Sustainable valuation

Can valuers embrace volatility?  

COMMERCIAL
Green cities in China
Sustainable offices show their value in the Far East  
Pg. 22

RESIDENTIAL
Accrediting offsite
Joined-up quality strategy brings boost for lenders  
Pg. 42

PERSONAL PROPERTY
Promoting ethics
The role of regulation in the arts business  
Pg. 52
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## COMMERICAL

### Opinon

Global urbanisation means investors may want investigate atypical locations and assets, a new report suggests. James Roberts looks into the findings.

### Update

**It’s all in the planning**

Mark Braysey explains why proceeds of crime legislation is important to property investors and developers.

**Smart and sustainable**

Tim Dixon reports on research that demonstrates the importance of big data to improve city life.

### Change is an opportunity

Conor Moran explains the benefits of modern technology for surveyors.

### In the know

How can we create effective workplaces to support those who ‘think for a living’? Andrew Costello introduces the six factors of knowledge work productivity.

### Taxing times

Robert Walker explores the changes to taxation of buy-to-let landlords.

### When market value is not enough

Sustainable value offers many benefits to both the valuation and property industry, argues Joshua Askew.

### The next generation

Jan Ambrose discovers how the Inclusive Employer Quality Mark can boost business.

### Legal Q&A

Legal experts answer common queries.

### Well positioned

Determining the location of data centres calls for specialist skills, as Bob Marsh explains.

### Lean, green and in demand

Green buildings are demonstrating their worth in rapidly urbanising China, demonstrating their worth, argues Stephen Tam.

### Is there an easier way?

Edward Peters discusses the merits of arbitration in resolving disputes.

### Assessing the damage

Julian Greenhill provides an overview of recent dilapidations rulings.

### Turning data into value

BIM presents rich opportunities for property professionals throughout the building life cycle. Sara Wilkinson explores its ‘value dimension’.

## RESIDENTIAL

### Update

**Assessing the damage**

Julian Greenhill provides an overview of recent dilapidations rulings.

**28 Is there an easier way?**

Edward Peters discusses the merits of arbitration in resolving disputes.

### Smart and sustainable

Tim Dixon reports on research that demonstrates the importance of big data to improve city life.

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contents

R RESIDENTIAL

36 Knowing me, knowing you...
Emma Vigus explains the importance of conducting comprehensive research on a new client

38 One flue over the cuckoo’s nest
Michael Parrett looks at how faulty chimneys can cause dampness inside a property

42 An intelligent approach
Stewart Dalgarno outlines why offsite construction is becoming the first choice in delivering high-quality housing

P PERSONAL PROPERTY

44 Listen to good advice
Is there a duty on the conveyancing solicitor to check a seller’s solvency, asks Fiona Pearson

46 Quantifying quality
Stefan Kruczkowski and Andrew Martinelli review progress on linking design quality and increased value in suburban residential developments

44 Revealing a hidden history
Eleanor Quince introduces a project to map where antiques were sold during the 20th century

52 Carrot or stick?
Ethical practice is indivisible from the debate over how to regulate the art market. Ivan Maccuisthen suggests a new approach

50 Quantifying quality
Stefan Kruczkowski and Andrew Martinelli review progress on linking design quality and increased value in suburban residential developments
Global urbanisation means investors may want investigate atypical locations and assets, a new report suggests. James Roberts looks into the findings.

A diverse future

Mumbai and Bengaluru’s place in the top five for rental growth despite being emerging markets is because India is actually on the right side of the trends that are acting against other emerging markets, in that it has big IT and outsourcing companies selling services to major western corporations.

Capital markets opportunities
Jeremy Waters, Head of International Capital Markets at Knight Frank comments: “We expect advanced industrial nations to drive the global economy in the next three years; with the global cities in those nations offering the strongest opportunities for real estate investors.”

With the US moving closer to a rate rise, the dollar is strong and American private equity investors are already buying more stock overseas, he reports. “We see this trend accelerating in 2016. They tend to be more comfortable with a higher risk profile, so we expect increased interest in sites and short income assets.”

In Europe, thanks to low bond yields and signs of economic turnaround, Waters predicts more opportunist money will come into the market. “In general, we see investors casting the net wider, with specialist property rising up the agenda. In part, this reflects a growing desire to seek diversity in a portfolio,” he says.

Key trends
The report also highlights five key trends that investors should bear in mind when deciding how and where to invest in the growth of cities.

- Expansion of infrastructure: This year’s Global cities report has identified a series of mega infrastructure projects coming to fruition around the world – a third lane in the Panama Canal, a new airport in Dubai and an industrial corridor in India between Delhi and Mumbai. New transport hubs create new business centres, offering development opportunities.

- Need for mixed use: the growth in city living has brought a re-focus on how best to integrate the way in which people live, work and play. This offers a diversified opportunity in a fast-growing trend. Good examples of mixed-use areas include Battersea Power Station in London.

- Deregulation: in various parts of the world, changes to regulation are freeing up ownership restrictions or enabling new investment vehicles. One example is India’s Real Estates Investment Trust, introduced in 2014 and expected to be worth as much as $100bn to the sector in a few years. Another example is the Free Trade Agreement between China and Australia.

- Importance of specialist property: investors need to diversify rather than think only in terms of commercial or residential. They should consider the specialist sector, including accommodation for the elderly or students – whose numbers are growing, plus automotive, hotels and even the private rental sector.

- Think shorter term: traditional yields on long leases have been attractive, but changing market conditions make them less easy to achieve. The imbalance between supply and demand means investors are moving to factor in capital values and rental growth prospects.

More information
Global cities: the 2016 report is available at http://bit.ly/1GOmL2P

James Roberts is Chief Economist at Knight Frank
Guide aims to boost efficiency

A new guide from BSRIA, Building Performance Evaluation (BPE) in non-domestic buildings, provides a general introduction to the evaluation process, explaining its importance and how it can be carried out.

BPE is a key element of the BSRIA Soft Landings process to help deliver an effective and efficient building. The guide is aimed at all those involved in the design, construction, operation and/or management of new, existing and refurbished non-domestic buildings.

BSRIA Marketing Officer Catherine England said: “Despite genuine intentions to develop efficient buildings, the construction industry is still missing the mark. Research from academia and industry has shown that buildings do not always perform as originally intended. This results in energy inefficiencies and occupant dissatisfaction. BPE can be used to evaluate both new and existing buildings.”

The guide discusses some of the tests and methods that can provide information on:
- building fabric
- building services and operating strategies
- energy use
- handover and commissioning processes
- occupant satisfaction
- occupant comfort.

The guide is free to download from http://bit.ly/1IZQvng

Leasehold form update

The LPE1 working group, which includes representatives from the Society of Licensed Conveyancers (SLC), the Law Society and RICS experts, has published a 2nd edition of the Leasehold Property Enquiries Form (LPE1).

SLC Chairman Simon Law said: “This important initiative will serve to improve the buying process for consumers. Over time, as standardisation becomes familiar to all property professionals, the quality of information, speed of its provision and potential longer term cost savings will benefit those buying and selling leasehold title.”

Licensed conveyancers, as specialist property lawyers, are expected to widely and quickly embrace use of the new forms. The society believes that further enhancement to the transfer of leasehold title can then only be achieved by engagement with the Land Registry to fully investigate the role they can play in improving the process and the availability of leasehold information.

For more details, visit www.conveyancers.org.uk

Energy tax reform

In the 2015 Summer Budget, the Chancellor announced a review of business energy tax, aiming to simplify and improve the effectiveness of the regime. The integration of the Climate Change Levy and Carbon Reduction Commitment Energy Efficiency Scheme (CRCES) with other business energy efficiency policies and regulations will be considered.

The government would like one simple reporting tool, one incentive and one fiscal mechanism. The Minimum Energy Efficiency Standard is not part of the review.

One option is for reporting obligations under CRCEES and the greenhouse gas regulation to be incorporated in an enhanced version of the Energy Savings Opportunity Scheme (ESOS).

In addition, a simplified carbon tax linked to ESOS, with the associated tax revenue used to fund improvements, would align well with the scheme’s rationale to cut business energy costs. The government has estimated savings of around £1.6bn a year if the opportunities highlighted by ESOS audits are realised.

For details, contact Mat Lown, Partner at Tuffin Ferraby Taylor mlown@tftconsultants.com Twitter: @matlown
Feedback for relativity website


The industry seized on the report and surveyors acting for landlord and tenant clients adopted their own personal interpolation. This compounded the subjectivity and self-serving nature that had been argued with regard to the various graphs circulating in the sector before 2009.

Myleasehold automated and made available online the RICS 2009 research for advisers and tribunals, and the site has performed more than 10,000 calculations since its launch.

With ‘relativity’ still no more than a theory, participants of the 2009 research were invited to submit new data.

Of the original 11 surveying firms that contributed to the research paper, four replied to the request for an update – Cluttons, Knight Frank, Boston Radford and Gerald Eve – three of these with new data.

Myleasehold is exploring the idea of inviting other firms to participate as part of the 2015 update. This may or may not come to fruition and will be a development driven by the industry.

Those immersed in the sector have their own ‘favourite’ graph or graphs. How they are used in reaching decisions is subjective and personal; a tool for reaching a compromise when determining a value that can never be known.

Those with an interest are invited to suggest how the website might be improved or further adapted.

www.graphsofrelativity.co.uk

Global ethics initiative grows

Unethical behaviour was the focus of a major conference in Sào Paulo, Brazil, following recent scandals and the dramatic change in the country’s economy. RICS Global Property Director of Standards, Peter Bolton King gave presentations on the work of RICS Futures and various projects, especially the International Ethics Standards Coalition (IESC), and the audience clearly felt that Brazil needs to increase transparency and act ethically.

As reported in Property Journal (March/April 2015, Standards must be maintained) the IESC first met in October 2014 to create a universal set of principles. These will underpin the many well-established codes of conduct used by real estate professionals and help to ensure higher standards of global professionalism, essential to market certainty and stimulating investment and growth.

The profession-led response to inconsistency recognises the global nature of commerce and industry. The IESC aims to instil trust between property professionals, their clients and wider society with RICS playing a leading part in the project.

Bolton King was elected chairman of the IESC Trustees and is delighted with the global response to the initiative: “Sixty organisations have already joined from all continents other than Antarctica. The project is attracting considerable interest and I believe that numbers will continue to grow rapidly,” he said.

“An independent committee has been appointed and will produce a draft standard by the end of 2015. This will go to global consultation before publication of a final document, scheduled for summer 2016.”

Coalition membership is open to not-for-profit organisations across the property, land, construction and infrastructure sector and related professions. In addition, companies and stakeholders such as academic and government bodies have the opportunity to be supporting partners.

www.ies-coalition.org
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CHRISTOPHER TUNNELL, DIRECTOR (ARUP)

You can get in touch with us by phone (08447 254 344) or by email (info@iapply.co.uk)
Mark Brassey explains why proceeds of crime legislation is important to property investors and developers

It’s all in the planning

Proceeds of crime is a phrase that conjures up images of drug dealers, fast cars and money laundering. Surprisingly, the Proceeds of Crime Act 2002 (http://bit.ly/1F1Mhp) can apply in a property context.

The Proceeds of Crime Act 2002 (References to Financial Investigators) (Amendment) Order 2009 (http://bit.ly/1MoD9sn) extended the confiscation regime to local authorities, allowing them to use enforcement powers to penalise planning breaches by depriving a criminal of their ill-gotten gains. Despite its name, the regime does not confiscate assets, but focuses on the value of the defendant’s benefit from their crime.

This regime has been used to target property investors and developers who have failed to comply with enforcement notices for planning law breaches. The benefit of the crime, which in a property context would usually be the rent received or increase in value, must be more than £5,000, a very low threshold.

Once an application for a confiscation order is made by the local authority, the Crown Court will determine the defendant’s benefit from their criminal conduct and the value of their assets. It will then make a confiscation order for the lesser of the two sums. The defendant will be subject to the assumption that any asset transferred to or held by them within six years was ‘benefit’ obtained as a result of their criminal conduct.

Determining benefit

In the leading case on the question of benefit (R v Del Basso [2010] EWCA Crim 11f9), an order was made in the sum of £670,000. The defendants appealed on a number of grounds, but mainly to determine whether the benefit

“ The regime does not confiscate assets, but focuses on the value of the defendant’s benefit from their crime was the gross or net proceeds after expenses. The court determined that the benefit was the total value of the advantage gained, meaning that the court will not necessarily take account of any expenses. It is worth noting that Lord Justice Jackson later commented that this decision was excessively harsh and may be disproportionate. In a more recent case (R v Waya [2012] UKSC 51) the Supreme Court recognised that a court may in some limited circumstances refuse to make a confiscation order if the amount ordered interferes disproportionally with the defendant’s right to peaceful enjoyment of possession.

The following three cases are good examples of the approach taken by local authorities:

1. In September 2012, the London Borough of Brent obtained a confiscation order of £1,438m against a landlord who converted a house into 12 flats without planning consent. The confiscation order included the landlord’s entire rental and housing benefit income over six years. On appeal, the Court of Appeal took a more lenient approach, finding that the rents received prior to the service of an enforcement notice should not have been taken into account. The order was reduced to £544,358.

2. In June 2013, the London Borough of Brent obtained a confiscation order of £494,314 against a landlord who had been using a property as two or more flats. The property had planning for retail and one flat. In 2014, the Court of Appeal concluded that although the judgment was severe, it was justifiably so and could not be quashed as manifestly excessive.

3. In September 2014, Lambeth Council secured a £143,351 confiscation order against a property developer who rented out a property as flats, despite being refused planning permission. The council indicated that it hoped this result would discourage others from flouting the planning rules.

Confiscations

In the current economic climate, it would not be surprising if local authorities use confiscation proceedings more regularly as a means to raise revenue, being able to retain up to 50% of the total value confiscated. In summary, the key points are that:

- proceeds of crime legislation does apply in a property context, especially in relation to planning
- the Act applies specifically to the benefit of proceeds of crime in excess of £5,000 and so it is not a high threshold
- ‘benefit’ means all the benefit from the crime, so gross not net income if rent is applicable. The costs of an unauthorised business cannot be deducted.

If you are served with an enforcement notice, you should be aware of the consequences of failing to comply. Do not ignore the notice; take legal advice.

Mark Brassey is a Partner in Blake Morgan’s Property Litigation team mark.brassey@blakemorgan.co.uk
Using big data to create cities that are smart and sustainable is critical if we are to transition to a low-carbon future. Research at the University of Reading shows that integration, innovation and interdisciplinary working is vital in creating successful future cities (http://bit.ly/1UoDR7Q).

We live in an urbanised world where more than 50% of the global population lives in cities, a figure that is set to grow to 66% by 2050. This growth is occurring in mega-cities, smaller and medium-sized cities in the developed and developing world. The RICS Futures programme recognised that this unprecedented urban growth presents huge opportunities: cities can act as vibrant hubs of innovation, enterprise and jobs growth and places that create economies of scale in technology deployment.

However, this development can also mean more greenhouse gas emissions are created, more resources are depleted, more energy is consumed, and larger, dense populations become increasingly vulnerable. The emergence of big data techniques can help to provide solutions to some of the most pressing urban challenges.

