particularly exposed.

Calculating the future economic effects of climate change is not easy. The equation first needs to incorporate the effects of changing global temperatures on local weather conditions, then calculate the effect of these changes on macro indicators that could affect local productivity and national GDP, consider exposure to grid constraint risks, the potential for regulation, shifting consumer behaviour, energy supply and, in turn, how these affect real-estate prices.

Climate change is costly precisely because it is difficult to predict and contributes to a company's risk profile as a macro stress factor. A recent analysis combining Maplecroft Risk indices and GRESB data demonstrates that risks associated with carbon emissions and climate change adaptation are not well accounted for compared to risks related to social and governance aspects. Despite being acknowledged, not all such risks are generally understood in quantifiable terms by real-estate investors.

Specific questions on energy and water efficiency, on the other hand, are better understood, and continue to be of interest to investors. But in many cases they are considered in terms of the operational costs they save when their benefits can be far broader. For example, investments in energy and water efficiency can be quickly reflected in the form of tax rebates, improved valuations, a lower chance of obsolescence, discounts on insurance premiums and even higher rental income and occupancy rates.

The business case for considering ESG performance is constantly evolving, reflecting changing expectations and contexts. In the years since the first GRESB assessment in 2009, the conversation has broadened to include socially driven initiatives such as the health and well-being of tenants, neighbourhoods and communities. This is reflected in attention to issues such as indoor air quality, location, services and material selection.

Unlike the demand for efficiency and low-carbon buildings, which have been traditionally driven by the investor community, the interest in health and well-being issues stems from tenant or

Calculating the future economic effects of climate change is not easy as the equation must incorporate the effects of changing global temperatures on local weather, then the effect of this on macro indicators

user preferences and employee expectations. Both groups are becoming more discerning about what they expect from a leased space or a workplace and, as a result, the best commercial real-estate companies no longer think of health and safety as a risk that must be minimised but as an opportunity for differentiation. These companies have been using health and well-being as a broad area of value creation and are adapting their practices to appeal to future generations of tenants, buyers and employees.

Sustainability studies

Taken as a whole, the research on the business case for ESG performance in the real-estate sector is vast and diverse. There are numerous academic studies finding a positive link between particular aspects of ESG performance — often the environmental ones — such as building certifications and financial performance.

A 2012 RICS report on the value of green buildings found that 'BREEAM-certified properties command a 28 per cent premium over non-certified properties, controlling for basic building characteristics' (bit.ly/BREEAMRICS12). There are also a growing number of case studies on how individual companies or funds have gained or lost as a result of specific social or environmental factors. More recently, scenario-based assessments have emerged, highlighting locations or asset types poised to gain or lose from sustainability issues.

In the end, there is no single business case for action on sustainability. Instead,

there are multiple measures of business success — some narrow, some broad, some tangible and some intangible — and each real-estate fund or company has to develop its own rationale. The baseline premise is often intuitive: good ESG performance is a proxy for good management. After all, it's simply a sign of good strategy, at both the organisational and asset level, to keep the tenant, customer, employee or community member happy. More often than not, the cost of not investing in suitable measures becomes higher than the cost of investment itself. Our investor members recognise this, as do the real-estate managers who participate in our assessments.

The main factor that continues to limit the ability to use ESG data in investment decisions is the lack of data availability, data comparability and data accuracy. That's why GRESB focuses on offering a reliable, robust ESG benchmark, based on high-quality data.

Today, and even more so in the future, stakeholders will demand the right kind of information when making critical decisions, defined by relevance, completeness, accuracy, timeliness and lineage or auditability. Our ultimate aim is to bring ESG data quality on to a par with that of financial data and continue to transform the way real estate approaches sustainability.

Roxana Isaiu is director, real estate at GRESB
r.isaiu@gresb.com

Related competencies include:
Sustainability

Fair principles for party walls

Surveyors should take care to avoid bias and potential conflicts of interest when working on party walls

Angela Gregson

The role of a party wall surveyor is a unique one. During the course of a surveyor's retainer, the duties placed on them change.

When a surveyor is first appointed, this appointment is a straightforward one: it is based on the contract between the surveyor and the appointing property owner and the common-law duty of care that arises between them. The party wall surveyor must act with the reasonable skill and care that could be reasonably be expected of such a professional who is competent. Therefore if they fail, for example, to ensure that a notice has been served on the correct party, they may be liable to their client for damages.

Matters become more complicated once a party wall surveyor is appointed or selected pursuant to section 10 of the Party Wall etc. Act 1996. Once appointed under the Act, the surveyor has in addition to their duties to their client a statutory duty to resolve any actual or deemed dispute pursuant to section 10. Those duties must also be exercised with reasonable care and skill.

There is some guidance in case law on the duties of party wall surveyors. In the unreported case *Longmire v Maldura* (29 January 2015), His Honour Judge Bailey at the Central London County Court held that surveyors appointed under the Act hold a quasi-judicial function, and as such cannot delegate that function to others – even to other surveyors in their own practices – and it is the

appointed surveyor who must sign the award. This emphasises the fact that the appointment of a party wall surveyor under the Act is personal to them and not the appointment of their company.

Further helpful guidance on this point was given by HHJ Bailey in the unreported *Barberini v Stancati* (2016), where he stated: 'the decision-making involved in an award cannot be delegated ... However, any work that is necessary to enable the decision can be delegated. I refer to the condition survey, engineering calculations, drawings and matters of that sort'. Therefore, the duties of party wall surveyors in this regard are quite clear; they may delegate the fact-finding part of their role, but they must not delegate any of their quasi-judicial functions.

It is generally accepted that party wall surveyors perform a quasi-judicial function. In the unreported case *Mills v Savage* (2016), HHJ Bailey said: 'party wall surveyors are exercising a quasi-arbitral function. They are bound by the rules of natural justice. It is axiomatic that, in considering and making an award, a party wall surveyor – and this must include the third surveyor – must enable the parties to make submissions if they wish and must give due considerations to any submissions made.'

To be clear, the rules of natural justice are rules of fair play, originally developed by the courts of equity to control the

Party wall surveyors perform a quasi-judicial function and as such cannot delegate that function to others

decisions of inferior courts, and then gradually extended, particularly in the 20th century, to apply equally to the decisions of administrative and domestic tribunals and any authority exercising an administrative power that affects a person's status, rights or liabilities. Any decision reached in contravention of natural justice is void as *ultra vires*; that is, beyond their powers.

When it comes to natural justice, there are two principal rules.

- ***Nemo judex in causa sua (or in propria causa)***: this is the rule against bias, that is, against departure from the standard of even-handed justice by those who occupy judicial office. No person may be a judge in their own cause, so that any decision, however fair it may seem, is invalid if made by a person with any financial or other interest in the outcome or any known bias that might have affected their impartiality (see *R v Bow Street Metropolitan Stipendiary Magistrate, ex p Pinochet Ugarte (No 2)* [1999] 2 WLR 272 (HL); *Porter v Magill* [2001] UKHL 67, [2002] 2 AC 357; *Davidson v Scottish Ministers* [2004] UKHL 34, [2005] SC 7).

- ***Audi alteram partem***: this means 'hear the other side'. A decision cannot stand unless the person directly affected by it was given a fair opportunity both to state their case and to know and answer the other side's (see *R v Chief Constable of North Wales Police, ex p Evans* [1982] 1 WLR 1155 (HL); *R v Army Board of the Defence Council, ex p Anderson* [1992] QB 169; *R v Secretary of State for the Home Department, ex p Doody* [1994] 1 AC 531 (HL)).

