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While it may be his final chairman’s column, Alex Charlesworth looks to the future on dilapidations, fire safety and board restructuring

Changing times

The theme of this issue is dilapidations, which play a large part in the typical work of building surveyors. Governed by case law going back more than 100 years, dilapidations represent an often complex area that involves many heated debates between opposing building surveyors.

Every so often, though, a new case or topic emerges, and dilapidations practitioners pore over the detail, discuss the ramifications with lawyers and react accordingly. I am wondering whether murmurings of tenants’ insurance against dilapidations claims may signal one such new topic. Can a tenant insure against an oversized dilapidations claim? What impact will this have on those dealing with dilapidations?

Crystal ball gazing

Building surveyors often prepare dilapidations assessments to help tenants make provision for potential costs at the end of their lease. These are usually based on a worst-case scenario. However, predicting how a claim will be settled sometimes feels like crystal ball gazing, and of course tenants want certainty. Can they really insure against excessive settlements?

This concept is now a reality, however: a tenant can obtain insurance against a claim going above a maximum assessed by a building surveyor as the likely final settlement. Exceed this and the insurance pays out, including litigation and the landlord’s professional fees. Where settlements are higher than the maximum, will insurance companies try to take action against a surveyor who assessed it? These are early days, and discussions will no doubt become heated.

One case still being discussed is Riverside Park Limited v NHS Property Services Limited 2016 EWHC 1313 (Ch), where vacant possession was a requirement of the break clause; the court ruled that the landlord should be entitled to market the property in an open-plan layout rather than partitioned, as the client had left it. Of course, in giving such a judgment there are many more questions arising, which in turn will keep the legal profession in fees for many years to come.

Taking away partitions is just the tip of the iceberg, as other alterations and additions will also need to be removed. Essentially, if a tenant has contractually agreed to remove alterations and additions at the end of the lease term then they will need to do so as part of the requirements of vacant possession. It effectively makes the break more onerous, as it depends on the tenants’ compliance.

Fire safety

Following the Grenfell Tower disaster, occupiers and investors continue to be concerned about the safety of their buildings. RICS has therefore issued guidance on fire safety in existing high-rise buildings, which states that “any assessor must be suitably experienced and qualified, and anyone advising in these matters must not stray outside their own area of expertise” (www.rics.org/grenfell).

Finding suitably qualified individuals is proving a problem, however, as the issues relate not only to the cladding but also to fire precautions, types of cladding insulation and evacuation policy, to name but a few.

Building surveyors are currently on the front line, fielding concerns and questions about cladding. As with many approaches taken in technical due diligence, they are adept at carrying out holistic inspections and identifying where additional investigations are needed.

Perhaps one approach that would help them would be to introduce a risk rating matrix based on visual inspections. In such a system, low-rise commercial property not being used as a dwelling and which has several means of escape will be a low risk.

Conversely, a high-rise dwelling with limited escape routes will be seen as a high risk. Cladding or insulation that cannot be immediately identified will have a risk rating appropriate to its use, leading to recommendations and client discussions, and the matrix will also account for fire precautions, means of escape and so on.

Chair farewell

I have had the pleasure and honour of being Chairman of the Building Surveying Professional Group Board since 9 July 2014, and I stepped down on 9 November 2017, a period of some four months more than the three-year tenure.

I have been supported by a very able and hard-working board, and I thank its members for their effort and dedication. I would also like to thank RICS staff, in particular Alan Cripps, who has been the backbone of the board.

Looking to the future, RICS is pressing ahead with PG2020 and restructuring the professional group boards. As I write, details are still emerging, and the board hopes that these changes will bring more connectivity with the membership and that building surveying will be fairly represented, both in the organisation and to the public in the future.
Fire safety under review

You will all have seen extensive media coverage of the fire at London’s Grenfell Tower on 14 June, and our condolences go out to all whose lives have been affected. A fire like this can never be allowed to happen again.

RICS will be submitting a response to the public inquiry that has been convened into the fire, and the inquiry’s first report is expected next Easter.

Our previous President Amanda Clack has also been appointed to the independent expert advisory panel, along with BRE Chief Executive Dr Peter Bonfield, former London Fire Commissioner and government Chief Fire and Rescue Advisor Sir Ken Knight, and Roy Wilsher, Chair of the National Fire Chiefs Council.

Timely advice
The Department for Communities and Local Government (DCLG) has been made responsible for ensuring relevant and timely advice is given to local authorities, housing associations and the private sector on cladding and fire safety. RICS is directly involved in providing advice and leadership to the government Building Safety Programme.

A separate industry response group was set up by the DCLG, and we asked the Construction Industry Council to represent all its 32 member professional bodies – including BuildUK and the Construction Products Association – at the group’s meetings to ensure a joined-up approach. A review of the Building Regulations has also been announced, led by Dame Judith Hackitt, and RICS will be heavily involved in this (http://bit.ly/2eTXNHL).

Seven tests of cladding using aluminium composite materials (ACMs) were commissioned by the DCLG and carried out by the BRE. Of these, only three combinations of ACM cladding and insulation were deemed acceptable under BR136. Some tall blocks with the cladding-insulation combination that failed have already begun to remove this, and others have been completely stripped. Yet as unprotected insulation was exposed to the elements and began falling off, this increased the risk of injury to those on the ground.

Holistic assessment
RICS quickly set up a group of experts following the Grenfell Tower fire, and from the outset we maintained the view that a fire risk assessment of a whole building must be carried out, looking at more than just cladding.

The following all need to be considered:
- height in relation to fire and rescue equipment for firefighting
- means of escape, including number and adequacy of exits as well as protection from fire during escape
- fire detection systems
- fire suppression measures, including mist and sprinkler systems
- compartmentation, including adequacy of fire doors in the light of modern specifications
- smoke vents
- fire evacuation policy, that is whether occupants should remain inside or total evacuation should take place
- building management policy
- emergency lighting
- cladding combustibility.

RICS has identified a weakness in the provision of fire risk assessments, with seven different schemes currently being offered. Furthermore, there is no mandatory, regulated requirement for formal qualifications and experience in what can be a highly specialised and complex area of fire engineering.

Anecdotally, there are cases where no fire risk assessments have been carried out or of poor reports having been written by unqualified assessors. In addition, those deemed “responsible persons” under the Regulatory Reform (Fire Safety) Order 2005 are often unaware of their statutory duties or not qualified to understand the reports, and in some instances do not progress the recommended works.

We have therefore called on the relevant professional bodies to work towards a collective solution. We must ensure there is a properly regulated register of qualified risk assessors, whom “responsible persons” can appoint with confidence. Training and guidance for property owners and managers is also being brought forward.

We are also working with insurers and valuers to provide appropriate advice on issues arising after the Grenfell Tower fire, and have already published guidance (www.rics.org/grenfell). RICS takes its responsibilities as a leading standards-setting body very seriously, and has seconded staff to ensure lessons are learned from this tragedy, for everyone’s benefit. As well as making submissions to the public inquiry and Building Regulations review, we are working with others to develop an international standard on fire safety.

Since the sad event, RICS has been working to pull the fire engineering industry and built environment industry together and learn lessons for the future safety of the public, as befits our Royal Charter. We are also alert to media attention, so if members receive any requests for comment please contact Rebecca Hunt in the RICS Press Office (rhunt@rics.org) for advice.

Gary Strong FRICS is RICS Global Building Standards Director gstrong@rics.org

For links to all current DCLG documentation relating to Grenfell Tower, please visit http://bit.ly/2uoTarw
The RICS Dilapidations Forum Conference offered plenty of predictions for the way the profession might look in a decade’s time, reports Paul Spaven

Back to the future?

In my opening address to the Dilapidations Forum Conference, held at the Park Plaza Hotel, London in September, I invited the 400 delegates to consider what the dilapidations market might look like in 2027.

With US- or European-style three-year tenancies being the norm by then, might the condition of buildings at lease-end be assessed by super drones linked to building information modelling?

Could valuation arguments be settled by algorithms? Negotiations conducted by artificial intelligence, with any damages paid in Bitcoin by your dilapidations insurer? Will repairs to the building be dealt with by 4D printing using high-tech materials? Roof coverings kept intact by hydro-reactive polymers?

Perhaps by 2027 there will be no need for dilapidations specialists such as lawyers, valuers, building surveyors or engineers – freeing us all up to pursue our hobbies and explore the universe. Freedom through proptech!

All too far-fetched? Well, one of the three main conference sponsors, SeeBrilliance, has developed advanced chemicals to restore factory-finished cladding on site. Another, Liquasil, is already using modern plastics technology to resolve building leaks, and the third, GoReport, has developed software that enables surveyors to record and cost schedules of dilapidation on site using handheld technology and publish them online immediately.

Exhibitors and experts

Subjects presented at the conference included use of drones for surveying buildings, re-useable electronic data that enables real-time savings, and infrared thermography and ultrasonic corrosion monitoring to find defects or defend a dilapidations claim.

Another was the beginning of insurance cover for dilapidations liabilities, as demonstrated by one of the exhibitors, CLS – certainly something we wouldn’t have predicted, even last year. So perhaps my vision of 2027 is closer to being realised than I thought.

The conference is the most important in the dilapidations specialist’s calendar and always attracts the cream of expert presenters. Zia Bhaloo QC – Chambers and Partners Real-Estate Silk of the Year – chaired the legal review and panel discussion. This included Nicholas Dowling QC, consultant at Malcolm Hollis and joint author of our bible, the textbook Dilapidations: The Modern Law and Practice.

Trevor Rushton, technical director at Watts Group, was another presenter who reminded us of the science behind reinforced concrete defects and extolled the virtue of modern repair techniques.

Steve Lemmon, a partner in the in-house mechanical and electrical engineering team at Malcolm Hollis, meanwhile offered dire warnings about the phasing-out of further greenhouse gases used in air conditioning systems, and said creative technological solutions will be needed.