City model

Commercial companies have seen a growing market for the future development of smart city technologies, and the supply of big data (huge, dynamic datasets) has increased. Advocates argue that technology can enhance economic development and quality of life, and the increasing availability and integration of big data can underpin these goals. Information for decision-making at a range of scales is vital, and potentially increased by the rapid development of technologies, such as mobile devices and ubiquitous computing.

The smart city concept in its purest sense, however, presents substantial challenges: focusing exclusively on the eye-catching smart technology aspects of cities distracts from following a truly sustainable path of urban development. It is vital to bear this in mind, given that the majority of the buildings and cities in the developed world are likely to still exist in 2050. Ensuring that existing cities are smart and sustainable is paramount.

The University of Reading research suggests that cities need three main critical and high-level factors in place to succeed.

Integrated approach: developing a clear vision (or a shared expectation of the future) for a city is fundamental, and putting people at its heart is critical to success.

Smart city thinking typically sees pervasive technologies (e.g. telecoms, transport and infrastructure systems, sensors, meters and other networks) as offering the ability to connect, integrate and analyse data to enhance their efficiency. The powerful drive for smart cities is understandable, offering as it does an estimated substantial market potential of $400bn by 2020, of which 10% could be reaped by the UK, according to the Department for Business, Innovation and Skills (BIS) 2013 report The smart city market: opportunities for the UK (http://bit.ly/1NKgc2T).

Data does not exist in a vacuum, and people use technologies and react and behave in the context of their social practices and learning. Placing citizens centre stage in a smart city view of the future is vital, which means:

- understanding the data generated
- how governance systems can be framed to protect confidentiality
- ensuring citizens have access to appropriate technologies
- recognising that there is no one-size-fits-all for cities.

Four key themes must be created: society, economy, environment and governance. A smart and sustainable city leverages information and communications technology (ICT) to:

- improve the life and wellbeing of its citizens
- ensure tangible economic growth for its citizens
- establish an environmentally responsible and sustainable approach to development
- streamline and improve physical infrastructure
A smart city model provides huge opportunities to create added business and economic value from the integration of big data. 

This integration is not just about improving the efficiency of existing systems. It’s also about creating new opportunities for businesses and economies. The potential for big data is vast, especially when combined with urban planning and city infrastructure.

RICs research

University of Reading research, funded by RICS Research Trust, will examine some of these issues in more detail. Clearly, a smart city model provides huge opportunities to create added business and economic value from the integration of big data, covering many areas of the built environment. These include data relating to buildings, land use, planning, environmental data, health, economy, and energy.

As has been said, there are still concerns over confidentiality of information, and it is as yet still to be seen how the role of RICS members might fit into this changing and complex landscape. The research will examine the drivers, barriers and key trends in the development of big data in cities, how this relates to opportunities for client advice, and how RICS members can use the findings to add value to their professional work.

It will use a survey of leading UK smart cities and interviews/workshops and major city case studies in the UK, the Netherlands and Taiwan, and an important output is expected to be a generic framework for an RICS ‘big data directory’ for the built environment in cities categorised by property type/land use.

Ultimately, cities are about people. Some 34% of people in the UK do not yet own a smartphone and 16% still do not have internet access. Despite this, and other related issues concerning fast broadband access in parts of the UK, there is still a strong potential for big data to improve people’s lives in cities. It will be essential, therefore, to understand how we can transition to a smart, sustainable and socially inclusive future.
Change is an opportunity

Conor Moran explains the benefits of modern technology for surveyors

It was late 2010 and I was on site completing a survey in Belfast in the pouring rain. My notepad was getting soaked, leaving my notes illegible.

I thought about going back to spend hours in the office, transferring hundreds of photos from my camera to my computer, then having to identify and tag them before I sorted them into the right sections of the report. Then there was the drudgery of transcribing all my notes in order to draft and format the final report, essentially duplicating the process. I was exasperated: surely there must be a more efficient way.

Time is the most precious commodity for surveyors, who are not risk-takers by nature. I am fully aware that surveyors do not normally take risks. This is an understandable trait, given the huge responsibility and liability placed on the professional’s shoulders, including creating precise reports that drive decisions that can have significant financial implications.

A mobile solution

GoReport is designed to minimise risk and save precious time for the surveying industry. The software simplifies data capture in the field and significantly reduces the time taken to generate reports ready for review. It drives down administration costs and facilitates report delivery to clients up to 70% faster than pen and paper.

The advantage of using one device for all data capture (including photos, notes, video, audio/dictation and sketches) is that it vastly enriches the audit trail of a report from start to finish. That gives a sense of security, considering the levels of accountability associated with the job. There are few business processes where a level of efficiency cannot be added by using technology, as has been proved repeatedly in other industries.

Resistance to change

I am fully aware that surveyors do not normally take risks. This is an understandable trait, given the huge responsibility and liability placed on the professional’s shoulders, including creating precise reports that drive decisions that can have significant financial implications.

But there comes a point when you have to be willing to take a risk. While your organisation is standing still, you invariably see your competitors whizz past as they adopt and adapt to new ways of working.

A surveyor friend summed it up well when he said: “Two to three years ago, it was a case of if my company would move to mobile technology. Now it’s a case of when.” At the moment, many companies are undertaking this anticipatory change. They are looking ahead and know that the change from old-style pen and paper methods to cloud-based software is inevitable.

But this is not as simple as it sounds, because with a new way of thinking comes fear of the unknown. It is difficult for company executives to judge future threats, opportunities and, most importantly, the return on investment that come with any new business process. However, if implemented correctly the rewards can be far-reaching, while resistance to change can ultimately become a severe competitive hindrance to a company.

Proven methods or technology?

Pen and paper has sufficed for a long time. It has generally been reliable and trustworthy, and as with processes in many businesses, there just had not been a better solution.

But there are many problems that come with pen and paper reporting, especially when trying to maintain the quality and reliability of a comprehensive audit trail.

The advantage of using one device for all data capture (including photos, notes, video, audio/dictation and sketches) is that it vastly enriches the audit trail of a report from start to finish. That gives a sense of security, considering the levels of accountability associated with the job. There are few business processes where a level of efficiency cannot be added by using technology, as has been proved repeatedly in other industries.

However, if implemented correctly the rewards can be far-reaching, while resistance to change can ultimately become a severe competitive hindrance to a company.
The world went through the industrial revolution at the beginning of the 20th century, when powered machinery changed the methods of working globally. So it is with technology: already many industries have welcomed advances in this area and streamlined their processes, which in turn has helped to boost productivity and profit generation.

**Industry needs**

In the past decade, firms have become increasingly stretched due to the demand for their services and the shortage of professionals on their books. The rising age of property professionals and the dearth of graduate entrants have been well documented. It seems that these problems are only going to be exacerbated.

In 2014, the Society of Chartered Surveyors Ireland published a report, *Graduate employment trends in construction and property surveying* (http://bit.ly/1Gs6riv) after members had indicated their increasing frustrations in recruiting qualified graduate surveyors.

This report, which gave a quantified projection of the problems facing Ireland in the next four years, contained alarming comments such as: “Based on the conservative forecast, the shortage of surveying professionals will be in the region of 24%.”

According to RICS, by 2020, 54% of the surveying sector’s 10,000 businesses will be turning down some 27,000 projects between them each year due to the lack of resources (http://bit.ly/1Fpss1M).

The heightened pressure of an increased workload on these professionals could lead to more instances of surveyors being found negligent by court and fined or disciplined for not demonstrating best practice following a RICS Regulatory Review visit. There is a realistic assumption that claims could rise as companies push their workforce to complete more jobs in less time.

Apart from enabling a surveyor to carry out more jobs, adoption of mobile technology can have a positive, long-term impact on risk management. This ranges from allowing the surveyor to dedicate more time to reflective thinking to ensuring that a comprehensive audit trail, supported by file notes, is available in the event of a claim.

**Going forward**

Working with RICS has enabled my organisation to meet the specific needs of the industry by reaching out to existing and potential customers.

RICS, which has always been very supportive of GoReport’s strategy, recognises the benefits of its software for surveyors in their daily working schedule; it is also very aware of the help that modern technology could provide the industry in dealing with some of the challenges.

In December 2014, GoReport held a SurveyTech roundtable discussion at RICS London headquarters. It was a valuable exercise and the feeling was one of significantly less resistance than my organisation had experienced in its early years.

RICS and GoReport both believe that technology is the way forward and are excited and passionate about the positive effect it will have on chartered surveyors, both now and in the future.

More information

> www.GoReport.com

Conor Moran is Founder and Chief Operating Officer of GoReport conor@GoReport.com
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The interest relief restriction announced in the summer 2015 Budget is arguably the most significant change to taxation for landlords in recent years.

Under the proposed provisions in the Finance Bill 2015, which are not expected to change before enactment, a restriction on interest relief will be phased in from April 2017 for buy-to-let landlords who are higher and additional rate taxpayers. Over the four years to April 2020, the 40% and 45% tax relief for mortgage interest will be removed. Instead, landlords will be able to make a claim to reduce their income tax liability by up to 20% of the finance costs. It will not be possible to create a loss in the event that interest costs exceed rents.

Individual landlords are currently able to deduct their finance costs in respect of residential properties (mortgage interest and fees, interest on loans to buy furnishings) from the income from those properties for income tax purposes.

Finance Bill 2015
The provisions will apply to individuals who pay UK income tax at the higher and additional rates on rental income from residential property from 2017-18 as follows:
- for 2017-18, the deductible amount in respect of the finance costs will be 75% of the sums previously allowed
- the figure reduces to 50% for 2018-19, 25% for 2019-20, and nil for 2020-21
- instead, individuals will be allowed to claim a basic rate tax reduction (currently 20%) from their income tax liability on the portion of finance costs not deducted in calculating the profit as above.

The reduction will however be capped at 20% of the lower of:
- the profits of the property business in the tax year
- the total income (excluding savings income and dividend income) that exceeds the personal and blind person’s allowances in the tax year.

If there is any excess finance costs on which basic rate income tax relief has not been claimed (e.g. because the finance cost exceeded the rental income), these can be carried forward.

For highly geared properties, and/or if interest rates rise, it is entirely possible that the landlord’s tax liability could exceed the net rental income. For example, a UK resident individual landlord whose portfolio is 85% geared, is paying interest at 5% and receiving a rental yield of 6%, would be subject to an effective tax rate of 105.7% from April 2020.

Corporate ownership?
Where raising rents is not an option, UK resident landlords may consider holding rental properties through a corporate structure where full interest relief for mortgage interest should be able to be obtained.

If the UK individual holds the properties through a UK company, the comparable tax rate would be 49.2% (even taking into account the summer Budget changes for the taxation of dividends). The decision to transfer a property portfolio would be determined by several factors including the level of gearing and whether funds are required in personal hands.

If the landlord is prepared to allow profits to ‘roll up’ in a corporate indefinitely, then the benefit of corporate ownership is even clearer. It will also be necessary to consider the capital gains tax and stamp duty land tax implications of transferring the properties to a company, although in certain circumstances the transfer can be implemented without any tax costs.

The additional administration time and cost of running a company (preparing and filing accounts and annual returns) will also need to be borne in mind, and it may be that the benefits of analysis when incorporating smaller property portfolios do not exceed the costs.

Policy
The stated policy intention behind the new rules was “to make the tax system fairer” by ensuring that “landlords with higher incomes no longer receive the most generous tax treatment”. However, whether it will in fact be tenants who feel the real effect of the changes, through either a reduction in the supply of rental property to the market and/or increased rents as landlords look to cover the loss of relief, remains to be seen.

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Sustainable value offers many benefits to both the valuation and property industry, providing a reality check in times of over-inflated optimism and hope when markets bottom out, argues Joshua Askew

**When market value is not enough**

The notion of sustainable valuation emerged in the real estate industry in the aftermath of the most recent global downturn, when it became obvious that some properties had been overvalued, in part due to overly optimistic assumptions about future performance. Market value, a snapshot of value based on a combination of evidence and market sentiment at a given point in time, seemed to have let the industry down. Many proclaimed it no longer fit for purpose, and dismissed it as being too volatile and unreliable.

Perhaps it is now time to revisit these claims dispassionately. Most of the earlier discussions centred on the ‘true’ value of a property, and valuers were called to reconsider their approach. Some argued that when market values plummet by 20%-40%, an asset’s ‘underlying fundamentals’ are not fairly represented by market value. The valuation industry was roundly blamed for failing to foresee an overheated market and reported values were too high.

Some valuers responded by refusing to lower their valuations, citing a lack of evidence of transactions at lower levels, whereas in reality, landlords who were not distressed simply did not want to sell at basement values. Others rightly considered market sentiment in addition to the scant evidence of deals and dropped values accordingly.

**Mortgage lending value**

In response to the crisis, seasoned investors called for a longer-term approach focused on value over time, without the volatility of the boom and bust cycles. The notion is not new and has already been put to use in some jurisdictions, most notably in Germany, where mortgage lending value (MLV), a more cautious and conservative value, is a widely accepted model.

The framework for determining MLVs considers a secure value which is “as long term and sustainable as possible” and attempts to smooth out the peaks and troughs as real estate markets wend their way between cycles. The MLV calculation is “unattached by temporary, e.g. economically induced, fluctuations in value on the relevant property market and excluding speculative elements... by taking into account the long-term sustainable aspects of the property, the normal and local market conditions, the current use and alternative appropriate uses of the property” (Quentin, 2009).

Detractors criticise the MLV methodology for being overly formalistic, rigid, arbitrary and academic, but it also contains many novel ideas. Its strength lies in its ‘two pillar’ approach, in which the valuation is determined both on the cost and income/comparable methods, and there must be a reasonable correlation between the land value, cost value and income/comparable value.

Another MLV innovation is that value is assessed independently, with income apportioned to the land valued into perpetuity, but income for the building is capitalised only for the remaining economic life of the physical structure.

**No alternative?**

In the UK, there is no real alternative to the MLV. There is the vacant possession value (VPV), a market value under the special assumption that the asset is fully vacant, but this is fraught with its own weaknesses. Speak to any valuer and they will tell you that the VPV is a highly hypothetical model with very limited use. Only the very large clearing banks have a practical use for VPVs, and most funders ask for them rather as a matter of habit not because of their particular efficacy.

But VPVs should not be dismissed altogether: it is a metric for determining a worst-case scenario for an asset, particularly in instances involving a single-let asset to a potentially risky covenant.

Apart from VPV, there is no clear answer. Valuers using historic trend data should be able to produce sustainable values, or a range of values, for a property asset – and ought to do so.

In the context of providing independent opinions and promoting trust in the profession, does it not fall to valuers to give a view as to the long-term value of an asset when giving a snapshot of market value? This approach would immediately place any market value in an historic and ethical context, rather than reflecting only the in extremis moment of valuation. Sustainable value gives a wider economic perspective; a normative baseline on which investment decisions can be judged. Without this, such
decisions may be divorced from a rational benchmark – they act as a reality check. One potential objection to the creation of a new basis of value may be the professional indemnity insurance implications. It is true there is an element of risk in this approach that will require scrutiny and thought, but I am not aware of any negligence claims arising out of the provision of investment value (worth) as a basis of valuation. A sustainable value would surely be akin to the Red Book reporting output: a valuation number based not entirely on market evidence or market assumptions, but rather on forecast econometric data, the subjective expertise of the valuer involved and provided as a guidance figure without reliance.