The rules of natural justice set a minimum standard of procedural fairness. In the context of appointing party wall surveyors, the rule of natural justice that surveyors will encounter most regularly is that of bias: it is my understanding that it is not unusual to appoint a family member or employee as one's party wall surveyor, or for party wall surveyors to appoint close friends as the third surveyor. In order to avoid the potential of an award being deemed void and unenforceable due to a breach of the rules of natural justice, no such appointments should be made if at all avoidable. Appointing owners should select independent surveyors where possible.

There are clear parallels between the duties owed by surveyors to their clients and those other professionals owe their clients. In *Barker v Vaxendale Walker* [2017] EWCA Civ 2056, a Court of Appeal case about a solicitor's negligence in relation to advice given on a tax avoidance scheme, Lady Justice Asplin stated that the relevant test is whether a reasonably competent solicitor in the defendant



Above it all: care should be taken that party wall issues are overseen by a disinterested surveyor

firm's position would have provided a specific warning, given the 'significant risk' that the interpretation of the law was wrong and that the structure adopted could be successfully challenged.

The Court of Appeal held that, even where a solicitor's interpretation was likely to be correct, there could still be an obligation to draw to the client's attention the risk of an alternative interpretation, and that it could be negligent to fail to do so. LJ Asplin stated 'the lawyer ... must evaluate the legal position and determine whether in all of the circumstances [they] should advise [their] client that there is a significant risk that the view that [they have] taken about the substantive matter in question may be wrong'.

This case has particular relevance in the field of party wall law as there are many instances where more than one interpretation might legitimately be taken. In cases where there may be a 'significant risk' that the interpretation the party wall surveyor is giving of the law may be wrong, they are under a duty to warn the client about this. If they fail to do so, then they may be acting negligently.

The role of a party wall surveyor is a complicated one. Party wall surveyors should therefore be careful to avoid the potential pitfalls.

Angela Gregson is a partner at Child & Child
angela.gregson@childandchild.co.uk

Opportunities in affluent retirement

New models of housing are emerging to serve more affluent older people, but supply is still falling seriously short of demand

Anthony Oldfield

The rising affluence and size of the over-65 population in the UK has prompted significant development in the retirement housing model over the past 30 years. The changing needs of residents demand varying levels of care across accommodation, and as mainstream housing begins to fail older people – who are outliving previous generations – their desire to retain their independence is on the rise.

This has opened up a market for residents who may not be able to manage their own home any longer but who do not yet require fully fledged care home accommodation. Advances in medicine, treatment and monitoring also mean that many issues are far more manageable in residential settings and do not need the full support of a traditional care home.

There are three key factors influencing demand for retirement living, which are currently compounded by both a lack of and mismatch in supply:

- demographic pressure
- increasing care and support needs of over-65s
- housing equity among over-65s.

The retirement housing model involves purpose-built accommodation designed for and occupied by older people, typically 55 or older, and comprises two key parts.

Housing with support:

- can be termed age-restricted housing, independent living, sheltered housing or category 2 housing
- is housing for older people that require some assistance but not 24-hour support
- often includes a warden during office hours, call system and a communal lounge.

Housing with care, meanwhile:

- can be termed extra care, assisted living, very sheltered housing or close care
- is housing for older people that often includes personal and domestic support, a dining service, communal facilities and 24-hour on-site care staff.

There is a lot of potential in the former market, which usually functions with a sales model akin to residential development. Recent JLL research with a builder of retirement housing showed that nearly 60 per cent of purchasers come from within an 8km radius of developments, so local house prices are a key factor. In our experience, a

minimum of £3,230/m² for sales values is needed in order to make the economics of a scheme stack up, partly due to the extra communal facilities required. McCarthy & Stone and Churchill are the main builders and providers in this part of the sector.

Housing with care is in turn a response to a rise in manageable care needs as well as older people's desire to remain in a familiar setting for as long as possible. Although a smaller part of the market in terms of numbers, housing with care is the fastest-growing segment, and allows residents to maintain some form of independence in the knowledge that help is on hand if it is needed. It can be adapted to residents' needs, with care and support available on site to varying degrees allowing them as much independence as they want.

Recent research (bit.ly/RetLivJLL) has highlighted that by 2025, there will be 2.6m more over-65s in the UK than in 2015, at a total of 14.3m people. That equates to one in five of the total population, which could become one in four in 2050. Together with longer life expectancy, this is triggering a huge shift in the take-up of emerging forms of retirement living.

Current research from the Projecting Older People Population Information initiative (poppi.org.uk) demonstrates that 40 per cent of over-65s are unable to manage at least one domestic task on their own. The National Audit Office meanwhile has found that the care needs of older people have risen by 30 per cent since 2005 and will continue to do so; but in tandem, the number of people receiving government support has fallen, meaning that a larger proportion of people will need to fund any care needs themselves.

The over-65s stand as the most affluent age group in the country – a generation to have benefited from inflation unlike any other, with house price growth of more than 4,300 per cent since 1970. It's estimated that over-65s currently account for a total of £1tr of housing equity in the UK. Combine this with pension wealth and a huge capital pool for retirement significantly dampens price sensitivity, with lifestyle taking priority. This shifting mindset, coupled with a focus on maintaining lifestyle and a desire to

Ratio of population over 65 to existing accommodation

170
over-65s to
1 housing
with care unit

25
over-65s to
1 care home bed

18
over-65s to
1 housing with
support unit

Source: JLL

Nearly 60 per cent of purchasers come from within an 8km radius of developments, so local house prices are a key factor

remain independent, plus greater ability to self-manage care without requiring a fully equipped facility, is driving opportunity and demand for housing with care.

Developers are now adapting to this change in mindset, focusing on larger, better-specified properties with bespoke on-site facilities. While some of the retirement-age population seek to downsize, housing equity means that they still want better-specified accommodation and larger units. They are after bespoke characteristics that fit their lifestyles, and which can be improved by freeing equity from their house. One example is Audley Retirement Village at Inglewood in Berkshire, which provides 94 apartments, a swimming pool, a restaurant, spa, treatment rooms, lounge areas and extensive landscaped gardens. In this respect, it is top end in terms of price bracket and facilities.

The housing with care model does not rely totally on initial unit sales for all its return, either. A number of business lines are also involved, such as fees for management, events, care and agencies, and food and beverage sales income.

Although these usefully diversify developers' income, the main additional value in housing with care lies in the event fees, which are levied by the freeholder – usually the operator of the scheme – and which are payable when a unit sells or changes hands. They often vary between five and 30 per cent of a unit's sale value.

They are an enjoy now, pay later model, with the occupier often receiving something in return such as a fixed service charge or a guarantee of no maintenance costs.

The difference from housing with support is that the developers continue to run the scheme, generating revenue from initial sales and making money throughout the service-led programme. The operator and occupiers' interests are aligned because both benefit from rising unit values.

There is considerable opportunity in the housing with care market, as there are at present fewer units per capita of the older population than care home and housing with support units (see sidebar, p.43).

Now that this has been recognised, the build rate for housing with care is growing at the fastest rate in the retirement market. Supply growth rates have historically been modest, with the sector pioneered by affordable providers when local authority support was strong in the early 2000s.