Conflicts of interest

Will Glassey, the technical author of the RICS Conflicts of interest global professional statement and partner at Mayer Brown, offered the delegates a timely reminder of their obligations under the statement, which outlines the rules we all need to follow when working for which RICS member firms must have procedures in place by 1 January 2018 (see article on p.14 of this issue).

There were two fascinating and unusual sessions during the afternoon. The first was a role-played cross-examination of an expert witness: David Holland QC of Landmark Chambers, described in the Chambers & Partners legal handbook as “tenacious” and “a realistic and skilled advocate”, demonstrated these qualities in grilling Iain Feasey, a senior associate at Malcolm Hollis.

The second was a fireside chat conducted digitally between a landlord, London and Cambridge Properties Managing Director Nick Burgess, and a tenant, Connells Groups Estate Director Ian Griffiths. They exhibited significant differences of opinion, particularly over the effectiveness of full and repairing insurance lease obligations.

However, we heard from Edward Shaw, a partner at Savills, that the various forms of alternative dispute resolution using the RICS Dilapidations Scheme might be useful (see article on p.9 of this issue and www.rics.org/dilapsdisputescheme). It was also heartening to learn from Neil Gilbert, a partner at Tuffin Ferraby Taylor, that the RICS Dilapidations in England and Wales seventh edition guidance note is proving to benefit both landlord and tenant one year on from its publication.

The future? Well, I chaired the event using an app on my iPad, comments were being relayed from attendees in real time, and delegates were interacting via their mobiles throughout the day... so the future is already here!

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To join the Dilapidations Forum, email dilaps@rics.org

BCIS Dilapidations Price Book 2018 is available from www.bcis.co.uk

RICS Dilapidations in England and Wales seventh edition guidance note www.rics.org/dilapsguide

Related competencies include Legal/regulatory compliance
“Supersession” is a term that can cause confusion at lease-end, so Jon Rowling clarifies matters

What’s the damage?

Supersession is a word that appears to mean many things to many people. It is widely used in the context of lease-end dilapidations, though, to indicate a limit on what a landlord is able to claim from a former tenant.

All lease-end dilapidations claims are damages claims; so, to understand supersession, two standard legal principles of the law of damages should be considered and applied, namely “mitigation” and “causation”.

Mitigation
A claimant – the landlord – should seek to mitigate its loss. If it does not do so, it is limited to claiming a sum equivalent to a mitigated position.

In a dilapidations context, the landlord should therefore not be claiming more than the cost of the most economic form of remedial works that would satisfy the obligation – potentially, patch repairs – even if it chooses to complete more expensive or extensive remedial works.

Causation
A claimant needs to be able to demonstrate that any loss suffered was caused by a breach of obligation on the part of the defendant, in this case the tenant. In a dilapidations context, if the landlord undertakes the more expensive or extensive form of remedial works, the question should therefore be why it has chosen to do so.

If the answer is held to be “because of the tenant’s breach”, then there is a causal link, there is no supersession, and the landlord can properly claim the cost of the most economic form of remedial work. If the answer is held to be different – perhaps that the market would demand that the more extensive or expensive remedial works should be carried out even if the most economic form of remedial works had already been completed – then there is no causal link, supersession has occurred, and the landlord cannot properly make a claim.

Remedial work
A landlord is not obliged to carry out remedial work in order to make a dilapidations claim. However, if it does it will generally be in a better position, in terms of evidence, when attempting to persuade a tribunal that a loss has been suffered and that the correct measure of the loss is the cost of the works.

A landlord who does not complete remedial work is certainly not prevented from making a claim but, to demonstrate a loss, would normally need to prepare a diminution valuation prior to issuing proceedings.

When a landlord does not carry out works, the supersession argument can only be theoretical. For example, the landlord might claim £1,000 to replace an item that was left in a non-compliant state; the tenant might argue that it could be patch-repaired for £600 but that, even if it had been, any sensible landlord would then replace the item to satisfy the market’s expectations. The landlord will disagree.

How do you resolve the disagreement? Ideally there is a sensible negotiation and then settlement. If not, the parties will need to present evidence to a tribunal indicating the respective merits and costs of replacement and repair, plus evidence of the market’s and the landlord’s approach to the matter. The landlord may need to be able to justify why it has not undertaken the remedial works.

The recent case of Car Giant Ltd & Anor v Hammersmith and Fulham Borough Council [2017] EWHC 197 (TCC) involved a landlord who had not completed remedial work for six years and, despite presenting a valuation claiming a loss, was not successful in this part of the claim (see p.8 of this issue).

Two limbs
In England and Wales, breaches of the repair obligation are also subject to section 18(1) of the Landlord and Tenant Act 1927, which is generally regarded as having two “limbs”.

The first requires a calculation to identify the diminution – reduction – in the value of the premises caused by the failure to undertake repairs in the most economic form.

The second limb is generally regarded as relating to the landlord’s intentions for the premises and, in particular, when the lease term ends or ended, whether there is or was an intention to pull the premises down or make such structural alterations as to render the repairs valueless; if this is the case, no damages will be payable.

In conclusion, to help navigate the concept of supersession in lease-end dilapidations claims, the principles of mitigation and then causation should be considered. Don’t just think about what remedial work the landlord has undertaken, ask why the remedial works were required. In England and Wales, the particular features of section 18(1) should also be applied to breaches of the obligation to repair.

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Related competencies include legal/regulatory compliance, quantification and costing of construction works.
Emma Humphreys reviews a recent landmark dilapidations case

If a job’s worth doing ...

It is becoming fairly rare to see a classic dilapidations case coming before the court, perhaps because clear standards for pre-action conduct and evidence are now set out in the Dilapidations Protocol. However, the decision in Car Giant Ltd & Anor v Hammersmith and Fulham Borough Council [2017] EWHC 197 (TCC) gave an opportunity for the court to confirm the correct approach to assessing damages where a landlord has done some but not all of the repair works.

Facts
The claimants were seeking damages of more than £400,000 from the former tenant of a commercial property comprising 39 units used as warehouses, a number of which were sublet. The 25-year lease had contained full repairing covenants, including one to yield up the premises by the claimants.

The parties agreed that the tenant’s breaches of these covenants when the lease ended in February 2011 would cost £402,887.86 to remedy. By September 2016, remedial work costing around £170,773 had been carried out at the premises by the claimants.

The tenant argued that the dilapidations claim was limited to £110,000 by section 18 of the Landlord and Tenant Act 1927; this imposes a ceiling on damages recoverable for a disrepair claim, so a landlord cannot recover more than the amount by which the value of its interest has been reduced as a result of the relevant breaches.

Appropriate approach
The court stated that the correct approach to this type of dilapidations claim is to identify the breaches and the works that the tenant should have undertaken to remedy them before considering the section 18 ceiling and valuing the damage to the landlord’s interest as at the end of the tenancy.

The court also confirmed that this valuation should be reached by comparing the hypothetical value of the premises had they been returned in the condition required by the tenant’s covenants, and the value in their actual state and condition.

Looking at the pertinent case law, the court noted that:
- where the relevant work has been carried out by the landlord, those costs should be used as a guide for the damage to the reversion
- where a landlord can clearly demonstrate that it intends to do the repairs, then in practice the burden of proving whether the damage to the reversion is less than the cost of the works may shift to the tenant
- a failure to undertake the repairs may indicate that they are unnecessary and that damage to the reversion should not be inferred from them. However, there might be explanations for the failure, such as the landlord deciding to sell the property at a lower price rather than undertake the repairs itself.

Decision
The above principles were relevant in Car Giant because only some of the repairs had been done by the claimants.

The court reduced the cost of this work under consideration – £170,773 – by £10,000, which was deemed the amount that the hypothetical purchaser might reasonably expect to recover in due course from the subtenants still in occupation of the various units towards repairs. After allowing recovery for financing costs of £5,000 based on the claimants’ actual expenditure, this led to a diminution in value calculation of £166,000, rounded up.

Turning to the repairs that had not been undertaken by the claimants, the court felt that it could not take account of these additional elements when deciding on the diminution in the value of the reversion, since there was no evidence to suggest that this value had been reduced by the outstanding works.

In particular, the claimants had not explained the six-year delay in undertaking these repairs, and there was no evidence that the remaining work would ever be carried out, neither that the outstanding repairs were serious or substantial. Indeed, the court noted that the claimants appeared to have undertaken such repairs as were required to obtain market value for the units.

The court therefore concluded that the damages for the tenant’s disrepair should be limited to £166,000. It also awarded interest at 1% above base rate and fees of £13,125 incurred in the preparation and service of the schedule of dilapidations, claim summary and drainage report.

The claimants suffered on costs in a separate judgment in the same case, not least because the tenant had made an offer under Part 36 of the Civil Procedure Rules well before trial to pay £250,000 in damages. The claimants’ costs recovery before this offer was reduced to 50%, and the tenant was awarded its costs from the date of the offer was made.

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Related competencies include Legal/regulatory compliance, Quantification and costing of construction works
Sensible settlements

Vivien King takes a look at the RICS dilapidations disputes resolution scheme

In 2014, RICS launched a dilapidations scheme specifically designed to allow quick and economic resolution of lease-end dilapidations disputes. It aims to put both parties on an equal footing, to keep costs down and to allow experienced parties to be represented by their usual advisors.

This all sounds great – but the scheme is rarely used. Why is this? It is not RICS’ first attempt to introduce a dilapidations dispute resolution service. As on the previous occasion, surveyors have been trained and examined with the aim of sitting as independent experts. However, unlike their counterparts in rent review, who resolve most disputes by sitting either as arbitrators or independent experts, dilapidations surveyors have failed to agree on the use or appointment of their peers to resolve disputes.