Twin approaches
Conceptually, two broad approaches to sustainable value have been suggested and applied. The first approach is that market averages or trend values in rent and yields over time should be examined and applied with all property/business cyclical variations smoothed out in the valuation, and all speculative elements that could affect value are ignored. A potential and uncertain redevelopment or extension of a property, for example, would count as a speculative element.

Long term average/trend rents and yields are applied to determine the sustainable value, an approach championed by MLV valuers, although they would argue that an MLV is far more sophisticated and complex.

The second approach, which deserves more scrutiny, is to turn the idea of a valuation unaffected by market cycles on its head. Volatility is embraced to reflect the sustainable value within an ever-changing and unpredictable market, rather than propagating the fantasy of order and equilibrium as the underlying valuation reality. Averages are disregarded, and long-term value is ascertained by adopting a less extreme version of boom and bust in the valuation cash flow, reflecting historic rises and falls of real economic and property cycles.

This approach is more practicable in discounted cash flow (DCF) valuations, in which rental growth, costs and discount rates can be made to increase and decrease across the investment horizon (over 10 years, for instance, although any timescale could be adopted) as the market moves from a growth to a contraction phase. The exit yield could also be adjusted to reflect the expected position in the property cycle at exit, so it would be lower during a stable or growth phase of the property cycle or higher during a contraction phase. All the resulting net annual income streams across the cash flow are then discounted at one (or more) discount rates, which also reflect the market cycle in each year.

For example, for a property valued at present on a 10-year DCF on the assumption of a two- to three-year continued growth cycle, rental growth is applied and a lower discount rate is used to determine the present values of these income streams during this period. A period of stabilised inputs could then be assumed for a further two years, before a three-year contraction (downturn) in which annual growth is reversed, new leases are at lower rents, and the discount rate increases to reflect risk.

In the final two years of the cash flow a slow recovery is assumed, with growth and discount rates (and other inputs) between the early upper peak and later lower wavelength trough. The exit yield would be higher than the initial yields evidenced by transactions as at the time of valuation. The resulting sustainable value will vary depending on the current position of the market in the property cycle at the time of valuation. Assumptions as to the wavelength and magnitude of the cycle will also affect value.

Sustainable value is a responsible and forward-looking concept. It attempts to produce a more rounded value and offers an opinion on the asset’s long-term value prospects. The advantages of applying sustainable value in the property industry are numerous; it is a fitting companion to market value in any report and ought to be explored and embraced by RICS and the property industry.

More information

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RICS view
This article raises important questions for the valuation profession. RICS is working on a number of projects in this area including an insight paper/guidance on mortgage lending value.

Ben Elder, RICS International Director of Valuation
The next generation

Jan Ambrose discovers how the Inclusive Employer Quality Mark can boost business

In 2014, RICS launched the Surveying the future campaign in a bid to tackle the lack of representation across the profession by a number of groups. Work started against a backdrop of endemic stereotypes and low levels of female members (13%), black, Asian, minority ethnicities (BAME) (1.2%) and people with disabilities (0.6%) working in the UK construction and built environment sector.

RICS recognised that its reputation would suffer if these issues were not addressed. To have only one section of society contributing ideas encourages corporate tunnel vision and can impact on an organisation’s profits and client pool.

Surveying the future aims to demonstrate the breadth and range of careers within property, land and construction and attract more talent to the industry (see panel, p19).

There are many misunderstandings, according to Justine Wallis, RICS PR and Communications Officer for the East Midlands and East of England who works with Kim Worts, RICS Director of External Affairs.

“When I spoke to Year 8 pupils at a careers event, only one had heard of surveyors, saying they were the men on building sites telling the builders what to do,” she says. “Despite tremendous efforts by Matrics members, who reached more than 100,000 students in 2013-14 through careers fairs and other initiatives, very few young people are joining the profession.”

She adds: “In many respects, RICS is envied by many other professional organisations, but it lags behind them in the area of diversity and inclusion; in fact, many RICS member firms have gone far beyond their professional body. According to the Financial Reporting Authority’s June 2014 report, across the nine accountancy professional bodies, female membership stood at 33%, while the Law Society’s 2013 annual statistics show that 46 of the Top 100 list of UK lawyers are female, with a sharp increase in the proportion of BAME lawyers.” The 2015 McKinsey & Company report, Diversity matters (http://bit.ly/15Db0TT) shows that gender- and ethnically diverse companies outperformed less-diverse organisations.

Global changes
If current statistics about the property and construction workforce do not improve, Britain will stop building in 2019. Each year, the profession welcomes and loses more than 400,000 employees, a significant skills gap that could threaten its future. It is evident that the industry needs to become more inclusive.

Inclusive Employer Quality Mark
Recognising that change was essential, an initiative was launched at the RICS Diversity and Inclusion Conference in June 2015. Part of the RICS growth, eminence and leadership programme (http://bit.ly/1KAcGaN) that sets out its strategy until 2020, the Inclusive Employer Quality Mark encourages all firms to carefully consider their employment practices and embrace inclusivity.

Organisations that have signed up to this voluntary scheme are committed to improving inclusivity and monitoring performance. They are also required to complete a bi-annual self-assessment, the first of which is scheduled for February 2016. These returns will give organisations a benchmark about their performance in each area, showcase success and establish where more work needs to be done.

The scheme comprises six principles:

1. Leadership and vision: true change needs to be driven from the top. The leaders of this industry need to share this vision to make it happen.

2. Recruitment: this means recruiting from a wider pool; outreach work in schools, being creative in drawing in the career changers.

3. Staff development: making the most of the skills of new recruits, giving them the opportunity to thrive.

4. Staff retention: all ages and both sexes want work/life balance. If your organisation does not provide it, they are moving to sectors that can.
The future
The Quality Mark aims to identify firms that engage with their local communities, have appropriate recruitment and flexible working practices and encourage a diverse workforce. It is not a massive bureaucratic burden, but an endorsement that will demonstrate to clients and potential employees that a company is inclusive, diverse and progressive.

Digby Flower, Chief Executive UK at Cushman & Wakefield, is very enthusiastic about the scheme: “Developing the RICS Quality Mark is important to our organisation, because it is committed to improving diversity and having a benchmark will help us know how we are doing against its goals,” he says.

An online resource is being created which will enable those in the scheme to click though and listen to what other companies are doing: for instance, how are DTZ or the Sweett Group, both early adopters, tackling issues such as staff retention?

Besides gaining ideas, the inclusion of case studies from large and small firms means that organisations can work together to learn, improve and succeed.

Positive response
The Surveying the Future campaign was launched with 54 features in national and regional titles. Feedback was excellent: for example, there were 22,000 online job enquiries in one day as opposed to the usual 100 a month, after the article appeared in the female section of the Daily Mail.

The campaign has also been publicised extensively via online platforms. Since May 2014, 2,807 tweets have mentioned #surveyingthefuture, a potentially staggering 12,612,776 impressions. People joining the conversation could help make a career as a surveyor as recognised as that of a lawyer, architect or accountant.

There have also been favourable comments on the RICS website, with one member saying that during their career, they had met mainly senior male property professionals and it was inspiring to find examples of female role models.

The team has already publicised the scheme through regional workshops, the first of which, How diversity can boost your business, held as a breakfast event in Birmingham in July 2015, was attended by 30 local business representatives.

�� Staff engagement: ensuring that all staff are involved in finding solutions.
�� Continuous improvement: commitment to monitoring what is important, sharing best practice, gathering evidence to show that your organisation is where it wants to be.

The Mark has been designed to be relevant to both large practices and SMEs. Organisations signing up to the scheme will be able to use the logo or tag line “signatory to the RICS Inclusive Employer Quality Mark”.

Other benefits include increased visibility of their brand, gaining clients who want to employ firms with inclusivity standards and clear signalling to job applicants on the quality of their staff practices and promotion opportunities.

RICS recognises that there is a war for talent within the professions. If current statistics about the property and construction workforce do not improve, Britain will stop building in 2019.

War for talent
RICS recognises that there is a war for talent within the professions, and is anxious to attract the next generation of surveyors. Besides contributing to the government’s apprenticeship scheme, other initiatives include Reading Pathways and the Changing the Face of Property group, which will be combined into a schools-facing programme Property and construction needs you.

The aim is that from the age of 12, young people should recognise the opportunities in the built environment, adding chartered surveyor to their career wishlist alongside doctor, dentist and lawyer.

Other industries have shown that creating a diverse workforce is achievable. Surely it is the time for RICS to join the battle for the best candidates, recruited from the widest possible pool.

“
RICS recognises that there is a war for talent within the professions and credits national, regional and local initiatives with helping to improve the gender diversity of their workforce, with the overall percentage of women now sitting at 9.8% as of 2016.

More information
For further details of the RICS Inclusive Employer Quality Mark, including FAQs, visit http://bit.ly/1WfArD
To register your interest, email qualitymark@rics.org or Kim Worts, RICS External Affairs Director, kworts@rics.org

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Dilapidations claim settlement

Q My client is subject to court proceedings for a dilapidations claim and wants to make an offer to settle by payment of a sum of money. Which approach is best to take and what differentiates a Part 36 and a Calderbank offer?

A There is no bar as to how to settle a claim. It can be undertaken by negotiation between the parties and can include repairs and/or payment of money. Parties can settle a case in any way they choose and at any stage of the proceedings. Generally, the sooner an offer is made the better, because it will reduce the costs and disruption to both parties.

The Civil Procedure Rules (CPR) set out how court proceedings operate. Part 36 deals with offers of settlement and it can provide a useful tool in motivating the parties to the action.

You do not need to comply with Part 36 and there can be valid reasons not to do so, particularly not wanting to pay your client’s opponent’s costs or seeking to restrict those to a specified amount. An offer can be made by way of a Calderbank letter. You should mark the letter “without prejudice save as to costs” and include in the proposal whatever terms are deemed appropriate, which the court can take into account when considering who pays the costs of the action. On that basis, it can be a important tactical tool in securing a settlement.

A Part 36 offer must be in writing and make clear that it is pursuant to CPR Part 36. It should specify a minimum period of at least 21 days within which the opponent will be liable for your client’s costs and state whether it relates to the whole or part of the claim and takes into account any counterclaim. A set court form, N242A, can be used, which will assure compliance with CPR Part 36.

Generally, the court would only be made aware of an offer of settlement after the case has been decided and a judgment made. This is to avoid any admissions influencing the court and also preserve any arguments as to who should pay the costs of the action, which can be affected by any offers.

When it comes to the option of withdrawing, the court rules on offers changed on 6 April 2015. A Part 36 offer can now be withdrawn or its terms changed after the 21-day period, if it has not been accepted by an opponent.

There are a number of different cost consequences depending on the outcome of the court proceedings, but in summary:

- if the offer is accepted within 21 days, the damages need to be paid within 14 days with your client paying the opponent’s costs
- if the offer is accepted after 21 days, the opponent is entitled to payment of its costs up to the date it expired but would pay your client’s costs after that period
- if the opponent does not obtain a court order that is as advantageous as your client’s offer, the opponent is required to pay your client’s costs, after the 21-day period the offer is made.

The damages awarded are still payable.

The claimant can also make an offer and counter proposals are common. If the opponent makes its own Part 36 offer and obtains a judgment that is equal or more advantageous, then your client can be ordered to pay:

- the opponent’s costs for the entire claim and on an indemnity basis after the date the offer expired
- interest on the indemnity costs up to 10% above base rate
- interest on the damages up to 10% above base rate for some or all of the period starting from when the offer expired
- an additional 10% of the first £500,000 of damages awarded and 5% of any additional amount above that figure, subject to the limit of £75,000.

The amount of costs would be dealt with by way of agreement, or determined by the court if no consensus is reached. That gives an advantage to the Calderbank letter, as you can specify the costs contribution you are prepared to make, but you do not gain the cost consequences under CPR Part 36. Those consequences exert considerable pressure and Part 36 can be relied on by both parties. There are considerable advantages to claimants being able to obtain additional damages, costs and interest, although a defendant can also recover its costs, even if it ends up having to pay damages.
In the know

How can we create effective workplaces to support those who ‘think for a living’?

Andrew Mawson introduces the six factors of knowledge worker productivity

Knowledge workers are managers, surveyors, researchers, consultants, creative professionals, scientists, analysts, designers, journalists, software designers, systems designers, engineers and so on – people “who think for a living”.

Developed economies around the world are increasingly dependent on the performance of knowledge industries for their economic success, but while much is known about the science associated with traditional manufacturing productivity and techniques to manage it, the same is not true for knowledge workers.

Research

In 2013-14, Advanced Workplace Associates (AWA) and research partner The Centre for Evidence Based Management, set out to understand the factors that made a difference to knowledge worker productivity and ways of measuring it using respected academic databases as an evidence base. The work was sponsored by BDO, the British Council, Telereal Trillium, Allsteel, Old Mutual and the Royal Bank of Scotland.

Using the highly robust rapid evidence assessment methodology, two questions were addressed:

● what is known from the world’s academic research about the measurement of knowledge worker productivity
● what are the factors associated with it?

While it was confirmed by the research that there was no universal way of measuring the productivity of knowledge workers that would enable comparison between organisations (e.g. something equivalent to return on capital employed, profit for knowledge), we concluded that it would be possible to use ‘proxy’ measures to assess the factors that support knowledge worker productivity.

Researchers identified six factors that were most highly correlated to knowledge worker productivity. Together, they describe a social infrastructure that creates the conditions for workers to fuse their knowledge, constructively challenging each other to come up with new ideas and knowledge and gaining an understanding of everyone’s contribution.

The thesis is simple: if these six factors are the best science available on the subject, then leaders and their organisations should orientate everything (culture, recruitment, performance management systems, organisational design, training, workplace design, IT) to achieve them.

Factor 1: Social cohesion

“A shared liking or team attraction that includes bonds of friendship, caring, closeness and enjoyment of each other’s company.”

People get on with each other in their teams, with other teams and with senior leaders. They are happy to share their ideas and knowledge and are comfortable with robust discussion for the greater good. They feel safe in saying their piece, regardless of the seniority or importance of others.

Factor 2: Perceived supervisory support

“How employees feel the supervisor helps them in times of need, praises them for a job well done, or recognises them for extra effort.”

People need to feel that those they report to are positively supporting them in achieving their endeavours and not constantly ‘beating them up’ or blaming them for apparently substandard tasks.

Factor 3: Information sharing and transactive system

“How teams pool and access their knowledge and expertise, which positively affects decision making and team processes. This leads to the idea of a team transactive memory system – a collective memory in a collective mind – enabling members to think and act together.”

It is about creating a culture and IT infrastructure for sharing knowledge and treating the whole team and the wider community as ‘knowledge memory’, to short circuit the search for the best sources of knowledge and so avoid reinventing the wheel.