However, there is an exponential mismatch between affluence and supply. Whereas the over-65 population is split 25:50:25 for high, middle and affordable affluence respectively, the existing provision is skewed towards the affordable end of the market, which accounts for 75 per cent. This means there is a staggering one high-end home to every 495 of the most affluent over-65s (see Figure 1).

There is no doubt that the demand is there. Units are selling at record speed, the biggest issue being building them fast enough. This is a clear opportunity for developers and investors to capitalise on these market trends, especially as the retirement generation continues to grow.

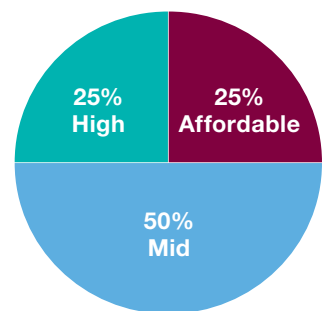
It seems to be, however, that government policy often focuses on the first-time buyer end of the market when providing better choice for older people is likely to free up large quantities of family housing (see *Property Journal* January/February, pp.56–58) that will help the entire market.

Anthony Oldfield is director, healthcare and alternatives, at JLL
anthony.oldfield@eu.jll.com

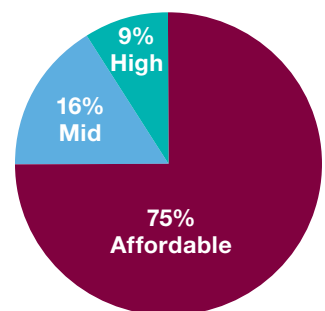
Related competencies include: Housing strategy and provision, Market appraisal

Figure 1.
Affluence v supply

Affluence of over-65s according to markets they are able to access



Supply of housing with care units by market



Source: Elderly Accommodation Counsel, Office for National Statistics, JLL

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How to avoid enforcement action

The consequences of failing to gain the requisite planning permission make a cautionary tale for landlords

Mark Brassey and Daniel Brayley

You could be vulnerable to enforcement action from your local authority if you purchased a house:

- that was converted into flats by the previous owner and you didn't properly check whether that work was completed with planning consent
- where you have made any alterations, such as adding a rear or side extension, without the requisite planning permission.

If either of these apply to you, you must act now – before it is too late – to mitigate the risk of a serious financial penalty. A breach of planning control entitles the planning department at the relevant local authority to issue an enforcement notice against you under section 172 of the Town and Country Planning Act 1990.

This will state the work that you are required to undertake – for example, to demolish any authorised extensions or to cease the use of the premises as flats –

and the date by which any such work must be completed.

Challenge or ignore?

While it is possible to challenge the validity of the enforcement notice by way of a statutory appeal before it takes effect, if you ignore it or fail to submit an appeal in time then the notice will take effect and you will be required to comply with it by the specified date.

If you do not carry out the works, you will be liable to prosecution in the magistrates' court or crown court by the local authority under section 179(2) of the 1990 Act, and if you plead guilty or are found culpable by the court you could receive an unlimited fine as well as an order to pay the prosecution's costs. More worryingly, the local authority may also be able to exercise the option to apply to the court for a confiscation order under

the draconian provisions of the Proceeds of Crime Act 2002.

After an intrusive investigation into your finances to ascertain the benefit of your criminal conduct, and the amount that you can afford to pay – even if this requires you to sell the property – the prosecution is likely to ask the court to make a confiscation order. This will be the sum of the total rental income that you have received at the property during the period of non-compliance with the notice – without deduction for expenses – and, potentially, rental income from any other premises you own where there may be a breach of planning control. Inevitably, confiscation orders routinely eclipse the fine and costs order made against landlords.

We have seen several defence arguments run and fail due to the strict criteria of the 1990 Act. If the notice was served by the local authority at the address stated for the



Extending a rental property without planning permission could make you vulnerable to enforcement

owner on the Land Registry entry for the relevant premises, it will be deemed served on the landlord. This is the case even if your tenants or managing agents failed to pass this letter on to you.

If the conversion work was carried out more than four years ago, this could amount to a valid ground to challenge the enforcement notice under the statutory appeals process. However, if the appeal is not made in time, it becomes very difficult to challenge the enforcement notice. Indeed, section 285 of the 1990 Act provides that the validity of an enforcement notice shall

not be questioned in any proceedings, except by way of an appeal within the specified time limit or in proceedings under section 179 where a person:

- held an interest in land since before the enforcement notice was issued
- did not have a copy of the enforcement notice served on them under section 179 of the 1990 Act
- satisfies the court that they did not know and could not reasonably have been expected to know that the enforcement notice had been issued, and that their interests have been substantially

prejudiced as a result of the failure to serve them with a copy.

Thus many defences that could have properly been run if legal advice had been taken at an early stage, or the enforcement notice had been challenged within the permitted appeal time, will fail where the local authority can prove that it sent a copy of the notice to the address stated on the Land Registry entry for the property.

Landlords should take the following suggested actions to ensure they are not vulnerable to enforcement.

1. Consider whether you are vulnerable under the 1990 Act. Are you sure you have planning permission for all alterations and extensions at your property?
2. Add your contact address to the Land Registry entry for the relevant premises. This is a free step, and critical to help avoid issues regarding service of any enforcement notices from the local authority.
3. Regularly check your post at your property or arrange for all post to you to be redirected by the Royal Mail.
4. Consider obtaining retrospective planning permission and, if necessary, make an application at the earliest opportunity.
5. If you do receive an enforcement notice, take legal advice promptly to ensure that you have the best chance of challenging it.

Landlords cannot afford to bury their heads in the sand. If you receive an enforcement notice you must act quickly and obtain legal advice. That will give you the best chance of defending what could be a significant financial penalty.

Mark Brassey is a partner with Child & Child
markbrassey@childandchild.co.uk

Daniel Brayley is a barrister at Gough Square Chambers
daniel.brayley@goughsq.co.uk

Enforcement case studies

In the case of *London Borough of Brent v Ali* [2014] EWCA Crim 1658, the defendant converted a house into 12 flats and then did not comply with the terms of an enforcement notice. He was tried in the magistrates' court and committed to the crown court for confiscation and sentence.

Although the fine for the offence was only £4,000, a confiscation order was made for the sum of £544,000. It is also worth pointing out that if the sum specified in a confiscation order is not paid by the specified date, a defendant risks a period of imprisonment. In Mr Ali's case, he ran the risk of five years in prison if he failed to pay on time.

More recently, in April 2018, the London Borough of Islington secured a confiscation order of £304,458 against a property company that had converted a property into five flats without planning permission.

Incentives for improvement

How can property owners be prompted to improve energy efficiency, and do their measures have a positive impact on value? European research suggests some trends across the continent

Prof. Sarah Sayce and Prof. Sara Wilkinson



The 2018 report by the Intergovernmental Panel on Climate Change confirms we may still limit the rise in global temperature to 1.5°C, which will still mean many EU countries suffer an increased number of days of intense heat, but experience cold winters. To ensure the rise in temperature is as minimised as this will require an 80 per cent reduction in carbon emissions from a 1990 base, as agreed at the 2015 Paris climate conference. Yet climate change means that demand for energy to heat and cool properties will also rise unless action is taken to increase the efficiency of the stock. Any supply issues will raise prices, with the burden falling hardest on those with poor purchasing power, and may lead to negative health outcomes and, at worst, fatalities.