There could be several reasons for this. Perhaps surveyors practising in the field of dilapidations simply do not know of the scheme, in which case this article might help remedy the situation. Perhaps the right people have not been trained – there are certainly some well-known practitioners who are not on the list, although several other are – but this could be resolved by parties agreeing to make a private appointment, as so frequently happens with rent reviews.

Or perhaps the scheme is too complicated – certainly a criticism that has been made of it. But this again could be resolved by a private appointment of the independent expert or arbitrator, on less complicated terms agreed by the parties.

Advantages

What are the advantages of using an independent expert or arbitrator with knowledge of dilapidations as a surveyor? First, they have just that – experience in the field in which they are to give their determination or award.

The structure of the courts has recently been changed, with the creation of the Business and Property Court, incorporating specialist courts such as the Commercial Courts, the Technology and Construction Court, in which dilapidation cases have historically been heard, and the courts of the Chancery Division. While this enables judges with particular expertise to be better deployed, the fact still remains that a judge may not be dealing with dilapidation claims on a regular basis.

Costs

Furthermore, there is the question of costs: going to the courts is expensive. While the judge is not paid by the parties and no fee is charged for use of the courtroom, court fees themselves are now high and even with cost budgeting – a procedure whereby the court limits the costs faced by the parties – awards can often rival the claim itself.

In 2010, the Rt Hon. Lord Justice Jackson expressed concern about the issue, publishing a report that led to substantial changes in the costs of court procedures in England and Wales. He followed this with a supplemental report in July 2017 that recommends a voluntary pilot of a capped-cost regime for cases where claims are up to £250,000, which would introduce “streamlined procedures” and limit cost awards to £80,000.

Nevertheless, this is still a substantial sum. Costs involved in the appointment of an independent expert or arbitrator could be considerably less, particularly if a procedure of written submissions is adopted and – with all due respect to the profession – lawyers are kept out of the procedure.

A fee will be paid by the parties to the arbitrator or independent expert, but if there is no hearing before them, there will be no need to pay for a venue. In fact, if written submissions are adopted, along with counter-submissions if required, the whole procedure can be quick and cheap.

Most cases of dilapidations are sensibly settled between the parties or their appointed surveyors, and it is only the occasional case that ends up in court. The involvement of a third party should still be seriously considered as an alternative to the courts or in those cases where an amicable settlement is proving difficult. Why not try it?

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www.rics.org/dilapsdisputescheme

Related competencies include
Conflict avoidance, management and dispute resolution procedures,
Legal/regulatory compliance

Image © Shutterstock
Expressing reservations

James McAllister and Stuart Frame unpick the complicated context in which surveyors operate when they offer legal advice

Surveyors operating in certain disciplines will inevitably have to advise on legal matters as part of their duties. Indeed, those specialising in party walls, boundary disputes and dilapidations would struggle to avoid doing so as part of their service. But does this amount to formal “legal advice”, and should it matter if it does?

Reserved legal activities

Under the Legal Services Act 2007, it is a criminal offence, punishable by up to two years’ imprisonment or a fine, for a person to carry out a “reserved legal activity” without being entitled to do so. Such activities include conducting litigation and making oral submissions in court on behalf of a litigant – rights of audience – probate and notarial activities, administration of oaths and drafting specific legal documents such as deeds of land. This also incorporates drafting “instrument[s] relating to court proceedings” for reward, as defined in Schedule 2, paragraph 5(1)(c) of the act. These are known as “reserved instrument activities”.

“Entitlement” to undertake reserved legal activities is enjoyed either as a person authorised by a relevant “approved regulator”, or as an “exempt person” for the purposes of that particular activity. It should be noted that RICS is not an approved regulator for the purposes of the act, and the only exemption that specifically applies to surveyors concerns reserved instrument activities, as stated above.

RICS members working for profit and not under the direct supervision of an authorised person may nevertheless draw up documents that relate to an existing tenancy, or a document that creates a farm business tenancy, according to the meaning of the Agricultural Tenancies Act 1995 cited in paragraphs 3(5)–(6), and Schedule 3 of the 2007 act.

If a person did not know, or could not reasonably have known, that they were committing an offence under the 2007 act they may have a defence. However, RICS members are unlikely to succeed in making such a defence given that the professional guidelines are readily available, and these clearly outline the standards of competence that are expected of members.

It is therefore imperative that surveyors operating in legal disciplines understand when their role strays into that of reserved legal activities for the purposes of the 2007 act.

While the act strictly regulates the undertaking of reserved legal activities to those so entitled, it does not prohibit the undertaking of all “legal activities”. Although reserved legal activities are still technically legal activities, section 12(3)(b) of the act expands the definition of legal activities to encompass: “(b) any other activity which consists of one or both of the following— (i) the provision of legal advice or assistance in connection with the application of the law or with any form of resolution of legal disputes; (ii) the provision of representation in connection with any matter concerning the application of the law or any form of resolution of legal disputes.”

The entitlement of non-lawyers to carry out “legal activities” is subject to certain enactments to the contrary; for example, section 84 of the Immigration and Asylum Act 1999 expressly prohibits the provision of immigration advice and services, except by certain persons.

Scope for surveyors

There is, however, no enactment excluding surveyors from performing certain legal activities. They are able to “assist” with the law or “represent” in the resolution of legal disputes under the framework of the 2007 act, subject only to a prohibition against an unqualified person expressly presenting themselves as a solicitor while carrying out these activities, as per section 20 of the Solicitors Act 1974. Absent fraud, there is no limitation on non-lawyers providing legal advice or representation that is not court-related.

This position is both practical and unsurprising, given:
- the diverse range of tasks and specialisms carried out by surveyors
- the significance of legal knowledge to much of this work
- the official assumption of solicitor-like functions in processes such as rent review arbitrations.

“Representation” in this context is not defined by the act, but must fall short of “the conduct of litigation”, or “court room advocacy”, either written or oral, which are clearly reserved legal activities. Correspondence with one party in relation to a dispute on behalf of another party, however, would not appear to fall within this distinction.
In principle, a surveyor can provide specialist legal advice, for remuneration or otherwise. Such remuneration will not, however, be recoverable as part of a party’s legal costs in litigation.

This includes advising on the merits of starting legal proceedings, as recognised in the RICS Boundaries: Procedures for boundary identification, demarcation and dispute resolution third edition guidance note: “do not be surprised if the client wishes to proceed with a court appearance even after you have advised that there is absolutely no possibility of the case being successful.

“As a chartered surveyor, you or the professional advisor/solicitor should make clear that the client fully understands the significant penalties that could be attached to proceeding unwisely” (www.rics.org/boundarygnthirded).

The broad way in which section 12(3)(b)(i) of the 2007 act is framed means that advising a party at a later stage is also unlikely to incur anything more than a possible claim in negligence, in the event that this advice proves wrong and the court determines it was reasonable for the recipient to have depended on such advice.

Exercise caution
RICS guidance notes are also broadly worded, to provide some protection against actions in negligence where functions have been legitimately assumed or contracted for. However, it is implied that a legal opinion should be sought, or caution exercised, when giving advice that touches on legal issues falling outside the surveyor’s expertise. As the RICS Dilapidations in England and Wales, seventh edition guidance note states: “Surveyors should be aware that the area of dilapidations involves many legal considerations and should avoid advising or taking steps outside their area of expertise” (www.rics.org/dilapguide).

The most apposite examples include advice on activities that the surveyor is prohibited from undertaking under the 2007 act, such as the exercise of rights of audience and the drafting of dispositions of land or their interpretation. Advising on the merits of a claim, while permitted, is particularly risky, especially if the client intends to pursue litigation without legal representation.

Understanding where to draw the line for surveyors operating in legal disciplines is the critical issue. Surveyors operating outside their area of competence when they provide legal advice, or venturing into reserved legal activities where they are not entitled to do so, may fall foul of the 2007 act and face the prospect of criminal prosecution. This is, of course, aside from any parallel civil liability in tort for negligence or regulatory proceedings.

James McAllister FRICS is a director of the Dilapidations Consultancy Ltd jm@dilapidationsconsultancy.com

Stuart Frame is a barrister at Staple Inn Chambers sf@stapleinn.co.uk

Related competencies include Conduct rules, ethics and professional practice, Legal/regulatory compliance

RICCS celebrates 150 years

RICS marks its 150th anniversary in 2018, and to commemorate this milestone, it is running campaigns for professionals, members and the wider industry.

Pride in the Profession will celebrate 150 years of surveying success by looking at the positive impact the profession has had in society, demonstrating how varied and rewarding a career in surveying can be. We need you to help us by nominating inspiring people and projects to illustrate the benefits that surveying has in the world around us. Submissions can be made via the RICS website (rics.org/150), with the best examples to be published there during the course of the campaign.

Cities for our Future, meanwhile, is a global competition run by RICS in partnership with UNESCO designed to address the most pressing issues facing the world’s rapidly expanding cities.

Global urban populations are predicted to grow by more than 2.5bn by 2050. This presents one of the defining challenges of our time, putting unprecedented levels of strain on property, construction, infrastructure and land use.

RICS will challenge students in the fields of surveying, architecture, design and engineering among others to consider the problems posed by rapid urbanisation and to find innovative solutions to the problems facing many global cities. The competition, which launches officially on 15 January, will be judged by some of the leading names from our professions and beyond, and the best idea will be awarded a cash prize.

We’re also inviting our members around the world to mentor shortlisted entrants – a great opportunity to help shape future talent. To register your interest, email us at 150@rics.org.