Factor 4: Vision/goal clarity

“The notion of vision refers to the extent to which team members have a common understanding of objectives and display high commitment to those team goals. For this reason, ‘vision’ on the team level is also referred to as goal clarity.”

For people to be emotionally engaged with the work they do, they need to understand how it fits into their team’s vision and goals and in turn those of the enterprise. They also need an empathy with the vision to commit their intellect and time to the tasks they perform and be prepared to go the extra mile.

Factor 5: External communication

“The ability of teams to span boundaries (team and organisational) to seek information and resources from others.”

In other words, ‘get out more’. We are talking about people exposing themselves to the views and experiences of diverse groups outside their team and organisation in order to shape their ideas and bring back new insights to fuel innovation and to maintain their vigour.
Factor 6: Trust
“The firm belief in the reliability, truth or ability of others. It is created by the expectation that the actions of other persons will be to one’s benefit, or at least not detrimental.”
People need to feel that those around them will act in their interest, that the knowledge they contribute will be used responsibly and that they can depend on the advice, skills and abilities of their colleagues.

Steps to success
Where organisations or units depend on the creativity, ingenuity and knowledge for their business success, the six factors are vital in releasing and focusing the energy, commitment and knowledge of individuals and organisations on business goals.

RICS members can use these factors both to run their businesses and teams and contribute to the design of the workplace as a tool to aid increased knowledge worker productivity.

Fresh start: creating a new workplace can be the catalyst for a discussion about what the organisation is trying to achieve and how the space can play a role. If enhanced worker productivity is a goal, you have the opportunity to share the science of the six factors with leaders.

For example, Mintel Chief Executive Peter Haig insists on his leadership team sitting in different locations in its building every month. Another organisation ‘gamified’ the idea by operating ‘desk bingo’, where in a month people have to sit at every desk in their team area. There are other strategies, such as creating collaborative spaces on each floor as a ‘heart’ for a building, or drawing people out of their own locations to meet or eat, designing restaurants as a destination social space. Running lunches and social events with different themes can bring together people who may not normally meet.

Perceived supervisory support: design the workplace so that leaders can sit with different members of the team every day, enabling them to support and coach and allowing the team to get to know the leader better as a person.

Being locked away in an office may aid their ego or ability to concentrate, but it deprives the leader of a powerful source of information about what is going on and how the team is feeling, and also increases ‘power difference’.

Information sharing and transactive memory: make the design of collaboration and meeting spaces across your buildings very different. Maybe give them crazy names. Why? Because people’s recall of the experiences in a place is aided by the memory of the event and the place. Create meeting rooms that are designed to maximise eye contact with ‘easy to use’ IT tools to access and share information.

Vision and goal clarity: use graphics and mobile displays to make visible the team’s vision, purpose and key goals so members are reminded of them and other teams can see how they do links to them.

Trust: enclosed spaces are not going to support trust. Make things open and transparent to indicate that there is nothing to hide.

Awareness: use walls to display graphics of the six factors providing a constant reminder of the aspects that make a difference to the performance of the team and community.

As a leader, adopting workplace ‘science’ in delivering your role will also enhance your professional standing in a business context. For them, the six factors resonate and at last give a baseline against which to design meaningful workplaces.

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RICS FM Hub www.rics.org/facilities-management
Related competencies include Facilities management
Well positioned

Determining the location of data centres calls for specialist skills, as Bob Marsh explains

Project managers are often tasked with leading complex, multi-disciplinary projects across an array of stakeholder groups and organisations. This includes operating as a single point of knowledge, managing schedules, identifying risks and clearly communicating goals at critical milestones throughout the process.

Such experiences and skills are key to site selection process for data centres, which calls for calculating complex financial models and developing technical solutions based on the balance between programme requirements and the cost to value ratio. Project managers’ ability to establish relationships with landowners, economic development officials, power companies, telecommunications companies and government officials all add to the benefits of including a seasoned practitioner at the early stages.

Each data centre design will vary according to its end user, and each developer will have a different mix of priorities – from baseline cost to security and transport links – ensuring that no two projects will be the same.

The bare essentials

Data centres need not be physically close to the users of the technology they support. But if in theory they could be sited anywhere, in practice the location is invariably determined by a series of technical considerations.

No matter what other variables go into the developer’s decision matrix, any data centre location must have two things to even be considered – a reliable, high-capacity power supply and communications connectivity that delivers speed plus diversity. A loss of electrical power would clearly be disastrous, so all are fitted with backup generators and an uninterruptible power supply as standard. Nevertheless, a proven and reliable power grid is a high priority.

This does not mean that a developer will automatically choose an urban location over a rural one. While an urban location may have easy access to the existing power grid, this says nothing about the reliability of the power supply, or its availability.

Conversely, a data centre sited in a rural area will usually be purpose built, and in conjunction with utility providers, to ensure it has the most advanced connectivity and highly robust power supply.

Security is essential

While servers themselves are designed to be resilient both to cyber attack and power outages, resilience is also built into the design of data centre buildings. This tends to mean high levels of duplication of infrastructure, commonly referred to as redundancy, which carries a cost premium. Developers may specify that the building be reinforced with steel and concrete, or even sited underground.

In addition to obvious measures such as a high-security perimeter fence, there are an array of structural ‘hardening’ techniques to make the data centre resistant to physical attacks. These can range from fortified blast walls, to layered counter measures to prevent intruders. Many facilities incorporate attack-rated walls, vault-type doors, biometrics and mantraps to protect internal areas.

While a custom-built data centre can be fitted with the latest in intruder prevention measures, some centres have been built in pre-existing secure sites. One of the best known is the headquarters of Swedish ISP Bahnhof, built in a former nuclear bunker that was once a Cold War command centre in a series of granite caves 30m beneath a Stockholm park.

A similar site exists in former military bunkers in Switzerland, while in Manchester, UK, a data centre operates in a former Bank of England gold bullion vault 7m underground, behind 18m thick granite walls and a 12 tonne bombproof door.
With the global demand for data rising every month, speed to market is crucial.

Weather and seismic threat

While the threat of physical attack is hard to quantify, other risks to a data centre’s integrity can be calculated with a higher degree of precision – extreme weather and seismic activity.

Of course, all data centres will be sited away from flood plains and far from areas of historic mining activity to prevent the risk of subsidence. But hurricane threat, such as on the east coast of the US, is a crucial factor both in their siting and design. Locations in the lee of natural landscape features will be sought after, with the buildings designed to withstand very high wind loads.

Meanwhile, in northern states, data centres will be designed to cope with heavy accumulations of snow on the roof and walls, and those on the west coast and in areas of seismic activity will include the very latest earthquake resistance technology.

How much protection a data centre developer seeks from natural threat will depend on two key factors – the operator and the cost. The greater a data centre’s resilience, the greater the cost. Clients seeking the highest levels of redundancy will want a data centre impervious to ‘once in a century’ weather events. However, a developer with a more limited budget for hardening may settle for the ability to withstand ‘once in a decade’ storms.

The key metric

Data centre efficiency is frequently judged on the cost per watt of electricity consumed. This yardstick can be affected by countless factors, from the design of the building and the density with which the servers are packed together, to how they are cooled. In operation, servers generate significant heat, hence cold regions hold an obvious appeal.

Technology and site design are crucial to a data centre’s cost per watt performance, but so too are the land and construction costs. Many local authorities offer tax breaks to attract data centres to the region, for reasons of prestige and job creation. They can offer other incentives too, such as competitive utility costs or reduced sales tax on major equipment.

With the global demand for data rising every month, speed to market is crucial. A location where the planning or construction process is likely to be longer will have a higher opportunity cost than a rival site that is able to come online and start generating revenue sooner.

But no developer will choose a site on cost alone. While remote rural areas may offer the cheapest land, proximity to urban areas makes it easier to attract the 100-strong skilled workforce needed both to build and run a large facility.

Nor should the importance of good transportation links be underestimated. Good road connections are a must, even if security concerns mean a data centre is likely to be set back from major roads.

The future

These cost variables constantly shift due to the improving technology of the servers themselves, and their associated IT infrastructure. The cost per watt is falling as servers become more efficient – both in terms of power consumption – and the density at which they can work optimally.

Advances such as highly efficient water-cooling systems are allowing data centres to pack ever more servers into the same space, and this trend is set to continue.

Many new facilities are designed with plenty of spare capacity, but as server density increases, developers are less likely to run out of physical space than the power needed to run them, or the ability to cool them sufficiently. In future, the ability to ramp up the power supply could become the single most important requirement, given that data centres are already estimated to consume 3% of the world’s electricity supply.

With global data demand increasing at breakneck speed, innovation in both server technology and data centre design is essential to ensure this vital infrastructure keeps up.

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Related competencies include
Planning
Green buildings are demonstrating their worth in rapidly urbanising China, as Stephen Tam reports

**Lean, green and in demand**

China’s Green Building Evaluation Standard (GB/T50378-2014) defines green buildings as those that save resources (energy, land, water and construction materials), protect the environment and reduce pollution during their life cycle, provide healthy, practical and highly efficient use of space and are in harmony with nature.

However, the development of green building in China began relatively late, and there is significant room for growth. The National Urbanisation Plan requires that 50% of new buildings should be green by 2020 in comparison to the 2% in 2012, pushing forward this growing trend.

Limited natural resources, the greenhouse effect, carbon footprint, air pollution, energy efficiency and other environmental issues have driven the agenda. Increasing concern over the transition to a more sustainable growth model has prompted the Chinese government to play an active role in promoting green buildings.

At the beginning of 2013, the country’s National Development and Reform Commission and Ministry of Housing and Urban-Rural Development jointly issued the Green Building Action Plan, putting forward the goal of completing 1bn sqm of new green buildings during the 12th Five Year Plan and pledging full implementation of green building standards for government-invested buildings from 2014.

**Certification schemes**

In addition to the government-led China Green Standard, the US Leadership in Energy and Environmental Design (LEED) has been widely adopted on many building projects, being well regarded among multinational companies and suitable for China’s geography and climate.

According to the US Green Building Council (USGBC), as of April 2015, 627 projects in China (excluding Hong Kong, Macao and Taiwan) with a total gross floor area (GFA) of 28 million sqm had obtained LEED certification, making the country one of the biggest overseas markets for LEED-certified GFA.

Most projects under the China Green Standard are certified only for their design phase, whereas LEED certification covers a building’s full life cycle (i.e. design, construction, operation, and demolition). Having a relevant assessment standard for different phases, the scope of LEED certification is also wider than the China Green Standard, with more sub-categories and appropriate evaluation standards fulfilling the various functions.

**Value for money**

Green does not mean expensive. According to statistics for domestic projects certified under the China Green Standard, the incremental cost of residential buildings in 2014 decreased by 31%-38% compared to its historical peak, while the incremental cost of public buildings decreased by 48%-64%.

CBRE believes the incremental cost of green buildings will decrease in the coming years (http://bit.ly/1MuV6zP), primarily because of the rapid development of green technology, products and processes, and the selection of more effective green features by developers with the help of professional consultants. Market demand and supportive government measures will make investing in green buildings an attractive proposition.

Investment returns on green buildings are reflected in four main aspects; non-monetary benefits, property performance, operational cost saving and preferential taxes and subsidies. These merits will bring significant advantages to developers, owners and end users.

While it is hard to measure the non-monetary benefits of green buildings, the positive impacts for landlords and occupiers can be quantified. Green office buildings can provide a more healthy and comfortable working environment than conventional buildings, meaning that employees tend to take less sick leave, are generally more efficient. Therefore, green building certification – particularly for commercial property projects – is a powerful differentiator for marketing, sales, leasing, management and operations.

Green building certification can also have a positive effect on occupancy and rental and capital value performance. The business case for green buildings, published by the World Green Building Council in 2013, pointed out that in most cases green buildings command up to 17% rental premium, up to 23.1% higher occupancy rate and up to 30% increase in property selling price.

CBRE conducted a study of LEED certified Grade A office buildings in the five Chinese cities Beijing, Shanghai, Guangzhou, Shenzhen and Chengdu and found that they commanded higher rents in Q4 2014 compared to non-LEED certified Grade A office buildings. The rental premium was between 1.5%-25.7%.

**Saving energy**

Cost savings are one of the most important considerations for investing in green buildings. Case studies show that not only do green buildings provide a comfortable living and working environment but they also help landlords and tenants to save energy and lower operational costs. In 2011, CBRE was hired...
by Galaxy group to provide LEED Certification consulting services for its Shenzhen Galaxy Center office project. Constructed in 2008, the building has a GFA of 54,178 sqm.

Five key energy efficiency approaches were implemented, including ASHRAE Grade 1 energy audit, test and commissioning of M&E installations, major electrical installation monitoring, test and commissioning of ventilation system and advice and training on LEED operation requirements. After obtaining LEED EB Gold certification, the annual energy consumption fell by 7.6% in the following year, and annual operational costs decreased by around RMB 460,000.

**Government incentives**

It should be noted that achieving energy and cost savings in buildings does not simply involve changing or upgrading the hardware. Very often, soft factors such as setting management targets and controlling processes can bring remarkable improvement. Meanwhile, making end users aware of the importance of being green has become a driving force for developers and owners to create their projects in a greener way. Government subsidies and preferential tax policies are also an important component of green building investment returns.

Government subsidies and preferential tax policies are also an important component of green building investment returns. Beside direct subsidy, local governments also implemented various preferential measures on plot ratio, bank lending and tax arrangement to encourage green building development.

The China green building market is already on a fast track. By the end of April 2015, the total area of domestic green buildings (including China Green Standard and US LEED) totaled 320m sqm, 154 times the figure in 2008 when the first batch of China Green Standard buildings were certified. However, the green building journey still has a long way to go. A conservative estimate puts China’s current building area at more than 40bn sqm, of which less than 1% is certified to green building standards.

The rapid urbanisation of China means that buildings are playing an increasingly important role in controlling greenhouse gas emissions and energy consumption. In November 2014, the US and China released the **US-China Joint Announcement on Climate Change**, which stated that: “China intends to achieve the peaking of CO2 emissions around 2030 and to make best efforts to peak early.” This makes it clear that the focus on green building should be adopted as a long-term national strategy.

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More information

- The business case for green buildings

- US-China Joint Announcement on Climate Change [http://1.usa.gov/1N1GHOH](http://1.usa.gov/1N1GHOH)

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Stephen Tam is Senior Director, Asset Services at CBRE
Is there an easier way?

Edward Peters discusses the merits of arbitration over other methods of resolving disputes

In the property world, the most familiar subjects of arbitration are rent review, overage, options, agricultural holdings, and the determination of rent and terms on lease renewals. However, in principle, every conceivable dispute about land can be referred to an arbitrator.

Arbitration has ancient roots: there is a description in Homer’s Iliad, and a reported case of an English arbitration dating from the Wars of the Roses. Modern arbitrations in England and Wales are now governed by the Arbitration Act 1996 (http://bit.ly/1MCVPo0). This practical and commercially minded legislation aims to ensure:

- that arbitrations achieve the fair resolution of disputes by an impartial tribunal without unnecessary delay or expense
- party autonomy
- minimum interference from the courts (it only specifies limited circumstances for intervention)
- that both sides in arbitrations are free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest.