Therefore, the need for energy efficiency has never been greater. However, Europe's housing stock is old and inefficient, with only three per cent of stock built or improved to the highest energy standards (bit.ly/BPIE2017). World Green Building Council analysis (bit.ly/WGBC18gm) using government data showed that energy efficiency correlates closely with the age of

the building, and that rented stock typically has lower efficiency than owner-occupied housing. Furthermore, with a renewal or replacement rate of only about one per cent a year, the solution must lie in retrofitting existing stock rather than relying on new build. There has been much success to date and there are technical solutions that enhance energy performance, but upgrading work must accelerate (bit.ly/BuildRev16).

The challenge is to find the motivations and mechanisms to upgrade stock. Must these be sticks in the form of regulation? Or can carrots work, in the form of subsidies or added value? The attractions of upgrade are clear: energy-efficient buildings have lower running costs, are more comfortable and, potentially, better support residents' health. The main EU policy mechanism has been the energy performance certificate (EPC) and, in the UK, the first-stage introduction of Minimum Energy Efficiency Standards (MEES). The former relates to the point of transaction and only raises awareness; the latter are a stick, but they only cover stock that has been let and are targeted solely at the worst-performing buildings.

In the absence of tighter and more widely scoped regulations, the emphasis has to be on motivation – including the prospect of financial gain through property value rise. But can valuers support this?

In terms of retrofitting, the incentive for energy efficiency improvements may lie more with improved comfort and reduced energy costs and, in future, ease of mortgage finance (bit.ly/EeMAP) than with capital value shift. Valuers can only advise clients of changes in value consequent on energy efficiency improvements if comparable evidence supports this. Valuers follow the market rather than making it, and their role is to work with market evidence. This apparent dichotomy is now explored with reference to research and the valuer's role.

Residential valuations are performed for various purposes but will normally be undertaken by use of the comparables method or, in the case of large portfolio investment decisions, a discounted cash flow (DCF). Given that the majority of residential units are either owner-occupied or situated in a context of prevailing owner-occupation if they are let, valuers

Table 1. Selected studies evaluating energy efficiency and residential value

Country	Sample size	Dates	Sector	Premiums
Netherlands	17,835	2008–13	Social housing	2.0%–6.3% rental premiums
Finland	7,000	2015	Owner-occupied	Premium of 3.3% for apartments
Hungary	1,399	2012	Owner-occupied	Premium 9.42% for retrofitted apartments
Germany	2,630	2008–10	Owner-occupied	Premium up to 3.15%
			Private rented sector	€0.76/m ² for rental
UK	333,095	1995–2012	Owner-occupied	Premium for EPC band A and B = 5%; band C = 1.8%

SOURCE: AUTHORS

The solution must lie in retrofitting existing stock rather than relying on new build, and upgrading work must accelerate

need to assess the impact of energy efficiency specifically against the factors that influence market behaviours. This can be challenging when the data for comparable sales is limited, with the EPC rating often the only energy data available.

Given the prevalence of mortgage finance to support residential transactions, it means that, while lenders may be concerned about the security of the loan, they may lack detailed information on which to assess the future energy risks, though this is set to change due to market initiatives to introduce green mortgages. However, when undertaking an investment valuation using a DCF, energy efficiency factors can be factored in more easily. To an investor, the future impact of energy efficiency and pricing may be a consideration, particularly if this will have an impact on the value risk profile of the asset to lenders.

In complying with the mandatory Red Book standards ([rics.org/redbook](https://www.rics.org/redbook)), valuers will need to consider risks attaching to their valuations and these, they are advised, extend to consideration of sustainability criteria, implicitly including energy efficiency. Clearly, such risks are most likely to be important to valuations that have an impact on lending and investment decisions, but they may also matter to prospective owner-occupiers.

The aim of the Red Book advice in relation to sustainability is to provide greater transparency in reporting and heighten awareness of such matters, both to clients and to valuers themselves. But in and of itself, however, more forensic inspection, analysis and reporting will not transform the market at the speed and on

the scale required to meet EU member state climate change commitments.

Reviewing the evidence

Many studies examine the relationship between energy efficiency in the social housing, private rented and owner-occupied housing sectors. Table 1 aggregates the findings of published academic studies, almost all of which used hedonic price analysis as the method of distilling any premiums and mainly focused on EPCs as a measure – albeit that the early studies were undertaken when EPCs were in their infancy or, in a few cases, before their introduction.

The table does not, however, include a recent hedonic study, undertaken as part of the yet to be published Revalue project that examined valuations for social housing in Germany, the Netherlands, Sweden and the UK along with their EPC ratings. It concluded that energy efficiency, although making a measurable contribution to value, was far outweighed by traditional factors, and mainly related to visible components affecting energy performance such as double-glazed windows. Notably, brown discounting in respect of inefficient buildings was noted and was greater in value impact.

Among the UK-based studies, research published in the journal *Energy Economics* in 2015 (bit.ly/Fuerstetal) found a positive relationship between energy efficiency ratings and the transaction price per square metre. This was most marked for terraced dwellings and flats compared to detached and semi-detached dwellings, perhaps implying that energy efficiency is less of a consideration in higher-value dwellings.

However, while these large-scale studies are valuable, a valuer must assess market value based not on such studies but on comparable market evidence that is local, recent and defensible against any negligence claims. Recent qualitative research in the Revalue project (bit.ly/RevalueRT18) does not fully bear out the findings of the quantitative studies. A series of interviews and round-table discussions conducted with valuers across England, Germany, the Netherlands and Spain supported the view that while visible factors such as windows – which benefit not just energy efficiency but also comfort and security – are important, overall efficiency is low down on the list of value attributes. However, as new, better-specified stock is built and retrofits take place, stock that has not been improved will suffer a brown discount.

In conclusion, the evidence points to energy efficiency beginning to have an impact on value, though this is very small compared with the factors that traditionally affect it. The strongest statistical evidence comes from large-scale hedonic analyses, but these do not explain the rationale for the evidence. The practice-based research shows what is driving the observed changes and supplies greater insight for valuers.

What is apparent is that the drivers of value vary depending on stakeholder group, but include health and well-being, regulation and, critically, the changing views of lenders. In future, energy is likely to be of increasing importance in the decisions of occupiers and investors, and this will be reflected in value. However, much will depend on the approach taken to regulation, availability of grant aid, the attitude of lenders and the transparency of evidence.

Sarah Sayce is professor of sustainable real estate at the University of Reading, UK
s.l.sayce@reading.ac.uk

Sara Wilkinson is professor of property at the University of Technology Sydney, Australia
sara.wilkinson@uts.edu.au

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Easing lease extension

The Law Commission's consultation on leasehold reform proposes to simplify the process of extending leases and acquiring freeholds

Amy Lewis and Shabnam Ali-Khan

The current legislation for extending leases on flats, the Leasehold Reform, Housing and Urban Development Act 1993, and on houses, the Leasehold Reform Act 1967, recently came under review, with a Law Commission consultation closing at the start of January.

As law commissioner Prof. Nick Hopkins points out, 'the current system is complex, slow and expensive and it's failing homeowners'. The residential leasehold system has been the subject of much criticism over many years, which led to Law Commission consultation paper 238: *Leasehold home ownership: buying your freehold or extending your lease* (bit.ly/LeaseCons238). Its aim was to gather a range of views on ways to simplify the process, to remove limitations on rights to buy the freehold and to extend leases.