Finally, the Pledge150 campaign will also see the organisation partnering with property profession charity LandAid to raise £2.25m by December 2018, to provide 150 bed spaces for young people at risk of homelessness. www.rics.org/pledge150

UPDATE

Recent published
Conflicts of interest global professional statement, 1st edition
www.rics.org/conflictinterest

Forthcoming
Whole life carbon assessment for the built environment professional statement

Reinstatement cost assessments of buildings guidance note
www.rics.org/standards

All RICS and international standards are subject to a consultation, open to RICS members. To see the latest consultations, please visit www.rics.org/consult

Related competencies include Conduct rules, ethics and professional practice, Legal/regulatory compliance
Under the skin

Trevor Rushton scrutinises the performance of cladding systems and the factors that can lead to failure

The horrendous images of the Grenfell Tower fire will continue to haunt the profession for years to come; inevitably, attention is currently focused on the performance of cladding systems in fire, and until we have the results of the public inquiry it will be dangerous to speculate as to potential changes in regulations and standards.

However, the behaviour of cladding systems is not simply measured in terms of their behaviour in fire; there are numerous other factors that have the potential to affect their long-term performance.

Cladding is now dominated by lightweight systems of timber, aluminium, high-pressure laminate, stone or terracotta. Even brickwork is increasingly substituted by brick slips on a rigid-foam carrier system, as forms of construction become ever lighter. From a surveying perspective, the important components and elements are largely concealed from view and it is difficult to assess the quality of work.

Timber cladding

In a drive to establish a low-carbon, sustainable footprint, timber cladding has become a popular choice for buildings, but with mixed success. External timber cladding third edition (http://bit.ly/2wmvPYE), published by TRADA Technology, offers some helpful guidance as to the correct specification of such cladding, the most vital factor being durability.

Naturally durable trees such as cedar and Douglas fir can perform well, but a lack of consideration of detailing for rainwater run-off, fixing and moisture movement can result in reduced operating life, even when more expensive durable materials are used.

Alternative, less-durable species can be heat-treated, a process which involves heating the timber in a kiln to about 200°C to destroy the hemicellulose that typically enables fungal growth. An alternative to heat treatment is chemical modification – acetylation – which modifies the properties of the timber and reduces its ability to absorb moisture.

Being a hydroscopic material, timber expands and contracts according to moisture content. Typically, in-service moisture conditions of 12-18% are anticipated, although saturation can be expected periodically. Timber that has been installed too dry or too wet can suffer distortion, leading either to unacceptable gaps or buckling. Ideally, the installation’s moisture content needs to be maintained at about 16%.

High-pressure laminates

High-pressure laminates (HPLs) are increasingly versatile and are now commonly used on building exteriors. Usually a blend of natural fibres and thermosetting resins manufactured under high pressures and temperatures, the panels can incorporate a variety of decorative finishes. When installed correctly, HPLs are durable, but as with many products installation and fixing must be carried out strictly in accordance with the manufacturer’s instructions.

A common method is to use rivet fixing, in which a central, fixed point carries gravitational loads while perimeter fixings restrict movement in the wind; the perimeter fixings must, however, permit the panel to move as a result of thermal and moisture changes, otherwise there is a risk of distortion, which will damage them or pull them out.

The fixing specification is critical, but of course once the panel has been installed it is difficult to establish whether the conditions have been satisfied, unless intrusive investigation is undertaken. A typical fixing specification is as follows:

- rivet shank diameter is 5mm
- rivet head diameter is 16mm
- fixed-point hole diameter is 5.1mm
- hole diameter for sliding points in the panel is 10mm
- the rivet head should be 0.3mm free from the panel surface
- rivets must always be centred in the holes
- to retain their position, each panel must have one fixed point in the centre
- all other fixing points are sliding points.

Poor fixing coupled with poor drainage and ventilation behind the panel is difficult to resolve without taking the cladding off – an expensive and disruptive operation, and for which it will be difficult to recover costs in buildings under multiple ownership.

Factors in failure

According to the Construction Industry Research and Information Association report Cladding fixings: a guide to good practice (http://bit.ly/2xXEJkq), it is estimated that 80% of cladding failures are due to three principle factors: location, oversized holes, and fixings overloaded or losing load capability over time, otherwise known as creep.

While traditional, heavy claddings demanded heavyweight bespoke bracketry, light claddings including

Distortions in an HPL cladding system resulting from incorrect fixing
thin stone–aluminium composites are usually supported on T-bar cladding rails arranged vertically and held off the building by aluminium “helping hand”-type bracket systems.

There are a variety of such systems, but common to their design is a simple L-shaped bracket with or without a thermal break strip, into which the leg of the T-bar can be pushed and adjusted to ensure vertical and horizontal alignment.

To simplify manufacturing, many brackets are supplied with round and slotted holes; these need to be used according to whether the bracket is taking gravitational loading – when a fixed point is needed – or restraint loading – in which case a slotted fixing is needed.

If the incorrect holes are used, there remains a risk of distortions from thermal expansion or long-term creep of the building. Needless to say, the spacing and fixing of cladding systems need to be the product of careful consideration of wind-loading conditions, as per BS EN 1991-1-3: 2003.

On 5 September, the Department for Communities and Local Government issued a circular to building control bodies and approved inspectors drawing attention to the need for competent and appropriate design of fixings.

This states that: “Failure to properly take into account these factors can mean that the safety factors used during calculation and design to meet anticipated wind loads can be significantly eroded or, in some cases, reduced to zero. Where safety factors are marginalised, only a perfectly installed system will be likely to resist predictable peak wind loads” (http://bit.ly/2y9JJPU).

**Water management**

Another critical consideration with cladding is water management. If water penetrates a cavity, it can move down through the cladding system to infiltrate the building at interruptions such as window and door openings. Rigorous water management is essential: this is often achieved with the use of cavity trays, or ethylene propylene diene monomer (EDPM) rubber membranes, at appropriate positions.

Given the need to maintain ventilation, cavity tray details also need to be constructed in such a way as to permit effective ventilation and prevent insect and vermin entry. Unfortunately, drainage mechanisms are often neglected or left to the cladding installers to sort out on site, causing inevitable leakage problems later.

Cladding designers have long appreciated that it is impractical to confront the weather head-on and create a totally impervious outer barrier. It is far better to accept that leakage will take place, designing methods to accommodate it and ensure water drains away harmlessly.

Good ventilation is an essential mechanism in drying, and will permit the harmless diffusion of water vapour from the interior of the property. The provision of good ventilation, however, is contrary to the principles of fire management, as large, narrow voids enable flames to spread in an uncontrolled fashion behind cladding.

So the provision of fire barriers is essential, but these also need to accommodate ventilation, usually by means of intumescent materials. However, distortion of lightweight panels in the event of a fire can overcome the advantages of intumescent foam.

Where cladding is fixed in front of mineral wool insulation, it is usual to provide a breather membrane between the cavity and the insulation to prevent the passage of liquid water into the inner parts of the wall where it could cause harm. Breather membranes need to be detailed and fixed properly to be effective; incorrect lap detailing can result in water ingress.

Seamless finishes such as external wall insulation systems rarely prove totally watertight, and the National House Building Council insists on the provision of a drained cavity behind the cladding for tall buildings. Again, it is very important to note that adequate attention is given to the drainage of any water that penetrates this void: many manufacturers’ standard detailing is prepared on the basis that a drained cavity does not exist, so you should treat it as you would treat a cavity wall.

In summary, while we await the result of further deliberation on the fire performance of cladding, as surveyors we need to be alive to the potential ways in which lightweight cladding systems fail – especially since the components that are critical to the system are often concealed from view and require intrusive investigation. Collectively, surveyors need to be up to date when it comes to the inspection of cladding.

TOTALLITY LISTS

Trevor Rushton is a partner at Watts

**Related competencies**

Building pathology, Construction technology and environmental services, Design and specification, Fire safety
Members and regulated firms are encouraged to have procedures in place to deal with conflicts of interest by 1 January, write William Glassey and James Morris

Conflict resolution

Conflicts of interest can be damaging to the integrity of the profession. Indeed, the public and press have expressed concern, and questions have been asked in Parliament regarding the way in which some surveyors have dealt with conflicts in the past.

In response to this criticism, and in an attempt to safeguard the integrity of the profession, RICS issued the Conflicts of Interest global professional statement in March 2017 (www.rics.org/conflictinterest).

The statement applies to all areas of RICS practice around the world, and all members and regulated firms must comply with the statement’s mandatory requirements, which come into effect on 1 January 2018.

It contains two rules, on conflicts of interest and confidential information respectively, followed by some definitions, and is supplemented by commentary providing more detail on the practical application of these.

The document does not, and cannot, provide an answer for every possible scenario in every branch of the surveying profession, but it does provide a clear framework of the principles that must be followed when assessing whether there is a conflict of interest, and what action should be taken if there is.

Doubt and duty

If in doubt, one should always return to the duty or duties the members or regulated firms owe and to whom, before considering whether it is appropriate to proceed. The statement does not place an absolute prohibition on acting when there is a conflict of interest or a significant risk of one, but allows RICS members or regulated firms to represent clients where all of the following apply:

- all those who are or may be affected have provided their prior informed consent
- it is lawful to do so
- it is in the interests of all those who are or may be affected
- it will not prevent the provision of competent and diligent advice.

There are three different types of conflict: a party conflict, an “own interest” conflict, and a confidential information conflict.

- A party conflict is a situation in which the duty of an RICS member or a regulated firm to act in the interest of a client or other party in a professional assignment conflicts with a duty owed to another client or party in relation to the same or a related professional assignment.
- An “own interest” conflict is a situation in which the duty of an RICS member or a regulated firm to act in the interests of a client in a professional assignment conflicts with the interest of that same member or firm, or the interest of any of the individuals in that regulated firm who are involved directly or indirectly in that or any related professional assignment.
- A confidential information conflict occurs between the duty of an RICS member to provide material information to one client and their duty or that of a regulated firm to another client to keep that same information confidential. It is important to note that the obligation to provide material information to a client is restricted to the individual member, so it depends on such information that they have rather than what the firm has.