Agreements

Sometimes a statute grants certain disputes must be determined by arbitration. Otherwise, an arbitration can only happen if both parties agree, which can generally be made before or after the dispute has arisen.

Leases frequently contain agreements stating that certain disputes must be referred to arbitration. The most common example is in rent review clauses (although some provide for determination by an expert valuer). Leases sometimes provide for the resolution by arbitration of disputes about service charges with neighbouring tenants or occupiers or between landlord and tenant. Disputes relating to overage payable or a contract are frequently referred to arbitration. Some partnership agreements also contain arbitration clauses.

Meanwhile, Parliament has decided that particular disputes must be referred to arbitration, for example, in cases concerning notices to quit under the Agricultural Holdings Act 1986. In other instances, Parliament specifies arbitration as the default position, but allows the parties to agree to have the dispute determined by an expert – for instance, in rent reviews or model clauses in tenancies of agricultural holdings.

Conversely, Parliament has also stated that sometimes an arbitration agreement that predates a particular dispute will be invalid, notably with residential service charges. The case can only be referred to arbitration if the parties reach a post-dispute agreement.

Occasionally, there may be no pre-dispute agreement, but once a disagreement has arisen, the parties may both decide on arbitration. That may be with the object of obtaining a decision from an arbitrator with appropriate professional expertise, for instance, the Professional Arbitration on Court Terms. This scheme is run by RICS and the Law Society for determining disputes about lease renewals under the Landlord and Tenant Act 1954, without the need to go to court.

Arbitration v court proceedings

There are various potentially important differences:

- Arbitration can normally only be conducted if there is an agreement between the parties either pre- or post-dispute, but a party can unilaterally issue a claim in court.
- Arbitration is heard in private and its subject matter is generally confidential; court proceedings are normally heard in public and can be freely reported.
- Those involved in the dispute can agree to select an appropriately qualified expert to arbitrate. In court, the parties have no control over which judge is allocated.
- Those involved can also agree the procedure that should be adopted. In court, the judge determines the rules and orders.
- An arbitration award is much less susceptible to challenge than a court order. The latter can be appealed whenever there is a ‘reasonable prospect’ that it was wrong and the prospects of success must not be fanciful. An appeal can add delay, cost and uncertainty. By contrast, under section 69 of the Arbitration Act, an award can be appealed on a point of law only with the court’s permission and if it is obviously wrong. The parties can even agree to eliminate the possibility of appeal on a point of law. A challenge under section 68 of the 1996 Act alleging irregularity in the arbitration process will not succeed unless it is a serious irregularity causing substantial injustice. The courts strive to respect the arbitration
process and uphold awards wherever possible.

- There are various charges in court proceedings, in particular a potentially substantial issue fee, but the judicial time is free. The arbitrator’s terms of remuneration will be set on the basis of either a fixed fee or time spent.

**Determination**

In both cases, a third party is appointed by the parties to make a binding determination of the dispute. The principal differences are:

- Everything concerning the function of the expert (jurisdiction, powers and status of the decision) will be covered by the agreement between the parties. The arbitration will be partly governed by the Arbitration Act 1996.

- In an expert determination, the expert has been appointed to give their opinion on the issue (although often having regard to information or submissions provided by the parties). An arbitrator has been appointed to adjudicate only on the evidence and submissions given by the parties.

- There are limited opportunities for challenging an arbitration decision, but usually there is no scope for challenging an expert determination. An agreement to refer a matter to expert determination can in theory provide for a review or appeals procedure, but in practice, because the parties sought an expert opinion, the determination is final and binding. There may be an exception “in case of manifest error”, but that will only catch “oversights and blunders so obvious as to admit no difference of opinion” (see http://bit.ly/1WGmUK6).

- An expert determination can be cheaper and swifter than arbitration, but much will depend on the procedure adopted. The parties can agree that arbitration is to be conducted on paper and within a tight timescale; conversely, they may wish to submit substantial quantities of information to an expert. Fees charged by an expert or arbitrator are likely to depend on the identity of the individual, the scope of the task and nature of the determination.

**Arbitration v mediation**

Unlike arbitration or expert determination, a mediator will attempt to move the parties towards a compromise, highlighting the problems and risks of their respective cases. If a mutually acceptable basis can be identified, the parties can choose to enter into a binding settlement agreement on those terms.

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**Further +info**

RICS Dispute Resolution www.rics.org/disputeresolution

Related competencies include Conflict avoidance and dispute resolution procedure

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Assessing
the damage

Section 18(1) of the Landlord and Tenant Act 1927 continues to generate interesting legal decisions. Two recent cases provide examples of the application of existing principles to the facts and, in the first case, Sunlife Europe v Tiger Aspect [2013] 2 P&CR 4 (Edwards Stuart J) and [2014] EWCA Civ 1656 (Court of Appeal), important points about who bears the burden of proof and the use of expert evidence.

The case concerned a lease of a building in Soho Square in London. Tiger Aspect was the tenant under two leases from the early 1970s on full repairing terms. It left the building in a very poor condition at lease end in 2008. Sunlife was the landlord and carried out extensive repairs in order to re-let the building.

The trial judge began by identifying the common law measure of Sunlife’s loss, i.e. the cost of putting the property into repair together with loss of rent for the period of the works: per Joyner v Weekes [1891] 2 QB 31. The judge assessed the relevant figure at £1.35m, applying the principle that where there is more than one way to carry out the works, the tenant is entitled to perform the covenant in the least expensive way, even if the landlord carries out more expensive works.

The matter then turned to applying the cap on damages under section 18(1), which limits the damages recoverable by the landlord to the diminution in value of the reversion resulting from the disrepair. In other words, the difference between the value of the landlord’s reversion in the condition it should have been and in the condition it actually was at lease end.

The judge concluded that the value of the reversion in its actual condition at the end of the lease was £4.46m, but that the reversion ought to have been worth £5.87m if the tenant had performed its covenants. As a result, the diminution of £1.4m exceeded the cost of repair (£1.35m) so that the section 18(1) cap did not apply to limit the landlord’s claim.

Points of interest
The Court of Appeal dismissed an appeal by the tenant against the judge’s assessment of the £5.87m figure. Three points of interest arise from the judgment of Lewison LJ in the Court of Appeal.

First, the burden of proving that the statutory cap under section 18(1) does not apply will not fall on a landlord who has carried out works of repair and improvement, but on the tenant. Lawyers can get unnecessarily activated about the burden of proof. But it is important in determining, for example, whether a landlord needs to get a section 18 valuation or can simply rely on the cost of repair as indicative of the diminution in value of their reversion.

Once an expert’s report has been disclosed it is evidence whether or not the expert is later called to give oral evidence.

In Sunlife v Tiger Aspect the tenant argued that where the landlord does work that goes beyond that which the tenant could have been obliged to carry out, they bear the burden of proving that section 18 does not apply, and so the judge had been wrong to infer that remedial work was necessary to square the breach of covenant.

The Court of Appeal rejected the tenant’s appeal on this point. Provided, on the facts, a judge has concluded (as he did here) that the landlord would not have carried out the work if the tenant had left the building in repair, a judge is entitled to infer, absent evidence to the contrary, that the reversion is diminished in value. It is only if the building would inevitably be improved regardless of the disrepair that the landlord will bear the burden of showing that section 18(1) does not apply.

Secondly, a residual valuation will be treated with caution by the court when applying section 18(1). The tenant’s primary case at trial was that performance of the relevant covenants would have left the building in an untenable state, with the consequence that an incoming tenant would have ripped out much of the tenant’s work (if it had been done). In his expert report,
the tenant’s valuer therefore used a residual valuation to identify the value of the building in the condition it ought to have been.

He identified a post-refurbishment capital value and worked back from there deducting a deferment factor, cost of works and developer’s profit to identify a land value. Lewison LJ noted that because a residual valuation is heavily dependent on the accuracy of estimated deductions, it will not be favoured where a more reliable valuation method exists.

In the event, the tenant had abandoned its primary case at the end of the trial, but left its expert somewhat exposed where he had been required to adopt a residual valuation because of the way the tenant had run its case.

Thirdly, once an expert’s report has been disclosed in proceedings it remains available to be relied on and the court is entitled to adopt some of an expert’s opinion without being bound to accept all their figures.

The landlord’s valuer had made an incorrect assumption in his report as to the cost of the works, but the judge otherwise preferred his approach. The tenant’s valuer was not called to give oral evidence but the judge nonetheless used his valuation as a template for his calculation, applying the adjusted figures given by the landlord’s valuer.

On appeal, the tenant objected that the judge was wrong to use the tenant’s valuer’s report as a template when he had not been called to give oral evidence, and had been wrong to accept some of the landlord’s valuer’s figures but not all of them.

The Court of Appeal rejected this point as well. Once an expert’s report has been disclosed it is evidence whether or not the expert is later called to give oral evidence (Rule 35.11 of the Civil Procedure Rules), and the judge was entitled to adjust some of the expert’s figures where he could see they were based on a false assumption, while at the same time adopting others.

Dilapidations claim
Another interesting example of the application of section 18(1) is to be found in Hammersmatch Properties v Saint-Gobain [2013] 2 P&CR 18. This was a dilapidations claim in relation to a large 1930s factory building let on full repairing terms. There was extensive disrepair at lease end. A stark difference existed between the parties as to the amount of the landlord’s claim: the landlord claimed £4.4m together with a substantial loss of rent; the tenant contended that damages were capped at £100,000 by section 18(1).

The case is a useful example of how the court will approach these often complex sorts of valuation. It also contains a useful summary by the judge, Ramsey J, of the legal principles for establishing the extent of the tenant’s breach. Applying the principles, the judge held that the cost of the works needed to put the property in repair was £3,087,712.

This exceeded the figure he identified as the value in repair, £3,061,251. Instead, the judge went on to consider the value of the site for development and concluded it was worth £2.1m on that approach. The diminution in value of the reversion was therefore the difference between its value in repair (£3,061,251) and the site value for development purposes (£2.1m) i.e. £900,000.

Beyond the demise
Finally, the Court of Appeal decision in Edwards v Kumarasamy [2015] EWCA Civ 20 goes one step further and implies an obligation to repair areas outside the demise where the covenantor has an ‘estate or interest’; this can be in the form of an easement through a common area. It should be noted, however, that this case fell under the application of section 11 of the Landlord and Tenant Act 1985.

The landlord’s claim for damages was therefore capped pursuant to section 18(1) in the sum of £900,000 and it could not recover damages for loss of rent or insurance rent.

More information
For the latest case law and how the outcomes impact on working practices, visit isurv.com

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Related competencies include Legal/regulatory compliance

Further +info
BIM presents rich opportunities for property professionals throughout the building life cycle. Sara Wilkinson explores its ‘value dimension’

## Turning data into value

Commercial property professionals need good quality through-life information about buildings, the surrounding environment and the market. At the same time, property services require robust and reliable data from many sources to deliver a complete view of performance and value during the building life cycle.

Effective information management across the various property sectors encompasses sourcing, organising and reusing of built environment information and data. Advocates for building information modelling (BIM) claim that the benefits for clients include faster approvals due to clearer design intent. However, to date, the benefits and opportunities to use BIM for facility managers (FMs) and corporate real estate managers (CREMs) has been overlooked.

BIM tools and processes were developed by the architecture, engineering and construction (AEC) sector to manage design and construction data. As these technologies and processes mature and evolve, so does the opportunity for other professional groups to use data contained within, or linked to, BIM models. The potential extends to FMs, CREMs, property managers (PMs) and investment surveyors to use the data contained in 3D BIM models and building management systems (BMS) to help with strategic planning, portfolio rationalisation and acquisitions.

BIM is defined as “a modelling technology and associated set of processes to produce, communicate and analyse building models”, where 3D models allow data to be shared. Over time, the 3D model has developed to incorporate 4D (time, or workflow, scheduling) and 5D (cost) data. Thus BIM is a series of interlinked databases, represented graphically using models, which can be shared and updated for design and construction tasks.

Property has three key characteristics; risk, growth and depreciation. The value of BIM for property is in the data required when assessing risk, growth and/or depreciation status, because it provides a description of building performance through life. This life cycle perspective includes commissioning, project execution, operations and maintenance, and recommissioning/disposal.

While value is addressed relative to BIM’s return on investment (ROI), this is typically at AEC project level, seeking to understand value relative to participating organisations. As such, these studies neglect the broader processes of client-side stakeholders and activities that lie upstream and downstream of design and construction.

RICS explored the potential to expand BIM to other professional activities through a series of workshops with experienced property professionals in Australia and England. Questions were asked about the types of data needed to provide professional services, where this data was sourced and at what point in the building life cycle it was needed.

After a comprehensive list of data types and services was established, the data was ranked in importance for particular tasks.

### Property life cycle

The life cycle of complex buildings makes it important to have robust, reliable through-life information about performance and value. Many investigations on the impacts of BIM and project performance and on business value focus on project and/or AEC outcomes.

Industry surveys in Australia,
the UK and the US show that most clients perceive a positive ROI when BIM is adopted.

For example, BIM can add value when assessing sustainability in a feasibility study, where costs and options can be assessed in respect of likely sustainability ratings under BREEAM or Green Star.

Because there is a value premium in sustainable commercial property in the UK, US and Australia, by using BIM data and simulations clients can be advised of the social, environmental and economic costs and benefits of options, allowing them to make informed decisions optimising or considering the impact on value.

However, does the information in AEC BIM models meet the needs of property professionals? AEC projects define life cycle as: pre-design, in which the decision maker from the client side evaluates project feasibility; schematic design; detailed design; construction documentation; construction; operation/maintenance.

Clients are the only party involved throughout. Taking the wider development and property management activities into consideration, a more extensive life cycle process includes activities such as: conception; planning and feasibility; preparation; execution; operation and maintenance; recommissioning.

**Information needs**

Information types identified in the survey as used by property professionals were classified (see Table 1), showing the data sourced, organised and (re)used by developers, property and portfolio managers, investment surveyors, valuers, PMs and FMs, building surveyors and in property transactions.

The data is sourced from building documentation, consultants’ reports, industry databases, building inspections, FMs, and documentation of the design and planning process typically created for compliance with regulations. Each information type was mapped with development and property management activities.

Of course there are challenges too, and the issues raised by practitioners surrounded inter-operability and data standards, data quality and fidelity, context, security and privacy, and digital skills and knowledge competencies.

Overall, there is potential for BIM data to be used by FM. FM and CREM professionals perform many tasks through the property life cycle using 24 data types (see Table 2).

Property professionals ranked the importance and need for the data types and different profiles emerged.

### Table 2

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CREM professionals have repeated data needs over longer periods of the life cycle, whereas building surveyors need a more limited range of data types at specific points, for instance when technical due diligence is performed. Although AEC focuses on design and construction, this is being extended into the operational phase and falls within the domains of FM and CREM. Property professionals requiring building performance and maintenance cost data will find BIM data useful, where available. The number of existing buildings with BIM is small, however BIM-enabled stock is more highly represented in new high-quality commercial property managed by FMs and CREMs.