The last significant legislation in this field, the Commonhold and Leasehold Reform Act 2002, widened the right for leaseholders to extend leases by removing the residence requirement. However, it left largely untouched a long and convoluted legal process. The commission's proposals therefore aim to:

- make the process quicker, cheaper and easier
- improve the rights of leaseholders to extend their leases and acquire the freeholds
- bring in a unified procedure for both houses and flats
- remove limitations on the right to enfranchise, including the two-year ownership requirement.

There are currently estimated to be more than 4.2m leasehold properties in England alone, more than half of which are owner-occupied, so the need for a radical overhaul is clear.

Unified procedure

Currently, leaseholders of flats have the right to a 90-year lease extension on top of the unexpired period, with houses having a right to an additional 50 years. In both cases the leaseholder must be the registered proprietor of the property for at least two years before serving a notice to exercise their right. Leaseholders of flats pay a premium for this right, leaving them with a peppercorn

ground rent; leaseholders of houses, although not paying a premium, are landed with an often high modern ground rent.

The proposals include introducing one, unified procedure for both flats and houses. The commission's favoured option is for this to be at a nominal ground rent and exercisable multiple times. Consultees were invited to submit views on the length of the lease to be granted, as well suggesting changes to the existing redevelopment rights. Should the new lease be for 125 years, 150 years or another length? Should a landlord's redevelopment rights be altered?

However, should we be focusing on a one-size-fits-all approach? Or should we be considering more tailored options, such as a right to extend the lease for a lower premium but with a ground rent or a higher premium with no ground rent? The downside of this tailored approach is it may make the statutory procedure more complicated. There is a risk that those leaseholders who struggle to pay larger premiums may end up paying more in the long run with a ground rent, or being pressured into agreeing a deal that might not be in their best interests.

Mechanism to exercise rights

The proposal for a single procedure is one of the measures designed to make the processes for both flats and houses easier and less expensive, as well as reducing vulnerability under with the current statutory procedures, especially those for flats in the 1993 Act.

There is a prescribed form of notice for asserting the right to enfranchise under the 1967 Act but not under the 1993 Act, so when it comes to such claims practitioners must rely on their interpretation of the legislation to ensure that all the required constituent parts are included in the initial notice of claim. As a result, there is a risk that the notice may be invalid. If the landlord alleges that it is, and the parties cannot agree, then an application must be made to the county court for a declaration as to its validity, which will in turn determine whether the claim can proceed. A prescribed form would significantly reduce any uncertainty about validity, and, it is proposed, this uncertainty would be reduced further by the introduction of a set of limited defined grounds on which a notice can be deemed invalid.

Currently, the issue of validity is determined by the county court. However, not all matters are within the county courts' jurisdiction, and some have to go before the First-Tier Tribunal. This is another example of the complexity of the current process that the commission aims to address through its proposal that all disputes and issues arising during an enfranchisement claim should be dealt with by the tribunal. This would include occasions where there are issues in dispute after a response has been given by the landlord to the initial claim, where no response notice has been given within the prescribed period, and where an order has been given by the tribunal letting a claim proceed in the event of a missing landlord.

The latter scenario is one that is presently a complex, lengthy and costly procedure where the tenant can end up paying far more in costs than they pay for the lease extension. The proposal to simplify the process where there is an absentee landlord includes not only the ability of the tenant to make the application for an

There are currently estimated to be more than 4.2m leasehold properties in England alone, so the need for overhaul is clear

order that a claim may proceed to the tribunal rather than the court, but that this be done on the basis that the claim notice will be deemed to have been served on the landlord if posted to an address falling within specified categories.

Valuation reforms

Alongside the process of making the claim is the need for a valuation of the premium payable for lease extensions or freehold acquisitions, which is where many disputes – and therefore delays and costs – occur. The Law Commission is suggesting the introduction of one clear method of calculating the premium to ensure that landlords receive sufficient compensation, as per clause 15.4 of the consultation. Currently, the landlord of a flat will receive a premium based on the value of its interest, the marriage value – a reflection of the additional value arising as a result of the lease extension or freehold purchase – and other compensation. It is these that can give rise to the disputes between parties and experts, so the adoption of a simplified formula could see a welcome reduction in such conflicts. The difficulty will be striking an acceptable balance between reducing premiums for leaseholders while ensuring that landlords are sufficiently compensated.

The consultation paper was more than 500 pages long and, while it is fairly accessible for those practising in enfranchisement, the 24-page summary paper highlights the salient points very well. All the same, given the length of the consultation paper, we have only been able to touch very briefly on the areas we think most noteworthy here. This is a complex and cumbersome area of law that has long cried out for reform and, with competing interests to manage, the Law Commission has a difficult task ahead. It is hoped that those of us who have day-to-day experience in the field, particularly where we act for both landlord and tenants, have shared our views and experiences to help produce a simpler, more effective, process for all involved.

Amy Lewis is a partner and Shabnam Ali-Khan is a senior associate at Russell-Cooke amy.lewis@russell-cooke.co.uk shabnam.ali-khan@russell-cooke.co.uk

Related competencies include: Landlord and tenant, Property management

An open approach

As open-plan flats become more popular, research has compared the fire safety requirements for different layouts

Andy Ballantyne

Fire safety guidance is a significant factor in the internal arrangement of apartments in the UK. In general, either the distance from the furthest point in the apartment to the entrance door is kept very short, or a protected entrance hall connects all rooms to the apartment entrance.

In recent years, an open-plan approach has become desirable, with bedrooms being accessed directly from a combined living and kitchen space. To support this, BS 9991: 2011 *Fire safety in the design, management and use of residential buildings – Code of practice*, included guidance for open-plan apartments. This was revised with the publication of BS 9991: 2015 to align better with earlier research published in the NHBC Foundation report NF19, *Open flat layouts: assessing life safety in the event of fire* (bit.ly/NF19Opflats). NF19 details research by the Building Research Establishment (BRE) on behalf of the NHBC Foundation, which compares the risk to life in open-plan apartments to that in designs of a similar scale complying with Approved Document B.

This assessment was undertaken using BRE's cross-industry standard process

(CRISP) modelling software, which applies probability distributions to factors including the location of the fire, such as bedroom, kitchen or living area; the number of doors and windows and whether they are open or closed; and the type and location of people in the model, according to age, gender and degree of dependence on others, for instance.

The effect on items such as detectors, sprinklers and the escaping occupants is then determined based on the geometry. As the occupants travel in the simulation, the accumulated fractional effective dose (FED) – a measure of inhaled harmful gases – is recorded, and then scenarios are compared to assess the risk to life.

NF19 found that the introduction of sprinkler protection to BS 9251: 2014, *Fire sprinkler systems for domestic and residential occupancies – Code of practice*, together with category LD1 enhanced detection, in accordance with BS 5839-6: 2013 *Fire detection and fire alarm systems for buildings – Part 6: Code of practice for the design, installation, commissioning and maintenance of fire detection and fire alarm systems in domestic premises*, improved levels of safety

in open-plan apartments, compared to Approved Document B-compliant designs that featured a protected entrance hall and category LD3 detection but where entrance hall arrangements do not have suppression, for the scenarios modelled.

The open-plan variations of these varied according to case.