If there is a conflict and it is possible to obtain informed consent from both parties, the use of information barriers should be considered. Information barriers are arrangements that are designed to prevent the flow of information between separate departments or individuals. In practice, they may consist of restricting access to electronic documents, and/or separating personnel so that they located on separate floors of the same office or in different locations completely.

These arrangements may enable a client or other party to give informed consent to work when there is a party conflict, or help to resolve a confidential information conflict. However, on their own, information barriers are not a solution to a conflict of interest unless there is informed consent.

Professional principles

The statement does not outlaw commission or success-based remuneration in principle. The supporting commentary makes it clear that there is nothing wrong with these, but members must always consider carefully whether they give rise to an “own interest” conflict or a significant risk of one.

RICS members have an obligation to identify and manage conflicts in accordance with the statement and keep records of decisions made, informed consent obtained, and any measures taken to avoid conflicts arising.

Regulated firms meanwhile must have, or implement, effective systems and controls appropriate to the size and complexity of their business to ensure compliance. Therefore, it is essential that both members and regulated firms use the time between now and 1 January 2018 to refine or put in place effective systems for managing conflicts of interest. The consequences of not doing so range from enforcement action from RICS to professional negligence claims.

William Glassey is a partner at Mayer Brown and technical author of RICS’ Conflicts of Interest global professional statement

James Morris is a senior associate at Mayer Brown

Related competencies include Conduct rules, ethics and professional practice
A wise move

Richard Ashton celebrates a variety of major projects he has led over the past five years as a surveyor

I gave up my diving career in 2000 and then went to Kingston University to study a four-year sandwich course in building surveying, after which I started work as a graduate building surveyor, qualifying as a chartered building surveyor in 2007.

As a surveyor, I enjoy a challenging but varied and rewarding career, working with people from different backgrounds to achieve common goals.

Examples of projects I have led over the past five years include the conservation of grade I listed Somerset House in central London, the construction of a new stand at the Kia Oval ground in south London, and acting as employer’s agent for a 450-bed Intercontinental London O2 Hotel on the Greenwich peninsula in south-east London.

Clean canvas

Somerset House North Block, home to the Courtauld Institute of Art, has always been one of my favourite buildings in London, so I was delighted when my employer, Artelia UK, was instructed to undertake external fabric works and prepare a 25-year maintenance plan for both the external and internal areas of the building.

My initial tasks included a full building survey to specify suitable materials and methods for repair, redecoration and stone cleaning. PAYE Restoration & Stonework Ltd was selected for the project, and its masons installed several high-quality stone indent repairs and intricate carvings.

The facade-cleaning methods were also carefully chosen to avoid irreparably damaging the building’s historic external fabric, which is predominately Portland stone.

A low-pressure nebulous system was used for most areas, while some of the heavier stains were removed using the Jos cleaning system and localised poultices. The unveiling of the facade as the scaffolding was dismantled was exciting to say the least, and – as you can see from the picture (above right) – the building has been gloriously restored.

I am currently collaborating with the institute on future maintenance plans for its current building transformation project, Courtauld Connects, which received planning permission and listed building consent in September.

We are assisting with its Second Round Heritage Grants application to the Heritage Lottery Fund, preparing a plan that outlines the management and maintenance tasks needed to meet the short- and long-term needs of the site and buildings and to maintain the heritage value of the buildings, the collections, the digital archives and the web resources associated with the project.

The Courtauld Connects project aims to transform the institute’s physical heritage, collections, learning, research and programming activities, conserving the buildings, reconnecting them with their historic purposes while significantly improving accessibility and circulation to meet contemporary exhibition expectations. While the building transformation work is undertaken the Courtauld will relocate, reopening on site in 2020.

Standing order

As well as its work in the heritage sector, Artelia UK has completed several projects for Surrey County Cricket Club at the Kia Oval. I was fortunate to be given the role of project manager for its new 5,400-seater stand, named in honour of the late Surrey cricketer Peter May, which increases the capacity of the ground to around 25,300. There was a lot of pressure to complete the stand in time for the start of the new cricket season in 2016 but the team was successful in meeting this deadline.

A challenge unique to the project was that the stand had to be built on a curve and fit exactly in a very tight space (see photo, above left). This required a lot of design coordination and precision when constructing it on site to ensure that all the components fitted perfectly together. There was no room for error on the programme, which was constrained on either side by the close of the cricket season in 2015 and the beginning of the next in 2016.

From a technical perspective, another challenge was the obstructions that were discovered in the ground affecting some of the proposed pile locations. Mini piles were one option that was considered; however, these would have been quite complicated to construct. The engineer put forward a proposal to use Cordek expanded polystyrene void formers instead.

The units were made to measure in the factory from a 3D survey and then installed on site between the existing Laker stand ground-bearing concrete slab and the new tiered concrete slab, cast in situ, forming the seating area.
This obviated the need to install 14 piles, which meant that the stand was easier to construct and resulted in considerable financial savings.

Hotel projects
As part of my role in the hospitality division at Artelia, I’ve been involved in several hotel projects, most notably as employer’s agent for the 450-bed Intercontinental London O2 Hotel on the Greenwich peninsula and as project manager for current and future Premier Inn projects.

Hotels are large, complex construction projects, but I have also learned that they present a different challenge. Not only is there often a need to manage the site acquisition, building design and construction stages, but these hotels also need to be fully fitted out and ready for operation.

Firm foundation
These are just a few examples from my diverse and challenging role as a chartered building surveyor. I also benefit from CPD financed by my employer, regularly attending formal training courses, and thanks to this I was recently certified as a project manager by the Association for Project Management.

I enjoy putting my learning into practice, and it is rewarding to be part of a team transforming an existing, often neglected, building or realising a plan for a new one, and then applying the experience I have gained to improve subsequent projects.

Richard Ashton is an associate building surveyor at Artelia UK
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Related competencies include Conservation and restoration, Design economics and cost planning, Project financial control and reporting

CIC publishes inclusive design guide

The Construction Industry Council (CIC) has published a free inclusive design guide. The purpose of the Teaching and Learning Briefing Guide: Bringing inclusive design into built environment education is to illustrate key issues and improve knowledge, skills and understanding in creating an accessible and inclusive built environment.

UPDATE

Federation voices SME concern as construction T levels launched

In October, the UK Department for Education announced that the first three subjects for its new technical qualifications will be construction, digital technology, and education and childcare. Starting in 2020, the T levels will be aimed at those aged 16–19 and rival A levels, with a £500m investment across 15 sectors including construction.

Justice Greening, Secretary of State for Education, said: “As we prepare to leave the European Union, it is more important than ever that we create an outstanding further education and skills system, giving all young people the opportunity to fulfil their potential.”

The content of construction T levels will be developed by a panel of industry professionals including those from Morgan Sindall and Skanska.

The National Federation of Builders (NFB) said it thinks the government’s announcement is a positive first step, but more could be done to include small and medium-sized enterprises (SMEs) in the process.

According to the NFB, construction SMEs train and retain two-thirds of all workers in the construction industry and make a significant contribution to their local communities. For every £1 invested with an SME, 90p remains in the community to hire local workers, train local apprentices and develop the local economy, the organisation said.

NFB chief executive Richard Beresford said: “With SMEs accounting for 98% of construction companies, the panel should better reflect the make-up of the industry.”

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http://bit.ly/2yfnV7t

www.builders.org.uk
Rough patch

With homelessness becoming an increasingly visible problem across the country, Mike Appleby and Anthony Taylor consider the legal and ethical implications of dealing with rough sleepers around commercial properties.

The number of homeless people sleeping rough on UK streets has increased in recent years. Their presence in the vicinity of commercial properties poses a growing ethical dilemma for property owners and managers as to how to respond.

Furthermore, according to Homelessness projections: Core homelessness in Great Britain, a recent report by Heriot-Watt University commissioned by national homeless charity Crisis, the number of rough sleepers on the UK’s streets is set to rise by three-quarters over the next decade (http://bit.ly/2vmRQIQ).

The research found that, at any one time in 2016, an estimated 9,100 people were sleeping rough, and it forecasts that by 2026 this number could rise to 16,000 if “current policies continue unchanged”. It also predicts that the number could exceed 40,000 by 2041.

Visible and vulnerable

Rough sleepers face a significant risk of victimisation, are likely to fall into crime and addiction, and are vulnerable to mental illness and severe health problems. However, while they comprise a small proportion of the total number of homeless people, rough sleepers are the most visible and have the greatest impact on local communities. Rough sleeping is often associated with nuisance activities such as begging, street drinking and antisocial behaviour that can make an area feel unsafe.

While rough sleeping is clearly an issue for both national and local government, it is property owners, managing agents, facilities managers or those deemed the “person in control” of the property who all too often find themselves on the front line, managing problems that can have safety implications for their staff, building occupants, visitors and the general public. But what steps can be taken?

A consistent approach

Persons in control need to adopt a consistent, measured approach, which could be set out in a protocol and agreed with relevant local agencies such as the police, local authorities and homeless charities, and which their staff can follow. Any management process is advised to address the following topics:

- deterrent measures
- signage
- managing rough sleepers
- contacting the police or local authorities, who can use their powers.

It is important that this approach is discussed with all those who have an interest in the property, which should
include the relevant local agencies and potentially the occupants – it is often they who are the most affected, as they enter and exit the building on a daily basis. In each region there are usually a number of agencies, including the police, local authorities and homeless charities, which have dedicated teams to deal with homelessness and the homeless. However, there are significant differences in the way the issue is handled from region to region.

Building a relationship with these agencies is crucial. Knowing the likely vulnerability of the rough sleepers, it is of course most important that they are always treated in a considered and considerate manner. Where possible, the rough sleepers should be provided with information about local agencies that can assist them and encouraged to use the facilities they offer.