### A way forward

Overall, it is feasible for FMs and CREM to use some BIM data, especially linked to the BMS. Data needs vary in range and the points in the property life cycle when it is required. The benefits are accessing and using more reliable and accurate data in professional tasks, although challenges prevail around data fidelity and assurances that it is current.

Expanding access to BIM could enable property professionals to improve the quality and accuracy of their services. Education programmes should be developed to allow property students to learn about BIM. At the professional body level, BIM competencies should be developed within the APC structure to provide recognition for this knowledge, skill and capability.

RICS has established the first BIM Manager Certification for members in construction and some aspects may be transferable to a property-focused certification. For existing practitioners, provision of online education resources would raise awareness and knowledge in respect of BIM and how property professionals could use data within the models.

Furthermore, CPD events will allow practitioners to realise the potential of using BIM data. It is time for property practitioners to start realising the potential of BIM in their professional practices.

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**Property has three key characteristics: risk, growth and depreciation**

More information:

- BIM and the value dimension. Sara Wilkinson and Julie Jupp www.rics.org/bimdimension
- RICS Futures www.rics.org/futures
- RICS BIM Manager Certification www.rics.org/bimmanager
- RICS BIM Group on LinkedIn http://bit.ly/I0U1zvE
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Knowing me, knowing you...

Emma Vigus explains the importance of conducting comprehensive research on a new client

Delivering accurate, quality work on time should help to ensure you remain on good terms with your client. But it is not always enough and if they are unhappy, this causes problems. Cynics may suggest there is nothing you can do about the eternally discontented, while optimists say you can identify the bad jobs with a few simple checks.

Does the work fit with your organisation’s strategy?
Euphoria and competitive spirit arising from being ‘in the game’ can cloud an honest evaluation of why you have been selected to bid. This may prevent a reasoned bid/no-bid process being undertaken, resulting in winning work that does not fit with your strategy for myriad reasons. As a minimum, you should have a basic process in place to establish whether it is worth competing for a tender.

Does your organisation have the expertise and resources to do the work accurately and on time?
Lack of expertise is one of the most common causes of professional indemnity insurance (PII) claims. You must always ask this question, whether taking on a new contract in an area in which you have long-standing expertise or diversifying into a new line of work or geographic region. Irrespective of experience and capability, an overstretched team is far more likely to make a mistake than one with a manageable workload.

Given the shortage of surveyors across most disciplines, consider long-term resource levels and their impact on your ability to continuously deliver against a service level agreement. You might be able to service the contract now, but will that still be the case in a year’s time? If not, how do you intend to fill the resource gap and can you afford to?

What percentage of our overall income will they account for?
Over-reliance on one contract or one client is a high-risk strategy. Aside from the financial downside of losing a customer who accounts for a high proportion of income, over-dependence on one client can have an adverse impact on your ability to negotiate either payment or contractual terms.

Is the work profitable?
Are you receiving a fee that reflects the resources required, your expertise, the associated risks and leaves you with some margin? If you are intending to run the project as a loss leader, establish at the outset the strategy you are going to deploy to convert related opportunities into income.

Is the work high risk?
Sophisticated firms will put prospects through a due diligence process. This involves gathering intelligence on everything from financial stability and corporate structure to (in the case of lending valuations) prior history of negligence allegations, approach to securitisation, average loan to value ratio, how a borrower’s susceptibility to default is assessed.

Research will pay dividends, as will conversations with your peer group and other professional advisers, including your insurance broker.

Should you notify your insurance brokers and what will the impact be on PII?
You should always talk to your insurance broker before accepting an unusual instruction, for example, working overseas for the first time or undertaking a new category of work. They should be able to advise on the suitability of existing insurance cover, confirm any additional insurance costs and, if required, notify your insurer (failure to do so where something is deemed material can result in your policy being voided).

Is there a conflict?
The purpose of a conflict check is to identify anything that prevents, or could be perceived to prevent, an individual’s or a firm’s ability to act impartially and in the best interest of a client. To carry out the checks effectively, the quality and efficacy of your client relationship management system and processes are critical, particularly in larger firms.

Lack of expertise is one of the most common causes of professional indemnity insurance claims.
Residential Due Diligence

Do you know with whom you are working?
Undertake due diligence on subcontractors and other contractors, e.g. panel members, architects and project managers. This should include:

- an assessment of their financial standing
- a review of their insurance arrangements (limit purchased, excesses and breadth of cover)
- their claims history
- referencing conversations with your peer group.

This should help to reduce the likelihood of finding yourself in the position of last man standing in the event of claim, or at worst uninsurable.

Do you understand what the client wants and do they understand what you are delivering?
Although this is clearly important on complex instructions, it is equally so when working for members of the public, who are unlikely to have an in-depth understanding of technical terminology or appreciate the physical restrictions that come into play when undertaking, for example, a building survey: “No, we don’t remove cladding to inspect the structure behind.”

Manage clients’ expectations from the outset:

- do not agree to timelines you cannot meet
- do not promise to deliver the undeliverable to win the business
- if demands are unreasonable, explain your concerns in writing and keep records of all communications
- ensure that uncertainty surrounding the service you are providing is resolved before you start work.

Are your terms and conditions up to date and fit for purpose? Have you sent a letter of engagement outlining the scope of services?
Serious consideration should be given to the negotiation of exclusions, limitations of liability and restrictions on the classes of person entitled to claim.

Bear in mind that not all exclusions will be effective in law, so if possible, consult a legal adviser at drafting stage. What will and will not be held to be effective will be dependent on a number of factors including:

- the identity of the parties
- the nature of the transaction
- the availability of insurance cover
- the reasonableness of the exclusion.

Your organisation has won the tender, but why?
The euphoria of winning a new instruction can cloud your judgment about what represents a good opportunity.

Before starting work, try to understand why your firm has been selected. You may think it is all about the quality of your business, but an honest appraisal might show the reason that you have been selected is because yours was the cheapest tender or the only firm willing to agree the contractual terms.

Equipped with this insight, you can take an informed decision about whether you are willing to bear the risk and the steps you can take to mitigate this.

Know who you are working for, deliver the product that meets the client’s requirements, and provide great customer service. If you can get all three right and you still get a negligence allegation, then it is time to join the cynics.

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“Ensure you understand the contract, seeking clarification if necessary from your insurance broker or solicitor.

Further info
Related competencies include Business planning, Conduct rules, ethics and professional practice.
One flue over the cuckoo’s nest

Chimneys are often deemed to be things from the past, but they are still widely used and there is resurgence in the use of open fires, wood-burning stoves and gas appliances. They are very exposed to the elements but often overlooked because they are difficult to survey – they can also be the nub of many property problems.

Chimney breasts are generally split into three groups:
- wholly internal (on a party wall, usually back-to-back with a neighbour’s)
- three-sided (partly internal with the fourth side on an external wall)
- projected (three sides standing out from the building).

**External problems**

Chimneys can be affected by ultra-local high and low-pressure areas. If an adjoining or nearby building is 1m or so above the stack on the one being surveyed, this can create a high-pressure zone that could stop air being drawn up the chimney (a large open fire needs about 255m² of air per hour to allow a proper updraft).

This pressure will fluctuate depending on wind conditions and the height and proximity of adjoining structures, and its impact is often underestimated.

High-pressure zones are an example of why surveyors should take a wider view of a building’s location, not just its construction.

Conversely, low pressure causes insufficient draw of air up the flue, which can happen if this becomes too cold. This often occurs on stacks that project from the building or where a flue is blocked. The air within the flue should be warmer than external temperatures if it is to rise. High and low-pressure zones can both result in excessive dampness inside the flue.

A vulnerable part of a construction is where the slope terminates at a stack projecting through a roof. Water runs down the slope and hits the rear upstand and flashing of a back box gutter, before it is diverted lower. Any defective back box or flashings (or blockages caused by moss, airborne detritus or plants) can mean water backs up, penetrating under tiles and into the base of the stack.

Older stacks are often constructed with thin outer walls (115mm) and without any damp-proof course at their base. These are vulnerable to rainwater penetration, especially where mortar has eroded.

Chimneys projecting through the roof ridge are very exposed to the elements. The flashing between the abutment of the ridge and the stack is a critical detail, often failing due to weathering and mortar erosion.

Flashing materials are predominantly lead or zinc. Solar gain will cause differential movement between metal flashings and masonry, particularly if south-facing. This continual expansion and contraction, exacerbated by frost action, will eventually weaken mortar joints until they fail where the metal is let into the stack.

Hard Portland cement, often used for pointing, can become brittle and fails much more quickly than traditional softer and malleable lime mortar. Air-entraining agents are sometimes added to mortar to increase its frost resistance. These create and increase the amount of tiny air bubbles by 10%-20% over normal mortars.

Chimney brickwork can suffer from spalling, especially in Victorian properties where original bricks are slightly softer and contain more fissures, allowing water ingress and frost action expansion forces.

"Chimneys are often deemed to be things from the past, but they are still widely used and there is resurgence in the use of open fires, wood-burning stoves and gas appliances."

Images © Michael Parrett
Mortar failures due to sulphate attack, frost action and weather erosion can also lead to movement of the stack, especially in windy locations. In extreme cases, stacks may collapse. Open chimneypots can become blocked with birds’ nests and may allow rainwater penetration down to the ground floor, sometimes evidenced by soot spots and staining on the hearth.

The crown is a vulnerable part of the stack, but difficult to inspect from the ground. Some are pronounced but others may be flatter in their curvature. Weathering and frost action can cause a breakdown of the flaunching (the cement covering the top brickwork that holds the pots in place), creating cracks that allow water ingress.

In older properties, flaunching would have been in lime mortar. In modern buildings, or those with successive repairs, harder Portland cement has been used and may have similar problems to pointing, as mentioned earlier.

Historically, properties in industrial areas have been prone to higher levels of sulphates in the air. Over time, any rainfall containing these pollutants would damage brickwork and masonry. This is similar to the corrosive effects of salty rain in coastal locations, which accelerates the deterioration of renders and mortars as well as metallic elements, particularly sacrificial zinc flashings.

Any metal objects (e.g. TV aerials) on chimneys make them more attractive to lightning strikes. This risk is increased if the building is tall or on high ground. I have seen the effects of lightning hitting lead flashings, which travelled down a metal valley gutter, along cast-iron gutters and down rainwater pipes until it eventually earthed, splitting all the metal rainwater goods.

Internal problems
Condensation may happen if the flue is partially blocked or fireplaces have been bricked up without venting. In addition to products of combustion returning into a property, e.g. smoke and carbon monoxide (CO), inadequate air-exchange rates mean flue gases can condense when warm and moist CO hits a cold flue.

CO is difficult to detect because it is odourless, colourless and tasteless and easy to inhale accidentally. It is produced when fuels do not burn fully. When a fire burns in an enclosed room, oxygen is gradually consumed and replaced with carbon dioxide; this prevents fuel from burning fully and releases CO.

CO detectors will help to alert homeowners to dangerous levels, but may have a shelf life and need renewing. Although not required in a private home, properties owned or managed by landlords must be serviced annually by a registered Gas Safe engineer.

Regular sweeping of flues used for coal and wood-burning fires is necessary to avoid a build-up of soot and other deposits. Often overlooked by owners, surveyors should always ask...
when a flue was last swept by a licensed chimney sweep.

Acidic build-up can cause extensive damage in upswept flues especially where dampness becomes an issue, leading to a breakdown of the internal parging, brick and/or stonework. In more serious cases of deterioration, dislodgement and failure caused by acid attack, older flues have to be completely relined.

This risk is increased if gas appliances are installed without a proper chimney liner or dedicated gas cowl on the chimneypot and the fire is just vented into the cavity.

Wood-burning fires can deposit soot and creosote salts on the flue lining, which can lead to serious damage to the chimney parging. When combined with moisture, these deposits can turn into sulphuric acid, and will contain isomorphous sulphates, chloride and nitrate ions (once only associated with rising dampness) among other mineral deposits.

Extended aerials attached to chimneys can render the roof more vulnerable to lightning strike. The chimney pots have been replaced with taller pots to overcome a high pressure zone created by taller nearby buildings.

A 1940s end flank wall projected stack. The walls around the flue and ‘withes’ (partitions between flues) are robust at 225mm. In older stacks, these are often only a half brick thick (115mm) and so more vulnerable to rainwater penetration.

The chimney stack is usually the last thing that is regularly checked and maintained, but should be one of the first things surveyors consider.

In Victorian and Georgian houses, wood or coal fires helped to keep stacks dry and any water ingress would have been dissipated by regular use of the fireplace. Fires were also important for mitigating the effects of moist air inside a property. Bricked-up fireplaces and double-glazing can now hermetically seal in moisture and buildings can no longer ‘breathe’ properly. Most dampness in old chimneys occurs in stacks that project on all three sides from an outside wall.

The configuration of a chimney is quite complex. The throat (the area just above the top of the visible hearth) should be gently curved and higher sections may be offset. Flues are generally narrow and easily blocked.

Flue parging is a lime-based render and vulnerable to moisture and heat. The constant heating/cooling cycle of fires, together with any moisture, may eventually cause parging and its underlying brickwork to deteriorate until they break off and become stuck on any angles and offsets in the cavity.

Any bridges across the cavity can lead to condensation, allow moisture transfer and restrict the flow of gases up the chimney. This is more likely if the stack is on an external wall because it is more exposed to rainwater and extremes of weather.

Chimneys have sometimes been repaired with square or cylindrical clay...
liners, often similar to underground drainage pipes. Because chimneys are usually offset, the butt joints of these rigid pipes may easily be misaligned, as would clay inserts using interlocking ‘tongue and groove’ pieces.

In these cases, misalignment and the resultant gaps between liner sections can create leakage paths and affect the upward draw of air, resulting in condensation and an escape of the products of combustion when the fireplace is used.

My previous articles in this series discussed damp problems in chimney breasts caused by underground leaks soaking into the fender wall of fire hearths. These do not have damp-proof courses and moisture wicks up the chimney breast, creating rising damp (but do not require a retrofit damp-proof course).

Identifying problems

- CCTV surveys can be taken from the top or bottom of a chimney, or using a hole bored through a chimney breast for an endoscope examination.
- Smoke-bomb tests (where a cartridge is ignited in the hearth) can determine whether there is a good draw of air. These check for smoke leakage from chimneypots and internal/external chimney breasts (including a neighbour’s, if the breast is on a party wall). Any smoke leakage will also indicate places where moisture can penetrate.
- A specialist option is an air pressurisation test of the chimney cavity. The fireplace and chimneypots are blocked with rubber ‘bungs’ and a tube inserted into the cavity. A calibrated air-pressurisation machine increases the cavity pressure to calculate its volume and then measures the rate of escape of air pressure. Any high rates of escape indicate a risk of water penetration.
- Moisture transfer from cavity blockages may be evidenced by damp patches within rooms, particularly bedrooms where chimney breast brickwork may only be half a brick thick on the face.

- Using a CCTV camera, or asking a licensed chimney sweep to push brush poles (minus the brush) up the chimney to see whether these catch on clay liner joints, would indicate alignment problems.