- **Case 1** comprised a one-bedroom apartment, measuring 8m by 4m, with an unenclosed kitchen. The single bedroom was accessed directly from the kitchen and living area.
- **Case 2** involved a two-bedroom apartment, measuring 10m by 8m, with an enclosed kitchen. The two bedrooms were accessed via the living area.
- **Case 3** consisted of a three-bedroom apartment, measuring 16m by 12m, with an enclosed kitchen. All three bedrooms were also accessed from the living area.

When the NF19 research was incorporated into the BS 9991: 2011 guidance, the decision was originally taken not to require the enclosure of kitchens in apartments measuring up to 10m by 8m on plan, although this decision was reversed in the 2015 version.

In addition, both the 2015 and 2011 versions of BS 9991 allow variations to the sprinkler system under BS 9251, subject to the agreement of the authority having jurisdiction. As such, it is common for concealed heads to be provided – a significant variation from the original study, which used quick-response heads.

The guidance in BS 9991: 2015 is restricted to the scope of the original NF19 research. This article therefore provides a summary of an extended study that examined the importance of enclosing kitchens in larger apartments or using concealed heads, in the context of risk to life in sprinkler-protected open-plan apartments. The purpose of this was to widen the possible design variations permitted for open-plan apartments beyond those given in BS 9991: 2015.

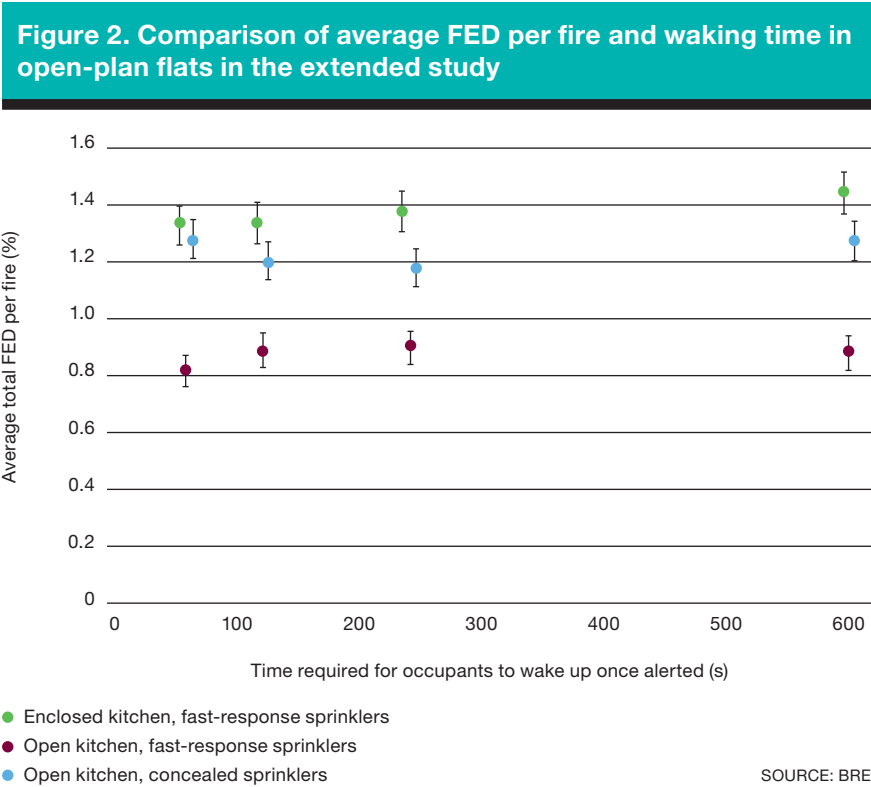
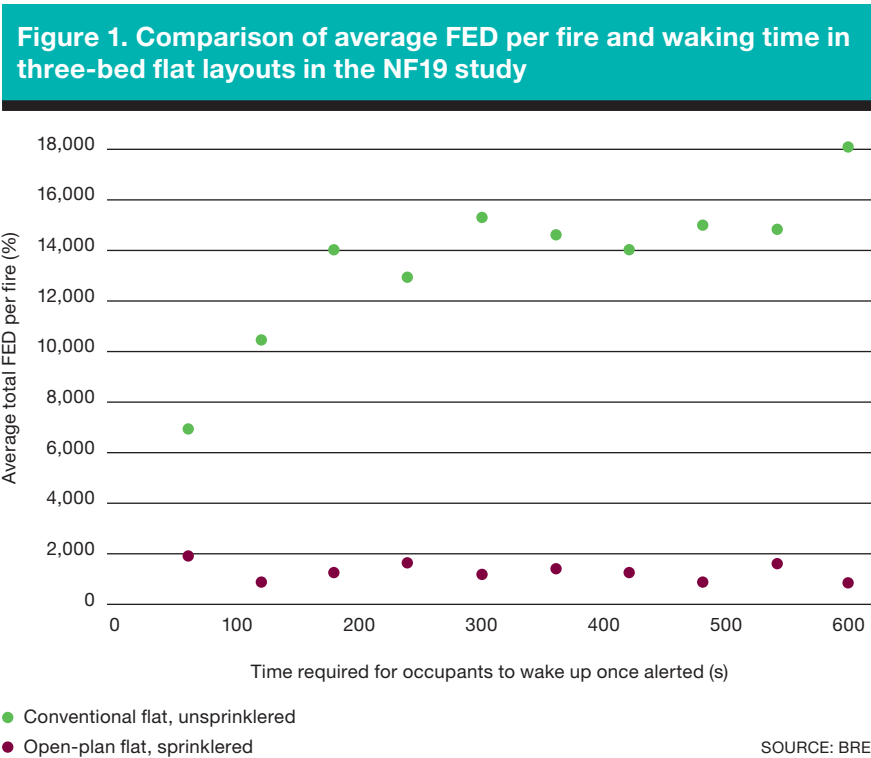
In 2014, Trenton Fire worked with BRE to undertake a numerical study investigating the effect of adopting unenclosed kitchens and concealed heads in larger open-plan apartments. The extended study was based on case 3 of the NHBC’s work, measuring 16m by 12m on plan and having three bedrooms. Unlike the original study, however, the wall separating the kitchen area from the living room was removed, meaning that the bedrooms were accessed directly from a living area with an unenclosed kitchen.

Concealed sprinkler heads

A further variation was also considered, with concealed sprinkler heads modelled using an increased response time index (RTI) to reflect delayed activation due to the presence of a cover plate.

RTI values for concealed heads were not available, though previous studies by BRE, including its report *Effectiveness of sprinklers in residential premises – an evaluation of concealed and recessed pattern sprinkler products*, have investigated the performance of such sprinkler heads in domestic contexts. In these tests, the increase in activation time of the concealed head was found to be less than ten per cent, relative to a standard pendant sprinkler head.

The RTI values of the standard pendant test used in the BRE experiments were not documented, so a conservative estimate for



the base RTI value was used to calculate that of a concealed head. The activation time for the latter was benchmarked to a special response sprinkler head with an RTI of 80(ms)^{1/2}.

The response time of this head was calculated using a method that is described in the *SFPE Handbook of Fire Protection Engineering*, adding ten per cent and then back-calculating the RTI of a concealed head. An RTI value of 115(ms)^{1/2} was derived from this assessment. The value was then used in the extended CRISP study, following the principles and processes used in the original NF19 study, with the only significant variations being the geometry and RTI of the sprinkler heads.