However, it is not uncommon for rough sleepers, particularly those with addictions, to refuse to enter hostels or similar shelter because they object to the “rules of the house”.

Managing rough sleepers

In the first instance, contact should be made with the local authority or other agencies such as housing charities to find out whether they are prepared to speak to the rough sleepers, provide assistance and encourage them to move on.

If these agencies are unable to assist, then the person in control, or representatives specifically trained to engage with rough sleepers, will need to assess the individuals from a safe distance. Should there be concerns about behaviour, the police ought to be contacted promptly.

If it is safe to do so, then the rough sleepers should be approached and asked to move on. Perhaps a leaflet could be compiled with the local agencies, which would advise the rough sleepers where they can seek help and assistance. This could be handed out by way of encouragement and providing a safe place to go.

Where items are left unattended, it may be appropriate to remove these, providing it is safe to do so and there are warning notices in place. Note, however, that the removal of personal property may in itself raise legal questions.

To avoid hygiene issues, it is important that any rubbish, including human or animal waste, syringes, broken glass or food, is cleared away regularly and thoroughly, with appropriate disinfectants used. It may be necessary to arrange specialist cleaners, particularly where there are sharp objects or faeces, which will need to be disposed of correctly.

If a camp of a number of rough sleepers becomes established, it may be necessary to refer the matter to lawyers to consider legal sanctions or the need to employ private bailiffs.

Deterrent measures

The use of deterrents is controversial, and can present a risk that the person in control will seem uncaring or unethical. The House of Commons Briefing Paper Rough Sleepers and Anti-Social Behaviour (England), published in December 2016, quotes the Chief Executive of Crisis Jon Sparkes on such measures: “Rough sleeping is devastating enough without homeless people having to endure such hostility from their surroundings” (http://bit.ly/2wB5mKV).

However, there might be occasions, at the discretion of the “person in control”, where the use of some form of deterrent is deemed appropriate, and this could include the following.

● Denying access with fencing or waling: such barriers will need to be at least 2.4m high as, if lower, they may present a risk of injury should people try to scale them. The fence or waling should not offer any handholds or footholds, so as to discourage climbing. Additional spikes or sharps should not be used, as these have the potential to injure people.

● Filling in areas that may attract rough sleepers: this might for example be achieved by planting a garden, installing bike racks or laying uneven ground cover. However, consideration will need to be given to positioning, legitimate access needs, whether the surface presents a risk of injury and the need for planning permission.

● Installation of CCTV: as well as acting as a deterrent, this can also provide evidence if the police or local authority are called.

● Use of devices that produce high-pitched noise or other sounds, or bright lights.

● Security guards at appropriate times of the day, such as dusk and evenings.

Where deterrents are used, additional signage is likely to be necessary to serve as a disclaimer. Further signs might warn that abuse of staff or the public will not be tolerated and that, for example, unattended items might be removed for reasons of health, security or safety.

Antisocial behaviour

Where rough sleepers are engaged in criminal or nuisance behaviour then it may be appropriate to contact the police or the local authority. However, to take action they will need evidence, which might include witness testimony, photographs, or CCTV footage of sufficient quality to identify individuals.

The police can be called if an offence has been committed, including:

● begging, which is an offence under section 3 of the Vagrancy Act 1824

● wilfully blocking free passage along a highway, as in section 137 of the Highways Act 1980

● using threatening or abusive words or behaviour, under section 5 of the Public Order Act 1986.

The Anti-Social Behaviour, Crime and Policing Act 2014 provides local authorities and the police with powers to deter antisocial behaviour, and these powers include the following.

● Civil injunctions: the local authority or the police may apply for an Injunction to Prevent Nuisance and Annoyance (IPNA) to tackle people repetitively engaging in low-level antisocial behaviour. An IPNA can prohibit them from doing so, or impose requirements to engage in a particular activity and address the underlying causes of their behaviour.

● Dispersal powers: section 35 of the 2014 act allows the police to disperse individuals or groups causing or likely to cause antisocial behaviour in public places or common areas of private land, directing them to leave a specified area and not to return for up to 48 hours.
Community Protection Notice (CPN): this is intended to deal with particular ongoing problems, rather than single incidents, that are having a negative effect on the community. A CPN may be issued by local authorities or the police to stop persistent, unreasonable behaviour that is proving detrimental to the amenity of the locality.

Public Spaces Protection Order (PSPO): following consultation with the police, local authorities may issue a PSPO to impose restrictions or conditions on the activities people can carry out in a designated area. They are designed to deal with problems that are having a detrimental impact on the community’s quality of life.

The use of these powers by the police and local authorities varies across the country in terms of the preferred measures and the extent to which they are applied, so it is important to liaise with them to understand their approaches. Exercising these powers can also attract adverse press coverage.

In July 2017, Oxford City Council was criticised in the press for pinning notices to bags belonging to rough sleepers, warning them of action under the 2014 act; according to the Evening Standard, homeless people were threatened with £2,500 fines for their “detrimental” presence (http://bit.ly/2xFPYKe).

On the publication of the Homelessness projections, Jon Sparkes of Crisis said: “We still exist because homelessness still exists, and [the] report makes it only too clear that unless we take action as a society, the problem is only going to get worse [...] [But] we warmly welcome the government’s pledge to tackle rough sleeping and other forms of homelessness. Now is the time for action and long-term planning to end homelessness for good.”

As he recognises, the issue of rough sleepers can only be solved by society at large, and will inevitably take time and state resources. In the meantime, those in control of buildings will have to do their best to address this difficult and sensitive issue on behalf of their clients.

London should have its own design code for factory-built housing to promote the use of off-site construction, according to a report published by the London Assembly.

In the 1970s, prefabricated housing made a significant contribution to supply, but there were problems with thermal and noise insulation, as well as condensation, which caused damp. Designed, sealed, delivered: The contribution of offsite manufactured homes to solving London’s housing crisis says the quality of off-site manufacturing has improved considerably since then, and calls on London Mayor Sadiq Khan to promote its use. http://bit.ly/2goZIkz

The redesigned isurv, RICS’ online subscription service for professionals, has been launched, offering improved layout and functionality to make it easier to locate and digest information about the built environment. The service, which gives insight from industry practitioners and legal experts, is designed to help you apply theory effectively in practice, increase your knowledge and help to resolve workplace issues. www.rics.org/isurv


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Take cover

Laurence Cobb weighs up the pros and cons of insurance-backed guarantees

The idea of insurance-backed guarantees (IBGs) is to provide cover in the event that the original contractor has ceased trading and is unable itself to honour its guarantee to the end user.

IBGs are used in a variety of situations; for instance, in contracts for the eradication of Japanese knotweed, damp-proofing, timber treatments, underpinning, roofing and flooring screeds.

Depending on their terms, policies cover the costs of necessary remedial works after, for example, a re-infestation of timber, recurrence of rising damp, breakdown of waterproofing, or failure of roofing, flooring or underpinning.

Period of cover
IBGs typically last for 10 years, or the period of the original contractor’s guarantee if that is shorter.

Their main benefit is to provide insurance backing for a written guarantee of the standard of work or materials, in the event that the contractor is unable to discharge its obligations, typically when it has ceased trading. In this way, IBGs assure the end user or owner that any remedial or re-treatment costs will be covered by insurance rather than having to foot the bill themselves, even if the original contractor has ceased to trade.

Of course, whether or not insurance will pay out when the end user seeks reimbursement will depend on the actual wording of the policy. There are a number of points to watch with most if not all guarantees:

- IBGs will not pay out for any part of the works that are not covered by the policy
- IBGs will not cover defects that arise from a failure on the end user’s part to carry out the recommended maintenance of the works or goods
- a failure to keep the property generally maintained and protected from bad weather is also likely to prevent a claim succeeding
- structural alterations or other interference with the relevant works are likely to invalidate an IBG
- consequential and indirect loss are likely to be excluded, so any lost profits, business revenues, anticipated savings, goodwill, damage to other parts of the building or to fixtures and fittings will need to be borne by the end user; for example, a recurrence of damp may be covered under an IBG for damp-proofing works, but the insurance may not extend to rectifying the damage caused to adjacent timbers or replacing carpets
- there may be a cap on the amount that the IBG will cover, and large excesses might need to be paid
- IBGs will not generally cover remedial works undertaken without the prior consent of the insurer, and a deterioration in insured works through a delay in reporting may also be excluded.

Small print
As usual, the small print of the policy needs to be studied to check exactly what is covered. You should confirm, for instance, that the contractor’s original guarantee is transferable, and that the benefit of the IBG can similarly be transferred if the building is sold.

The usual IBG wording, for example, provides that the benefits of the guarantee shall automatically pass to any subsequent owners of the property. Of course, this will be of no help if the previous property owner has failed to maintain the works in accordance with these terms.

Other issues to consider include the following.

- Does the insurance kick in if the contractor voluntarily ceases to trade?
- If the failure occurs near the IBG’s end date and the cap on liability is limited by reference to the original contract price, then the amount recoverable may not be sufficient to pay for all the rectification works.
- Some policies require the end user to pay a claim service fee to the insurer to enable it to investigate, and if the claim is found to be invalid, this is not refundable.

Policy prudence
To conclude, IBGs do not necessarily provide the peace of mind that those promoting the products suggest, so perhaps managing expectations is the best approach. It is always prudent to check the detail of the policy and, in particular, the obligations with which the insured party must comply in terms of maintaining the property and the claims notification procedure. An IBG can be helpful, but should be assessed on its merits both as to its cost and its benefit.

Laurence Cobb is a consultant at law firm Taylor Wessing lcobb@taylorwessing.com
Patience and diplomacy

Because domestic clients will always have distinctive requirements, a residential building surveyor’s work will be highly varied, writes Patricia Newman

Although residential clients often instruct smaller building surveying practices, the requirements of such clients can demand a range of skills.