Solutions

Many chimney issues can usually be fixed by blocking any gaps (e.g. renewing mortar joints), re-fixing pots and fitting cowls, removing internal blockages, ensuring proper ventilation, sweeping chimneys and repairing flaunching, parging, box gutters, flashings and rainwater goods. Vulnerable areas should be checked regularly.

High-pressure zones can be negated by extending the height of the chimney stack so it is approximately 1m clear. Low pressure can be addressed by installing cowls onto chimneypots to counter the effect of downdrafts (these will also stop rainwater ingress and birds nesting). They can also be negated by checking there are no physical blockages within the cavity, especially at the throat, and ensuring the air in the stack (particularly if it is external) remains warmer than the outside air.

Building Regulations Approved Document J contains information charting average wind speeds for geographical areas and provides environmental clues of potential problems.

The Lead Development Association recommends an external polysulphide mastic sealant to replace mortar where lead or zinc is let into a stack. This takes up the differential expansion and contraction movement without failure. Sulphate-resistant mortars are available that have a lower tri-calcium aluminate content and thus a much lower alkali level. Inhibitor additives mixed with mortar containing natural zeolite also resist sulphates. Flashings should be let into the mortar by a minimum of 25mm and properly wedged, using either a polysulphide mastic or lime-putty mortar. Mortar course repointing should be undertaken on older stacks using lime-putty mortar and finished with a ‘bucket handle’ profile to increase resistance against rainwater penetration.

Chimneys may also be relined. A large rubber ‘condom’ is inserted down the flue then inflated. Fast-drying cement is poured around this insert, which is then deflated and removed, leaving a new rifle-barrel flue that will prevent water penetration and allow the smooth exit of the products of combustion.

Often the tallest structure in a location, most church steeples have a lightning conductor attached. This could be a useful addition to tall properties with high, exposed chimney stacks.

The chimney stack is usually the last thing that is regularly checked and maintained, but should be one of the first things surveyors consider. Because chimneys have both internal and external parts, surveyors should not look at a building in isolation but consider the surrounding environment.

More information

- http://bit.ly/1JOh8Cv
- Chimneys in old buildings, GBA Williams, SPAB
- BRE Good Repair Guide 15: Repairing chimneys and parapets
- Scottish Building Regulations Approved Document F (Ventilation)
- The Solid Fuel Association
- www.solidfuel.co.uk
An intelligent approach

Stewart Dalgarno outlines why offsite construction is becoming the first choice in delivering high-quality housing

Offsite construction is an established, high-value manufacture and construction method that delivers guaranteed quality, precision-engineered components to meet a variety of standards. A mainstream and intelligent way to build, it presents cost-effectiveness, speed and energy-efficiency advantages from inception to construction, while removing practices that could invite error or inconsistencies.

For residential surveyors, offsite construction offers significant on-site benefits, cost certainty, and outstanding durability and robustness. Based on certified products manufactured in controlled factory environments, it uses modern technologies to minimise construction risk and simplify design.

The construction process at the on-site stage is vastly reduced, making installation easier, reducing the need for trades, removing opportunities for error and enhancing the long-term performance of the projects.

In the UK, timber frame is the largest offsite construction sector; 70% of houses in Scotland are built by this method, which is also on the increase in England and Wales. Given its many advantages, timber-frame offsite construction can deliver home units quickly while maintaining profit margins and equity interests for constructors and investors.

Timber frame also enjoys an unlimited, sustainable material supply chain, giving the potential to manufacture 10,000 homes or units a year, with considerably shorter call-off periods than traditional build methods.

Gold standard assurance

With offsite construction currently used for one in five new homes, industry stakeholders know it to be low-risk, durable and exceptional value. Lending and insurance authorities can now balance both perceived and accepted risks for newer offsite construction products through a dedicated guarantee programme.

The Build Offsite Property Assurance Scheme (BOPAS) is an industry-leading accreditation scheme underwritten by RICS, Buildoffsite, Lloyd’s Register and Building LifePlans. It guarantees a product’s consistent through-life performance that it will remain saleable and insurable for a minimum of 60 years (more than three times the term of many mortgages) and provides assurance against any form of variability in the system or product warranted.

Developed in consultation with the Council of Mortgage Lenders and the Building Societies Association, BOPAS presents the gold standard for novel offsite construction techniques. It comprises:

- an appraisal of durability and maintenance
- process accreditation
- an online database of assessed building methodologies, registered sites and warranted properties.

Additionally, it is designed to evaluate the adoption of best practice by offsite constructors in competency, configuration, risk, and procurement management and process control.

Sigma II Build System

Stewart Milne Timber Systems’ Sigma II system is the only advanced closed-panel timber-frame/offsite construction product to achieve BOPAS accreditation. Offering an integrated approach with guaranteed performance and cost-effectiveness, this closed-panel timber-build system is the result of seven years’ collaborative research and development.

It enables clients to tailor the amount of prefabrication required per project, and encompasses closed and insulated walls, pre-fitted windows and doors, and insulated pre-wrapped floor and roof cassettes. All this offers residential developers...
Lessons from Japan

Earlier this year, I was part of a delegation that visited Japan, whose highly successful offsite construction housebuilding sector is producing more homes annually than the entire UK housing market. By investing heavily in research and development, Japan is a world leader in advanced offsite construction, with large corporations and brands dominating its private housebuilding sector.

The country has developed a sophisticated approach that is delivering highly customisable and durable newbuild homes. With an overarching focus on quality and system assurance, the market in Japan has benefited from BOPAS-like principles to the point where offsite constructed newbuild homes are given preferential mortgage rates and insurance terms.

It is hoped that introducing BOPAS to the maturing offsite construction industry in the UK will begin the same shift towards a more joined-up, industrywide approach.

North West Bicester

Stewart Milne Group is working with A2Dominion on its development in North West Bicester. This pioneering housing project will be the UK’s only true zero-carbon community and aims to deliver the highest standards of sustainable living to its residents. With its fabric-first design, precision-engineered, as-built performance and fully integrated offering, the Sigma II Build System was an ideal fit for the priorities of this ambitious task.

Stewart Milne Timber Systems designed, manufactured and installed the initial 93 Sigma II build systems for the first homes as part of the 393-home Exemplar phase of the project. With a 0.15 U-value, 3m³/hr/m² of air loss (in accordance with best practice as prescribed in Part L1A of the Approved Documents) and thermal bridging of 0.04, the properties will reach Code for Sustainable Homes Level 5 through excellent heat retention and airtightness.

Initial infrastructure work began in April 2014, and the first residents are expected to move in over the coming months.

Energy efficient and robust

When combined with a fabric-first approach, offsite construction adds even more value for clients and surveyors by delivering high-performance housing that requires little to no ongoing maintenance in terms of ‘add-on’ energy-efficiency technologies. Offsite construction reduces the building design versus as-built performance gap, through factory quality, simplified detailing and improved process controls on site.

Rising energy bills for consumers and impending carbon-emissions reduction targets for builders are a serious concern. Being able to build houses that do not require additional expensive ‘eco bling’ and are guaranteed to remain energy efficient for at least 60 years is an attractive assurance to investors and owners.

Stewart Milne’s technical team works with clients from the concept and design stage to advise on appropriate specification, value-engineer the project from the start, and reduce waste and risk. This contributes to increased buildability, lessens construction costs, and incorporates robust and durable solutions to any project brief.

Related competencies include Housing strategy and provision

Committed to innovation

Stewart Milne Timber Systems is part of the Stewart Milne Group, one of the UK’s leading independent housebuilding, construction and development companies.

The four divisions share one aim: to use their expertise, innovation, quality and commitment to provide the best solutions for their clients.

The group celebrates its 40th anniversary this year. Over four decades, it has been delivering housing and commercial builds through offsite construction, which has been integral to its clients’ continued business success and the satisfaction of its customers.
Listen to good advice

Is there a duty on the conveyancing solicitor to check a seller’s solvency, asks Fiona Pearson

A High Court decision earlier this year resulted in headlines suggesting that there is no duty on a purchaser’s solicitor to check a seller’s solvency.

What the court was in fact considering in the case concerned, Kandola v Mirza Solicitors LLP [2015] All ER (D) 26 [Mar], was how far beyond the normal pre-contract searches and enquiries the solicitor should go. It was held that there is no general duty on a solicitor to check the credit status of the seller in a conveyancing transaction unless expressly instructed. In most situations, the solicitor will of course become aware of a seller’s insolvency as a notice or restriction on the title will be revealed on the official search of the registered title.

However, in Kandola, a bankruptcy petition was registered against the property the day after exchange. Unfortunately, the timing meant that the official copies supplied pre-contract did not reveal the creditor’s notice, which would otherwise have shown up on the title. Had a bankruptcy search been undertaken at the Land Charges department of the Land Registry, this would have revealed any registered or pending bankruptcy petition against the seller.

In addition, the purchaser, Kandola, had agreed to pay an unusually large deposit of £96,000 (22% of the £425,000 purchase price) on exchange to the seller’s solicitors as agents for the seller, rather than as stakeholder. Kandola’s solicitors had warned him of the risk of paying the deposit on this basis, given the risk of losing it if the seller became bankrupt or was otherwise unable to complete, but he proceeded regardless. As a result of the bankruptcy petition, the sale failed to complete and Kandola lost his deposit.

Professional negligence

Kandola, an experienced property investor, brought a professional negligence claim against his solicitors. He alleged they should have undertaken a bankruptcy search or Land Registry priority search prior to exchange, either of which would have revealed the existence of the bankruptcy petition.

Counsel for Kandola accepted at trial that it was not normal procedure for either search to be carried out by a purchaser’s solicitor before exchange, and indeed that there was no recommendation to do so in the Law Society’s Conveyancing handbook. However, it was argued that the circumstances of the transaction required the solicitor to go beyond the handbook and take steps to assist in gauging the extent of the credit risk being run. He contested that any reasonable solicitor would have taken such steps.

The defendant solicitors argued that Kandola was fully and properly advised throughout the retainer, which included specific written advice not to exchange contracts on the basis agreed. Kandola failed to heed that advice. In addition, the solicitors were not aware of all aspects of the transaction and many of the negotiations were going on directly between Kandola and the seller.

Court decision

The court found the solicitors were not in breach of duty.

First, it was not ordinary conveyancing practice (nor suggested by the handbook) for a bankruptcy search to be carried out prior to exchange. In any event, there was little point in doing so, because the seller could have become bankrupt after exchange of contracts.

In the circumstances, there was no duty on the solicitors to have delved further by making a pre-contract bankruptcy search or Land Registry priority search unless they had been expressly instructed to do so; in this regard, the judge commented that just because a solicitor could take a particular step did not mean it was their duty to do so. In addition, it was clear that
the solicitors had adequately warned Kandola of the risks associated with paying a deposit on an agent, rather than stakeholder basis.

The court found on the evidence that Kandola had understood the advice he had been given and if he had wanted to check the seller’s solvency, he could have done so himself. However, the judge commented that even if Kandola had not understood the advice, his claim would still have failed if it was given in terms suitable for a person of his experience.

The court reinforced the proposition that the solicitor’s duty to explain matters to his client takes account of the client’s own experience; the solicitor is not required to explain matters that should be obvious to a person with the client’s experience or background. If the client asked for further explanation or appeared not to understand, the solicitor might have to go into more detail. However, as the judge explained, the solicitor was not a guarantor of his client’s subjective understanding and would have fulfilled his duty if “he gives an explanation in terms the client reasonably appears to him to be able to understand, and to have understood, even if the client later alleges that he did not in fact understand what was said”.

In dismissing the claim, the judge concluded: “Just because a solicitor (or other professional) could take a particular step does not mean that it is his duty to do so. His duty is always defined by his retainer. If he advises his client of a risk, it is a matter for the client to decide whether he wishes to take that risk, or to obtain further information or security before doing so. The solicitor is not, in general, obliged to seek out such further information unless instructed to do so.”

Reducing risk
The Kandola decision reinforces the standard procedure as set out in the handbook. A prudent solicitor may still consider it sensible to carry out a bankruptcy search prior to exchange of contracts. This is particularly so in circumstances where the deposit is to be released to the seller or where the sale is at undervalue (and so there is a risk that the transfer might be set aside).

A bankruptcy search at the Land Charges department of the Land Registry will identify whether there are any registered or pending bankruptcy petitions or other similar orders against individuals or companies. Every bankruptcy petition in England and Wales will be registered at the department. A search is valid for three weeks from the date of issue and the cost is just £2 for each name searched. It would be cautious to undertake a search at the outset of the transaction, just prior to exchange and before completion.

Clearly, diligent solicitors should take all relevant steps to protect themselves from the risk of a claim.

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Being cross-examined in the witness box and having to justify the steps taken several years after the event is not something to be relished.

These steps will of course, be fact-dependent to reflect the circumstances as they arise. One of the key points in this case was that Kandola was considered to be an experienced and commercially astute client. In such circumstances, the court considered that the level of information required was different to where a solicitor was advising an inexperienced client, or one dealing in matters with which they were not familiar.

The judgment makes clear that an inexperienced client, or one dealing in matters with which they are not familiar, may require more explanation before they can sufficiently understand the risk they are about to take. An experienced client, however, is likely to need less explanation or even none at all. In part, this is because the decision as to whom to trust in business is a commercial decision for the client and not the solicitor.

For commercial clients, there is a greater expectation that they would be astute and appreciate the risks of property transactions once these were adequately explained to them.
Quantifying quality

Stefan Kruczkowski and Andrew Martinelli look at progress on linking design quality and increased value in suburban residential developments

Introduced by CABE in 2001, the Building for Life (BfL) indicator reflected growing professional concerns with the design quality of suburban development. Criticisms included:

- **Poor connectivity**: new homes were physically and socially ‘cut off’ from their wider neighbourhood creating inward looking developments
- **Lack of local or distinctive character**: developments across the UK often looked similar if not identical; a phenomenon exaggerated by a high number of mergers between housebuilders
- **Disorientation**: mazes of roads and cul de sacs
- **Over-engineered roads**: few measures to calm vehicle speeds or encourage their use as social or play spaces
- **Sparse landscaping**: failure to take advantage of the local topography
- **Weak spatial definition**: buildings were seemingly scattered randomly around curvilinear street patterns
- **Insufficient parking**: isolated and unsafe provision often resulted in cars parked partly on pavements as residents struggled to find space
- **Wasted open space**: beset with anti-social issues due to no clear ownership or ineffective management regimes.

While some blame housebuilders for these failings, others argue that the developments simply reflect what the planning system has been framed to permit. Engineered roads and disorientating curvilinear layouts are symptomatic of highway standards, while national planning policies – including but not limited to PPG3 – sought to increase densities and restrict parking provision to shift people onto public transport despite fragmented or non-existent infrastructure.

With the government committed to driving up house supply, a high proportion of which is expected to be created within suburban-scale developments, BfL offers the opportunity to avoid common urban design pitfalls. Yet there continues to be a challenge in establishing a positive correlation between good design, cost and value given the potential impact on profit margins and land values.