Findings

The purpose of the study was to measure how the risk to life, in terms of average FED for each fire, differed between an Approved Document B-compliant design and that of the large open-plan apartments, which include sprinkler protection and improved automatic fire detection. Figure 1, from the original NF19 data, compares the average total FED per fire with the time required for occupants to wake up once alerted. The data shows the average total FED is at least three times lower for the open-plan design than the design based on Approved Document B.

Figure 2 shows the results of the extended study. The average FED per fire from the case 3c layout of NF19, where the kitchen is enclosed and fast-response sprinklers are modelled, is compared with that of two other scenarios where the kitchen is open to the living space, with fast-response and concealed-head sprinklers used, respectively.

In both variations, the average total FED per fire is less than where the kitchen is enclosed, including scenarios where the slower-responding concealed sprinklers are modelled. This is probably because the sprinklered fires, which are of a fixed size, occur in a larger overall volume; this results in the heat and products of combustion, through which occupants have to escape, being of a lower intensity and toxicity due to dilution with air.

The findings demonstrate that two of the limitations of NF19 are not significant for

Table 1. Successfully modelled open-flat design elements		
Design aspect	BS 9991: 2015/NF19 recommendation	Extended study finding
Maximum apartment size (with enclosed kitchen)	16m x 12m with up to three bedrooms	
Maximum apartment size (with unenclosed kitchen)	8m x 4m with a single bedroom	16m x 12m with up to three bedrooms
Minimum ceiling height	2.25m	
Apartment arrangement	Single level only. Multi-level apartments, houses or galleries have not been considered	
Smoke detection	Category LD1 to BS 5839-6	
Suppression	BS 9251 system with fast-response sprinkler heads	BS 9251 system with sprinkler heads performing no worse than concealed heads
Location of cooking appliances	Not permitted to be adjacent to apartment entrance doors	
Access	Not permitted directly from the common stair in small single-stair buildings	

case 3c, allowing us to conclude that the access room may include a kitchen area and that sprinkler heads with a higher RTI may be used, for a value of up to 115(ms)^{1/2}. The updated findings are summarised in Table 1. These results also offer supporting data for buildings that have been designed in accordance with the superseded BS 9991: 2011 and those for which sprinkler systems with concealed heads have been previously approved by the authorities having jurisdiction.

Certain limitations remain, however, as per the original NHBC study. Like NF19, the study did not investigate apartments greater than 16m by 12m, multi-level apartments, smoke control systems or alternative types of automatic suppression. Neither does it directly address the proximity of kitchen cookers to apartment entrance doors. For the design of apartments outside the scope

of these studies, further research with appropriate fire modelling tools would be necessary to assess whether a particular design is appropriate.

Interpreting the study results, the delay in sprinkler activation is clearly a significant factor. Providing appropriate information to the occupier and good management and maintenance are recommended to promote the effective operation of sprinklers. Poor maintenance, painted-over heads and so on could result in a sharp reduction in sprinkler performance and a lower standard of life safety compared to traditional apartment arrangements.

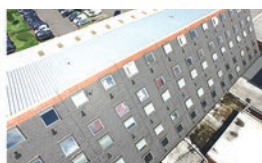
Andy Ballantyne is an associate at Trenton Fire andy.ballantyne@trentonfire.co.uk

Related competencies include:
Fire safety, Health and safety



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Search engine to service engine

Research into real-estate portals around the world shows new approaches developing as competition for clicks gets tougher

Claudia Conway

Real-estate search portals are now well established as a first stop for house-hunters around the world, but increasing competition in many countries means a fight for dominance. The biggest market share may not mean the greatest profit, and there are now many fronts on which different portals can compete.

The development seems very much driven by marketing and technology, but could real-estate professionals have more to add to the equation, or will it be all about the algorithm? The *2018 Global Real Estate Portal Report* (bit.ly/MDPREportals) by academic and adviser Mike DelPrete collects facts, figures and analysis from around the world that offer surveyors food for thought.

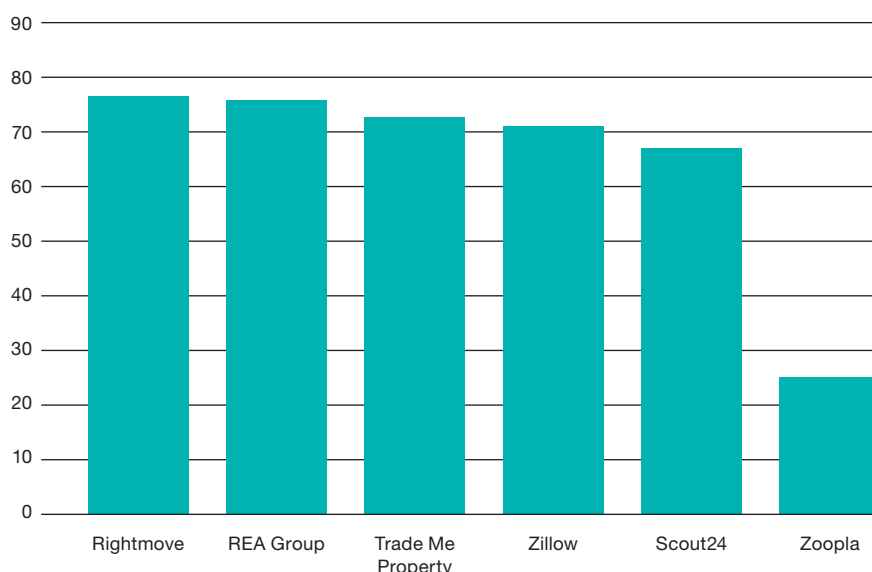
Most large portals receive the majority of their revenue from agents whose listings they carry (see Figure 1), but some are changing the model by offering other services. In mature markets the big portals have reached saturation point and can't look to make any more money from the sheer number of listings, so they are having to diversify and find ways to make more from each customer.

The simplest way to do this is already offered by most sites – a premier listing option that puts them higher up the page and provides more or bigger photographs. So regardless of technology, it's the simple tweaks that can pay dividends, especially in the attention-poor world of the internet.

Some portals have developed a soft offering to do so, comprising blogs, household tips and real-life stories to keep the consumer's eyes on their site rather than those of others. It may be hard to measure the impact of this, but some have clearly felt it worth their while to sustain a degree of customer loyalty and interest.

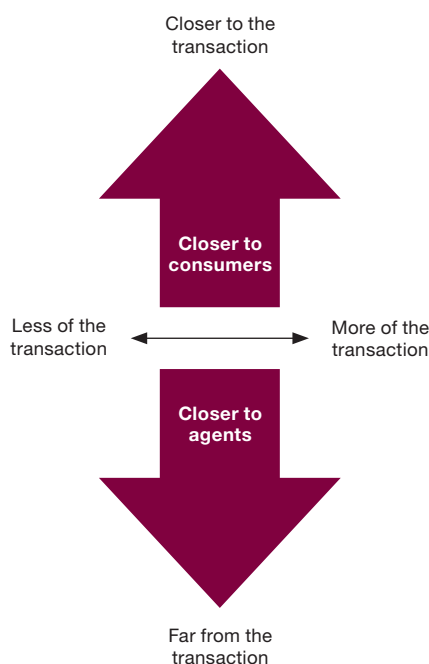
In the past few years, diversifying into other revenue-generating activity has taken off as well, though generally these offerings will create less revenue than listings and require volume to make financial sense. Perhaps most common is lead generation for services such as utilities, mortgages and insurance; DelPrete calls this moving 'from a search engine to a service engine', bringing

Figure 1. Percentage of portal revenue from agents



SOURCE: MIKEDP.COM

Figure 2.
Where is a portal's focus?