The diversity of enquiries and instructions makes for a varied professional life, which could include advising on building defects, neighbour disputes, party wall appointments, building disputes with contractors, expert evidence or design work, for example project management and contract administration, as well as purchase surveys.

Although these functions can be undertaken by large practices, many such companies prefer to concentrate on commercial clients, where securing repeat business can be an influence. However, in my experience, residential clients seem to return, typically about repeat business can be an influence.

During initial discussions, the likely budget is often the first disappointment, while still enabling contractors to incorporate any variations that inevitably occur. Residential clients’ visions or requirements are generally personal and distinctive, and may even vary between members of the same household. Many find visualising the finished article quite difficult until construction is under way.

On many occasions, the careful checking of detailing both on paper and on site can help to prevent the contractor having to redo works, and limit the delays of late client changes. This enables all parties to exercise greater control over costs, and ensures the clients are satisfied when your involvement in their project ends.

Communication is key

Communication is the key, in a way that is clear, uncomplicated and not too technical, helping a residential client to comprehend; yet it should also be sufficiently detailed to be well understood by contractors or other professional advisors, and giving a good sense of the final outcome in ways that all parties can appreciate.

Every interaction with residential clients is different, and each, given appropriate timescales, will be rewarding in different ways.

Patricia Newman is Principal at Patricia Newman Practice
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Related competencies include
Analysis of client requirements, Construction technology and environmental services, Contract administration
Getting to know you

Ewan Craig, a speaker at RICS’ annual It’s Your APC conference, discusses the optional competency Analysis of client requirements

The Analysis of client requirements on the Building Surveying pathway requires the ability to apply mandatory and technical competencies. These include the following:

- **Client care**: collecting data and analysing and defining the needs of clients to develop the brief
- **Legal/regulatory compliance**: awareness of constraints, planning legislation and Building Regulations
- **Design economics and cost planning**: consideration of designs and cost.

The levels

**At Level 1**
Demonstrate knowledge and understanding of the need to collect data and analyse and define the needs of clients.

**At Level 2**
Provide evidence of the practical application of that knowledge and understanding; this should include the development of strategies and methodologies and, where appropriate, undertaking feasibility studies, design proposals and costings.

**At Level 3**
Provide evidence of developing appropriate strategies to meet the client’s requirements with minimum supervision, based on your analysis and interpretation, and demonstrate the ability to report on tailored strategies to them.

Establishing and agreeing the client brief ensures it can serve as the fundamental reference for the service and as a means of measuring success. You should be familiar with Analysis of client requirements, being able, for example, to explain how you prepared data and analysed it, so you can address questions about this based on your submission documents in your assessment interview.

**Questions**

**Actual questions are based on the candidate’s experience, which should be at Level 2 but could exceed this. Two examples are given below.**

**Could you explain how you established the client brief at the inception of project E for the private client?**

This is aimed at Level 2; however, it could be extended to Level 3 if you offer advice to the client on appropriate strategies. The answer would explain pertinent issues to support your application of knowledge.

This is fundamental at the early stage of any project. My practice assigned me to a private client to extend their home, as the practice’s first project with them. My aim was to understand my client’s needs and objectives, so I could scope the project and identify the key success criteria.

This was particularly important as the client had little experience of such projects or understanding of the construction sector, so helping them develop their ideas and vision into an agreed document for the service was extremely useful; it helped them understand the project, and helped me to realise their aspirations.

In discussing the client’s needs and objectives with them, I focused on their vision, their preferences in terms of functionality and design, their budget and the likely programme.

These were developed into the client brief, which also took account of other aspects such as constraints; I discovered, for instance, that the house was listed and the client was unaware of the need for planning permission, listed building consent or Building Regulations compliance as these affected their programme. I confirmed the brief with the client, and it proved useful in guiding them through the process of designing and constructing their extension.

**Would you please explain how you prepared the outline design proposals for project K for the client?**

This is aimed at Level 2. The answer would show the issues that were considered in applying your knowledge.

I already had the client instruction, and had developed the brief for the project to extend an office. The client was experienced in design and construction processes, which meant they had a better understanding of the design ideas and could communicate more clearly with me about them.

I followed my practice’s methodology on outline design, considering constraints, budget, the function of the extension and how it linked with the existing space. I prepared several sketches with different layouts and styles; the client was keen to ensure ease of movement and to group teams through the building, so I gained a good understanding of the business, the functional groups and how these interacted in the course of developing the outline designs and space layout. The envelope, structure, services, budget and other aspects were then considered together with aesthetics to complete the designs.

**Care**

Given the time constraints of the APC, your answer should be brief but comprehensive. Care should be taken to demonstrate your own skills, abilities and knowledge to the assessors.

Ewan Craig is an APC assessor and Associate with Ridge and Partners LLP ecrangeto@ridge.co.uk

For details on the APC Building Surveying pathway, please visit www.rics.org/bsapc

**Related competencies include**
- Client care
- Construction technology and environmental services
- Design and specification
- Design economics and cost planning
- Legal/regulatory compliance
Caring for the client

Natasha Tyler describes her professional life since she won the 2016 RICS Young Building Surveyor of the Year award

I was absolutely delighted to be nominated for the Young Building Surveyor of the Year award in 2016, and honoured to have been chosen as the winner – especially considering the calibre of the surveyors who were shortlisted.

The feedback from RICS on my selection was threefold. First, the organisation recognised my efforts in maintaining client satisfaction and exceeding expectations. Second, it acknowledged my role as an ambassador, given that I’m a past local RICS Matrics chair and a current member of the RICS Matrics UK Board. Third, RICS recognised my work exploring drone technology.

I’m now looking forward to working on larger projects and even more passionate about promoting the profession among the next generation. Being a young female in the property and construction industry isn’t as daunting as it sounds, although it is a sad fact that only 14% of chartered surveyors are women.

My route

I’ve always had an interest in buildings and the world around me, and wanted to help shape our physical environment. I take great pride in seeing people working, visiting and living in the buildings with which I’ve been involved.

My route into the profession was quite traditional. I gained an RICS-accredited degree in building surveying at Anglia Ruskin University, after which I joined a small practice in Essex where I completed my APC within three years. I gained a lot of hands-on experience, and then moved to London to join Powell Williams, a commercial project management and building surveying practice, where I now work with major investors and blue-chip occupiers.

A good building surveyor is like a detective. They must research and question the key issues, until satisfied that they are in a position to provide rounded commercial advice that meets their client’s needs.

The best way to build a long-lasting relationship and secure repeat business is to be constantly alive to the client’s commercial priorities, and looking for ways to add value to projects, whether that means informing them of innovative techniques or securing cost savings.

Ultimately, the feedback we get from clients at Powell Williams is that, as a practice, we make their lives easier, and this is what they want.

The award judges were impressed with my client care skills, and I’ve been lucky to be working on some very interesting instructions.

Strood Retail Park

I acted as project manager and employer’s agent for the demolition of a former B&Q store and building five non-retail units totalling 57,639 sq. ft with a construction value of £5m. The development also included works to reconfigure the highways access, car park layout and pedestrian access to provide better links with the town centre, while the retail park remained in operation. One particular hurdle included amending designs during the project to meet a new tenant’s requirements while controlling the programme and budget.

The Meadows mall

Having initially been involved during a technical due diligence survey of the 400,000 sq. ft shopping mall in Chelmsford, Essex, I am now the lead surveyor dealing with all building surveying matters, including dilapidations, feasibility reports and planned preventative maintenance.

I work closely with the asset management team to advise on improvements and the capital value of the shopping mall. I had not previously been involved with shopping centres so it has been a sharp learning curve, but I am now actively pursuing retail opportunities from a business development perspective.

Guildford Business Park

I am also excited to be working as project manager and employer’s agent for a flagship £15m refurbishment. Building two, originally constructed in 1988, has been stripped back to its frame and is now to be rebuilt with a three-storey front extension, additional floor and a new grade A standard interior throughout.

The familiar external glazed facade will be reinstated, while the new floor will create a penthouse office suite with outdoor terrace area (see image, above left). A total of 82,000 sq. ft of office space will go on the market in March 2018.
The profession’s future

It has been a privilege to attend or take part in a number of events since winning the award. My personal highlights include participating in a panel discussion on diversity at the RICS Building Surveying Conference in April and being in a promotional video for the organisation. It has provided a great platform not only for myself but also Powell Williams.

Such activities to inspire and engage the next generation of surveyors – whether school leavers or career-changers – are essential. With 28% of chartered surveyors over the age of 60 according to an RICS membership survey of 2015, and the lack of public awareness about what a surveyor is and what we do, it is essential that everyone gets involved to help spread the word in order that we can attract the best talent.

RICS has developed new routes into the profession through apprenticeships and I’m working with the organisation to create an interactive workshop to role out nationwide to promote surveying to 14–16-year olds.

I get enormous job satisfaction and enjoyment from my career, and hope that others may also consider a career as a chartered surveyor whatever their gender, race, sexuality or background.

I am proud to be an RICS ambassador especially when I see its focus on the skills, diversity and inclusion agenda with CEOs and fellow professional organisations. Hosting events for Coming Out Day, continued support of the Young Surveyor of the Year award and the introduction of the Inclusive Employer Quality Mark are all positive steps.

The world of surveying – and in particular the technology available to surveyors – is rapidly developing. Having explored the opportunities of using drone technology and how this can enhance the quality of service provided to clients, I am totally convinced that as a profession, we need to embrace new technology to improve productivity and offset workforce shrinkage, but also attract a new generation of surveyors who have grown up in a digital world.