**Quality audits**

By using BfL as a basis for a series of high-profile housing quality audits and highlighting the type of urban design weaknesses, CABE’s criticisms damaged the relationship with housebuilders, which regarded BfL as a stick with which to hit the industry.

CABE research in 2003 exploring the relationship between good design and residential property values failed to gain much traction with the housebuilding industry. Well-designed developments sold well and achieved target valuations – but so too did those that were less well designed. Compounded by historic lack of supply, housebuilders did not need to invest in design quality to secure sales and achieve target margins.

The demise of CABE in 2010 offered the opportunity to reflect on the initiative. BfL had a good level of recognition across government – nationally and locally – as well as good awareness across the housebuilding industry. Yet there were three linked areas of weakness:

- the elusiveness of developments achieving BfL
- a gap between investment in design quality and newbuild valuations
- the lack of consumer awareness of BfL

**More carrot, less stick**

In September 2012, Building for Life 12 was launched (see panel p47) The original 20 questions used to create a nationally consistent definition of good design were slimmed down to 12. But the most significant change in strategy was the introduction of a ‘carrot’ in the form of pre-completion awards for developments that performed well against the questions.
Prior to 2010, developers were entitled to apply for a BfL Award only after schemes were completed. A post-completion award is regarded as a ‘nice thing to have’ as a housebuilder, but is not particularly useful when their core business is selling the homes they are currently building as fast as possible while maintaining or enhancing margins. It follows that homebuyers would be more interested in knowing whether the development in which they were considering buying a new home achieved a certain design standard rather than what the developer had won on a completed scheme elsewhere (although arguably this might give some assurance of the credibility of a particular company).

Offering housebuilders the opportunity to secure commendation prior to construction and therefore compete not only on price but urban design quality might be more effective than the regulatory focused approach of the previous decade, it was reasoned.

Early indications
In February 2013 the first Built for Life™ Commended developments were announced. To secure commendation status a developer must have their scheme reviewed by an independent panel operated on a local basis with services provided by the Design Network. Since then an increasing selection of schemes have been added to the Built for Life website (builtforlifehomes.org).

Integrating into the neighbourhood
1. Connections
Does the scheme integrate into its surroundings by reinforcing existing connections and creating new ones, while also respecting existing buildings and land uses around the development site?

2. Facilities and services
Does the development provide (or is it close to) community facilities, such as shops, schools, workplaces, parks, play areas, pubs or cafes?

3. Public transport
Does the scheme have good access to public transport to help reduce car dependency?

4. Meeting local housing requirements
Does the development have a mix of housing types and tenures that suit local requirements?

Creating a place
5. Character
Does the scheme create a place with a locally inspired or otherwise distinctive character?

6. Working with the site and its context
Does the scheme take advantage of existing topography, landscape features (including water courses), wildlife habitats, existing buildings, site orientation and microclimates?

7. Creating well defined streets and spaces
Are buildings designed and positioned with landscaping to define and enhance streets and spaces and are buildings designed to turn street corners well?

8. Easy to find your way around
Is the scheme designed to make it easy to find your way around?

Street and home
9. Streets for all
Are streets designed in a way that encourage low vehicle speeds and allow them to function as social spaces?

10. Car parking
Is resident and visitor parking sufficient and well integrated so that it does not dominate the street?

11. Public and private spaces
Will public and private spaces be clearly defined and designed to be attractive, well managed and safe?

12. External storage and amenity space
Is there adequate external storage space for bins and recycling as well as vehicles and cycles?
Subject to payment of a licence fee, developers are entitled to use the Built for Life trademark for marketing purposes and showcase their development online. Towards the end of 2014 some developers were actively using Built for Life™ branding, among them the UK’s largest housebuilder. It will be interesting to see how their competitors respond.

Mike Fallowell, co-founder of Newton Fallowell, says: “Homes that sell faster and for more have kerb appeal. Built for Life schemes have this. Their streets are better arranged and designed and their homes will sell better in future on the second-hand market.”

**Added value**

Reluctance to invest in higher quality design could be directly related to an apparent absence of value uplift. It is also suggested that value enhancement may only arise at the point of second or future sale, and is not therefore of direct benefit to the originator of the scheme. This clearly acts as a disincentive, while ignoring the potential benefit of enhanced sales rates in higher quality schemes.

The RICS Land Group has been working to secure research on this issue. Should we, and can we, factor the presence or absence of an independent Built for Life Commendation into newbuild valuations? If, in principle, this was an acceptable proposition, what evidence might be required to support uplifts in valuations for commended developments? Alternatively, and arguably more realistically in view of market stability and sensitivities, should modest down-valuations be offered for developments that fail to secure commendation and will potentially become less desirable than their better designed counterparts on the second-hand market?

In an industry where every penny counts and every negative adjustment to margin is unpopular, modest upward or downward valuations could have a dramatic impact on the quality of residential environments.

The intention in raising these questions is to provoke further debate. Any aspect that appears to impact negatively on margin is unlikely to be popular. Equally, higher quality development is not always considerably more expensive to develop. A greater awareness of quality measurement and awards for design could assist in maintaining or perhaps enhancing margins, as well as securing much needed housing delivery that can stand the test of time.

It is entirely possible that the perception of higher costs and lower margins resulting from better quality development could be flawed. However, what the UK now needs to do is ensure that the housing crisis is tackled in a way that delivers places we can all recognise as being Built for Life.

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**Further +info**

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Related competencies include

Development appraisals, Housing strategy and provision, Planning
Eleanor Quince introduces a project to map where antiques were sold during the 20th century.

Histories of the UK antiques trade have focused on the collectors. But many significant objects now in UK national collections will have passed through the hands of one or more antiques dealers, about whom little is known.

Researchers at the Universities of Leeds and Southampton are working to place the antique dealer back into the history of 20th century Britain in its project Antiques dealers: the British antiques trade in the 20th century, a cultural geography. Funded by the Arts and Humanities Research Council, the idea is to build up a picture of the British trade in antiques across a 100-year period. By linking objects with dealers and finding out about the dealers themselves, the project hopes to supply the missing piece of the puzzle.

Significance
Directing attention to the often displaced and marginalised history of the commercial trade in antiques allows a radical repositioning, highlighting the relationships between the history of the commercial antiques trade, the discursive structures of the history of decorative arts and the establishment of public museum collections.

The project investigates the history of the trade in ‘antiques’ over the course of the 20th century with a focus on antique dealers, their activities and practices. Of primary interest is the trade in decorative art: furniture, ceramics, glass, textiles, examining general as well as specialist sellers.

Although the focus is on traders working out of Britain, the nature of the trade flows naturally to a consideration of international dimensions, in particular the relationships with the European and North American markets, with whom British antiques dealers regularly traded.

We aim to map the trade as a whole; those operating at the top as well as in the middle and lower tiers. The project follows three main lines of investigation: an assembling and assessment of quantitative and qualitative data on who was trading when and where; an identification of archival holdings giving a more detailed picture of certain traders; and a series of oral history interviews with prominent dealers who have spent a lifetime in the trade, providing personal stories of how it changed during the latter half of the century.

Part of the catalyst for the investigation has been the rapid transformation of the antiques trade taking place post 1980. The last two decades of the 20th century were a turbulent time, with a large number of dealers closing their shops, retiring, or modifying their trading activities. Therefore, the oral history archive will form an important record before these voices are lost to us forever.

Collecting the data
The project began in September 2013 and the first task was to identify dealers working within Britain between 1900 and 1950. In these first few decades of the 20th century, directories were published annually by county, listing all the businesses trading in that area. We identified dealers through a series of manual category searches.

While the data mainly informed us of dealers’ names, locations and trading dates, the categories themselves helped to build up a picture of a changing trade. In the early period, 1900-1920, a number of traders were listed under ‘curiosity dealer’. This terminology rapidly fell away, with only a handful of dealers retaining the title past the second decade of the century.

The oral history archive will form an important record of a changing trade.
As we moved closer to the start of the Second World War, dealers listed under individual categories – glass, ceramics, furniture – gave way to more generic ‘antique dealer’ titles, suggesting that portfolios had diversified as time moved on.

Locating the dealers through directories began to offer an idea of the number of dealers operating across the century. We estimate that there were in excess of 100,000; some in business just for a short while, others into second, third or even fourth generations.

The data forms the basis for an interactive map of the trade; the first output from the project. The searchable map, hosted online, shows the locations of dealers trading between 1900 and 2000. It allows the user to zoom in to pinpoint individual dealers in each area, and see the concentration in different areas. A sliding dateline allows viewers to see how the numbers of dealers in the different areas changed over time.

The map is a work in progress, currently showing just over 2,500 dealers, with the highest concentration in the earlier part of the 20th century, but it has been launched so that members of the public can contribute. As the research progresses, the map will include case studies of prominent dealerships, images of their shops and trading stands, of deals done and objects traded. They recount their experiences getting started in the trade – some inheriting or taking over existing businesses, others starting from scratch, and many beginning as apprentices to established dealers.

Collectively, their memories enable us to get an idea of common themes that preoccupied traders at different points in time. For example, many stories concerned Queen Mary, wife of George V and the current Queen’s grandmother, a well-known visitor of antiques shops. Many dealers prepared for her visits by removing small items – snuff boxes, brooches, miniatures – from easy reach, because tradition had it that if she picked up an item and said “oh I do like this” the antiques dealer had to give it to her as a gift. And often, the smallest items were the most valuable.

**Ongoing work**
The universities’ project continues until April 2016, culminating in a conference to be held at Temple Newsam House in Leeds. Following the conference, we will be publishing a book outlining our findings and delving deeper into the histories of some of the most prestigious antiques dealers.

As a research team, we are conscious that this project is only the beginning; there is so much more to be discovered about those who traded and those who purchased. The implications of this research have the potential to be far-reaching, not least in helping us to understand the changes affecting the British antiques trade today. It is hoped that future projects will follow, facilitated through the establishment of a Centre for the Art and Antique Market at the University of Leeds.

**More information**
> Get involved: submit information on the trade in antiques across the 20th century at www.antiquedealers.leeds.ac.uk/get-involved

Interactive Map: search for antique dealers in your area
https://antiquetrade.leeds.ac.uk

Blog: https://antiquedealersblog.wordpress.com

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Art has grown to become such a strong alternative asset class in recent years that the debate over regulating the market directly has become increasingly heated.

Where money looms large, ethics can play an important part in providing a practical solution in the marketplace for avoiding trouble, building confidence and ensuring stability.

Clear standards and the adoption of best practice are essential building blocks towards this goal. They are particularly important in the international art market because however much the authorities or vested interests might want to legislate, history tells us that comprehensive direct regulation is largely unworkable and serves only to damage markets while failing to prevent crime.

As art market lawyer Pierre Valentin argued at September’s Art Business Conference in Westminster, the establishment of the Conseil des Ventes in 2000 as a regulatory body to oversee the French auction market did nothing to prevent the emergence of the huge corruption scandal at the Hôtel Drouot, Paris’s centre for auctions, in 2009 (http://bit.ly/1Ftj10p).

In the UK, attempts to get to grips with stolen and looted art via the establishment of a centralised Home Office database 15 years ago fell apart because, having backed the plan after much deliberation, the government refused to finance it. At the same time, Scotland Yard faced other priorities after 9/11 and international cooperation proved more difficult than anticipated.

At a more prosaic level, anti-corruption policy meant that officers across the UK’s police forces dealing with art theft were reassigned after 18 months in the role – just as they established contacts and developed an understanding of the issues.

**Regulation issues**

Britain is among the top three most successful art markets in the world. Politicians wanting to tinker with that will have to face a number of home truths, as Valentin highlighted in the debate.

- regulators tend to be bureaucrats who lack market knowledge
- those in charge of enforcing compliance tend to be poorly paid and resourced, which is reflected in monitoring standards
- regulators cannot keep up with the pace of change
- the myriad variations across international borders make it all but impossible to regulate a global market at national level.

Perhaps the most detailed proposal for regulation in recent months has come from Dr Thomas Christ and Claudia von Selle of the Basel Institute of Governance. Their intermediary report of a self-regulation initiative for the art market, entitled *Basel art trade guidelines* (http://bit.ly/1is4XPH) argued that the current level of regulation and compliance was “insufficient”.

> “With some competitors engaged in unethical or illegal behaviour, operating profitably while acting with integrity and ethics is increasingly difficult,” they concluded.

But while the report correctly identified many of the issues that trouble the market, it set out a structure for governance that was simply impractical in a global market where the vast majority of businesses are small operations.

As with EU bodies, the report’s proposed secretariat (run at Basel by, presumably, those compiling the...
Emerging markets often focus on relativism, setting aside universal and absolute ethical standards in favour of dealing with things in the specific cultural context. It is a risky approach, though, as oil companies and others have found when falling foul of bribery scandals when negotiating contracts with officials in Africa and the Far East.

As far as I am concerned, utilitarianism should play no greater place in the art market than it already does, for instance in blocking the export of cultural object of outstanding national importance – note my use of the word ‘outstanding’.

To understand the problem, look at what is happening in Germany. If passed, its Cultural Property Protection Act will force anyone wishing to export a cultural artefact valued at €150,000 or more, and that is more than 50 years old, to secure an export licence.

How does this support the nation’s art market? How do you define a cultural artefact and who decides on the valuation? Who now will export artworks to Germany for sale and who, in Germany, to any wrongdoing among members that might bring the association or industry into disrepute. Expelling a powerful member who might turn on them legally is a fairly unlikely turn of events, publicising the act all but unheard of for the same reasons, despite the potential benefit of boosting public confidence in the association by showing that it has teeth.

An Ofart, like Ofcom, might get round these weaknesses, but then you are back with the problems of cost, red tape, interference with legitimate interest and so on.

Nevertheless, I suspect that, properly developed, the answer does largely lie with trade bodies. They can filter out the undesirables, encourage best practice, set out codes of conduct, support members and their clients in resolving disputes and help boost confidence in the professionalism of members.

This public service ‘branding’ can be invaluable in helping develop new markets, just as in China, for example, bidders at auction tend to chase classic brand names when buying wine, jewellery and other collectables. It is about confidence.

Qualifications
Specific professional qualifications should, in my view, attract preferential treatment when crossing international boundaries, especially into emerging markets that do not yet have the infrastructure for policing their own standards.

International recognised standards in security, packing and shipping should help companies win reduced insurance premiums as well as fast-track processing across borders.

In short, I would like to see more carrot than stick in promoting best practice. There has been far too much of the latter in recent times and, as another speaker at the conference, Robert Hiscox, pointed out, insurers are effective at back-door regulation by refusing to cover the dodgy.

Establish your kitemarks and then show business how it can use them to promote its brands and save money.

In the case of the art market, where I have particular expertise, there is no need for the ‘carrot’ of preferential treatment. If it is less risk, faster processing of consignments, more security or access to state-of-the-art facilities, they are all at the heart of what the market is about.

Establish your kitemarks and then show business how it can use them to promote its brands and save money.

With the ‘carrot’, you are promoting the standards of one profession over another in an already overcrowded market. A government ‘seal of approval’ would be a fairly unlikely turn of events; publicising the act all but unheard of for the same reasons, despite the potential benefit of boosting public confidence in the association by showing that it has teeth.

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