SOURCE: MIKEDP.COM

together the services and the end user – the prospective buyer or tenant – who is not paying to use the portal.

Going further, some sites have been busy in the field of acquisitions, notably Australian market leaders REA acquiring an 80 per cent stake in mortgage brokers Smartline, Zillow's purchase of Mortgage Lenders of America LLC, and the takeover of utility site Uswitch by Zoopla in the UK. 'The leaders in the field offer deep integrations across their sites, critical to their success,' says DelPrete.

He says these seem to be showing the direction these sites are heading, generally either getting closer to the transaction or further away from it, and the extent of the portal's involvement with the transaction (see Figure 2). These moves also indicate whether the portal's relationship with the agent or consumer is the more important. Taking on more advertising relating to household services and goods, for example, is not near the transaction but can still add value. Services relating to finance and title, however, bring the portal closer to it.

Real-estate portals may have essentially started out as media companies that made

their money by advertising properties, but now they are moving towards becoming true tech companies that can bring services together, even to the point that some are beginning to offer themselves as platforms for the entire sales process. Although not covered in DelPrete's report, Zillow is piloting the purchase of homes directly from sellers, offering quick cash as other sites do but with the advantage of having a big reach and a trusted name; people may be wary of smaller companies offering the same services (bit.ly/ZilForbes).

This seems like the ultimate high-stakes gamble for major portals, and it remains to be seen whether others will follow suit. It's certainly likely that more will offer services that take consumers all the way through the transaction – and perhaps beyond, in terms of home maintenance provision for example. There are already sites operating that aim to manage home remodelling projects and get the best price for these by aggregation (bit.ly/setterNov18), so portals could set their sights on similar offerings.

If the blockchain and AI optimists are to be believed, these technologies could cut out many of the intermediaries, making entirely online conveyancing a secure, much faster option. However, this still appears some way off – not due to the technology, which is largely ready, but the inevitable lag in legislation that will allow its use.

Amid the myriad services being offered by these sites there seems to be a notable lack of synergy with surveying, which is an essential part of the homebuying process. This is perhaps because of the granular nature of the market, with most of the firms that carry out surveys being small, local operations, in the UK at least. Could the next step be a major portal buying up a large surveying firm to give them both a competitive edge, or using a gig economy approach to connect self-employed surveyors with buyers? As search engines become service engines, those who look for creative partnerships are likely to profit.

Claudia Conway is editor of the RICS Property Journal claudiaconway@rics.org

Related competencies include: Business planning, Data management



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Support off the streets

As part of its 150th anniversary fundraising drive last year RICS produced *Solutions to youth homelessness*, a collection of thought leadership pieces on this complex problem. This extract explains why partnership and innovation are vital

Hew Edgar

Youth homelessness has many causes and many associated issues. Any solution should be holistic. It should provide the range of help that young homeless people need, including support in terms of finance, mental health, well-being, education and more. We must provide housing that is connected to other services in order to give young homeless people the space to thrive.

‘Housing first’ – the policy of simply providing housing so other problems can be addressed from a stable living situation – is often touted as the most effective solution to homelessness. This is especially crucial for young people who, without a home, have little prospect of preparing for the workplace or managing their lives.

In relation to RICS recommendations, the solutions that the property profession can offer orientate around the provision of adequate housing. Given the state of the residential market and the public finance squeeze, it is very difficult for charities and local authorities to acquire and access suitable homes for vulnerable people, let alone provide the other support they need.

To bring social homes forward under difficult economic conditions, the government must be creative. From using temporary modular or prefabricated buildings on ‘meanwhile’ sites – vacant sites awaiting development – to pursuing greater numbers of dormitory-style or co-living developments or covenants for

To bring social homes forward under difficult economic conditions, the government must be creative

building social housing on public-owned land without disposing of the land itself, the government has many avenues to explore when considering expanding stock in a cost-efficient way.

By encouraging downsizing – through tax incentives, for example – or providing jobs and infrastructure in areas that can accommodate more people or more homes, more effective use can also be made of existing stock to satisfy increasing demand and thereby reduce pressures on the sector.

Finally, turning to the construction skills crisis and plight of homeless young people leads us to a clear and pragmatic solution. The government, charities and the private sector are already working together to provide training opportunities and homes for vulnerable homeless people, as well as training for the skills they need but may lack. More could be done to support these projects and connect them. For example, free or subsidised accommodation could

be provided at scale for those training or gaining qualifications, and partnerships established between local authorities, employers, educational institutions and providers of shelter to support the supply of homes and training; the corporate relationship with young homeless people can and should be positive and constructive.

Ending youth homelessness – and homelessness overall – is possible and achievable. It requires us to be more innovative about how we provide and use our homes. Furthermore, it demands that we think beyond homes to the aspects of life that homelessness robs us of, such as employment, education and welfare.

Hew Edgar is interim head of policy at RICS
hedgar@rics.org

Related competencies include: Housing strategy and provision
Further information: rics.org/solutions

The diligent dealer

When can an auctioneer be held legally liable for the goods they are selling on?

Milton Silverman

A few months ago I was consulted by an art dealer who bought a painting at auction that turned out to belong to someone other than the vendor. The painting went back to the true owner, and the consignor to the auction was not worth suing – but did we have a case against the auctioneer?

As agent to the vendor, an auctioneer has many duties and responsibilities but is not liable to the same extent as the vendor. The position was examined in great detail in a case of 1925 concerning the sale of a motor car at auction, which still stands as good law. It emerged that the vehicle was the subject of a hire-purchase agreement and some of the instalments were still unpaid.

Following an action brought against the auctioneers by the buyer, the court concluded that ‘an auctioneer who sells goods not as owner but as auctioneer only, though not naming [the] principal, does not ... warrant the title to the goods sold’. The judge added that ‘the auctioneer cannot question [the] principal about

[the] right to sell, and the buyer is well aware of the auctioneer’s position’.

The latter adjudication may not ring very true today, given the emphasis on due diligence. However, the position remains fundamentally that the auctioneer does not automatically warrant the title of their principal, the vendor. I told my client that, based on this venerable case law, we did not have a case.

There are, nonetheless, scenarios where an auctioneer can be held liable in a title dispute. An even earlier case, regarding the sale of ‘chaldrons of soil’ in 1814, makes clear that the auctioneer does have some responsibilities, and this, too, remains good law. In this case a jury decided the auctioneer had been aware of a title dispute before the sale but had failed to communicate this to the plaintiff. On that basis, the auctioneer was held liable.

We can conclude from these cases that an auctioneer does not as a matter of course underwrite good title to the lots they are

selling. They do, however, underwrite to the purchaser that the vendor has given authority to sell and that they as auctioneer have no information of any problem with the title of the consigned work.

Finally, consider the following sequence of events, which has actually occurred. An important institution holds hundreds of works and gives instructions to an auction house to remove a number of these for sale. Unfortunately, due to a breakdown in communication, the auctioneer removes a piece that was meant to stay put – a mistake not discovered until after it has sold at auction.

This time, because on the basis of the facts it was indeed the auctioneer’s fault, they were liable to repay the purchaser as they could not ‘warrant that they had authority from their principal to sell’.

Milton Silverman is senior commercial dispute resolution partner at Streathers LLP mcsilverman@streathers.co.uk



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