I’ve had a fantastic year since winning the Young Building Surveyor 2016 award. It was an honour to be acknowledged not only for the advice I give to my clients and the projects I have worked on, but also the work I do as an RICS ambassador. I have met some very interesting people, been promoted to associate, and worked on great instructions. I would like to congratulate the winners of the 2017 awards and encourage anyone who fits the criteria to enter next year. ☞

Natasha Tyler is an associate building surveyor at Powell Williams and 2016 RICS Young Building Surveyor of the Year

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Related competencies include
Client care, Design economics and cost planning, Works progress and quality management

Glass for period windows

The London Crown Glass Company specialises in providing authentic glass for the windows of period buildings. This glass, handblown using the traditional techniques of the glass blowers, is specified by The National Trust, the Crown Estates and indeed many others involved in the conservation of Britain’s heritage. Specify authentic period glass for your restoration projects.

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Surveys in Practice Roadshow 2018

Multiple dates and locations across the UK

This popular technical two-day roadshow returns in 2018 covering key elements of the Home Buyer and Home Report. It will be delivered in two separate seminars, the first focusing on interior areas of a property and the second - on the exterior.

The two days are packed with case studies and real life examples designed to improve your confidence in spotting defects. Gain best practice guides and model templates for report writing to ensure you fulfill your clients’ expectations.

Attend this event to ensure the advice you provide to your clients is clear, relevant and, above all, useful. Seminars are taking place in London, Cambridge, Bristol, Warrington, Leeds and Glasgow.

Find your closest location at: rics.org/sip

Join the discussion about this radically changing sector. Register now to benefit from the early bird rate at rics.org/wbef
What is building conservation? It might seem a silly question to pose here, but I do so because conservation keeps changing as a discipline and is often misunderstood. Some see conservation purely as a technical process of building repair and maintenance. But it is also about understanding the range of historic structures and traditional building materials, and how they are repaired. Old buildings need to breathe, for instance, and the mortar, plaster and paint used can affect this.

Wider view
We speak now of conserving the historic environment, a phrase that embraces more than buildings alone. Historic England defines it as “all aspects of the environment resulting from the interaction between people and places through time, including all surviving physical remains of past human activity, whether visible, buried or submerged, and landscaped and planted or managed flora”. Another phrase is “cultural heritage”, used to distinguish the work of humans from natural heritage. Cultural heritage not only includes buildings but also other assets such as works of art and intangible heritage. As part of this broader culture, buildings must have secure and viable futures, and conservation professionals should help to ensure this. This may entail changes to a building to accommodate new uses or technology, and such changes must balance the building’s significance with the need for adaptation. It is not enough simply to preserve historic buildings: all of them have already been subject to change throughout their lives, and most can accommodate further changes. The legal protection regime does not rule out alterations to listed buildings, but ensures that any such changes are appropriate.

Conservation decisions need a clear understanding of a building or site, although proposals are all too often made without such insight. Making decisions usually involves consideration of different options that are not explicitly articulated, but it does help the process of obtaining consent if the owner has prepared an options appraisal.

Legal lag
The Planning (Listed Buildings and Conservation Areas) Act 1990 defines listed buildings as having “special architectural and historic interest”, but policy and guidance in the past few years have developed with an assessment of a wider range of values, not conceived when the act was drafted. Our concepts of what “heritage” is have changed: for instance, local heritage may not figure in listing designations, even though much greater value is now being put on it by the people who live and work there. The key to making decisions about the future of historic buildings is to see them as a part of continuing development, and be informed by these wider considerations of value.
The Engine Shed in Stirling aims to promote Scotland’s built heritage by offering a resource for conservation professionals and the public alike, writes David Mitchell

Heritage hub

Run by Historic Environment Scotland, the Engine Shed at Forthside Way in Stirling opened on 4 July 2017. The £11m learning and visitor resource boasts state-of-the-art technology, with the interactive map of Scotland using an augmented reality app to explore buildings and including a 4K 3D theatre. This promotes innovation by educating and training built heritage and conservation professionals in the protection and preservation of Scotland’s traditional buildings, as well as enhancing public understanding of the historic environment.

Need for knowledge
Scotland’s historic built heritage is a unique resource, yet its maintenance demands conservation skills that are in short supply. An estimated 5,000 skilled workers are needed throughout the construction industry in Scotland to look after more than 450,000 traditionally constructed buildings. Many such properties are still in use as homes or workspaces, so the need for continued conservation and the development of techniques, technologies, skills and understanding of materials increases. The Engine Shed therefore seeks to raise standards in caring for the nation’s built heritage by demonstrating the continuing cultural and economic relevance of traditional buildings, construction materials and skills.

Indeed, the opening of the Engine Shed represents a significant milestone for Scotland’s heritage sector. It highlights the crucial work taking place, and also provides a platform for upskilling and engaging those interested or already working in the industry, ensuring Scotland’s built heritage is protected now and in the future.

Open to all, the Engine Shed provides hands-on workshops, lectures, training and educational resources for those working in the sector, as well as giving members of the public an opportunity to explore their built heritage through interactive exhibits and augmented-reality experiences. It aims to spark a passion for Scotland’s historic environment and inspire a new generation to take an interest in traditional buildings.

As part of its professional offering, the Engine Shed has begun running an advanced diploma in technical building conservation, aimed at those with experience in the built heritage field who are interested in furthering their career. Taught on site, the 10-month programme is unique, and includes hands-on craft demonstrations, laboratory work, studio exercises in 3D digital documentation and regular field trips to active projects around Historic Environment Scotland’s estate. Individual modules and day-long seminars can also be taken as CPD to enhance knowledge of the technical aspects of traditional materials, combined with learning in conservation science and the latest digital documentation techniques.

In addition to the diploma, an outreach programme of events and activities runs throughout the year, including a week-long course introducing building conservation and traditional building materials and skills through a combination of talks, workshops and field trips.

Climate of concern
Over the past few decades, we have seen significant changes in weather patterns, with a shift towards more extreme weather events still predicted. Scotland has always been subject to severe weather and our traditional buildings were built with enormous resilience to environmental hazards, but recent climate change is having new and unanticipated impacts on them.

The Engine Shed has been designed in part to meet the need for a living classroom in conservation science and technology, which is vital in developing understanding of such physical effects on Scotland’s heritage. Providing a range of workshops and educational resources for architects, surveyors, construction workers and stonemasons among others, the Engine Shed will promote the skills and knowledge to protect Scotland’s built environment against the continuing impacts of climate change.

Historic Environment Scotland’s digital documentation and conservation science teams are now also based at the Engine Shed, and constantly seek new technologies – primarily to aid conservation but also to help with building or site management that better supports public understanding of heritage. The two teams help to
and remained in use by the Ministry of Defence until 1990.

Two modern extensions have also been built, using glue-laminated timber frames clad in lightweight zinc on either side of the original structure to provide extra space for Scotland’s first building conservation centre. The design and scale of these have been carefully planned to complement rather than compete with the original building.

In a purposefully contemporary setting, traditional skills and materials are blended with new technology, including a 95-seat 3D auditorium and a large-scale map of Scotland – compiled from high-resolution satellite images – in the main space, where visitors can access additional information by using iPads as augmented-reality devices.

The project team made the most of local and natural materials to retain as much of the fabric and character of the original munitions store as possible, while demonstrating a sustainable approach to construction with the new wings. The interior walls of the Engine Shed have been restored and the floor reduced to its original level, with side platforms removed to provide level access throughout the building. Existing openings were restored to their original proportions, with others created to provide access to the new extensions.

Three-quarters of the original slates from the roof of the building were salvaged, and the refurbishment of the existing steel windows is a further impressive design feature. A large amount of sheep’s wool has been used to insulate the building, as well as triple glazing and three ground-source heat pumps. Clay board has also been used instead of plaster board, as the former takes less energy to manufacture than the latter and thus has a lower carbon footprint.

**Constructive continuity**

Engine Shed Project Manager Peter Buchanan said: “We have sought to retain and disturb as little as possible of the original fabric and character and upgraded it with minimal impact. The form of the new shed is a simple, clear-span structure with a pitched roof, reflecting the traditional approach to railway architecture where a simple design for a shed is repeated until the required accommodation is achieved.”

The Engine Shed is not just about maintaining traditional buildings and materials, it’s about marrying these with new and advanced technologies to continue to conserve Scotland’s built heritage and environment. Long may it do so.

**Sheds and sustainability**

The Engine Shed itself is a sustainable build, using traditional and natural materials in unique new ways to refurbish a traditional Ministry of Defence munitions shed that dates back to the 1890s. The building formed part of the extensive Forthside military compound in central Stirling between 1890 and 1900. Although the exact construction details are unknown, Forthside was a core military depot storing and transporting supplies, equipment and munitions across the country via the rail and river network,

*Images © Historic Environment Scotland*
Looking into the past could inform future building use, explains Robyn Pender

Holistic histories

Demands on buildings continue to increase: energy reduction, maintenance simplification, climate change adaptation, new ideas about comfort and modern patterns of use. It’s often thought that these must be in fundamental conflict – but if you get things right, then it’s usually fine all round.

The key is to think holistically, concentrating not just on the building’s fabric and context or its services, but on the occupants as well. At Historic England, we call this the “building performance triangle”: you can’t address the fabric in isolation from the heating, cooling and plumbing. It makes no sense to talk about temperature control without thinking about the building and the climate, or the occupants’ expectations of the services.

Low-cost comfort

Looked at in this way, many apparently intractable problems can resolve themselves. Take the example of a church that the parochial council would like to heat. What it wants in fact are comfortable conditions that allow effective use of the building. If the council brings in an engineer who sees it as a box in which air needs to be heated to a particular temperature, fabric problems making the space feel damp and cold will go unresolved, and the building will have a conventional system fitted that heats the ceiling at some expense while causing terrible draughts. It will also pull moisture out of the walls, which may condense on the windows and under the roof, making the fabric’s condition even worse.

Housing and offices face similar issues: there is a huge gap between the energy performance promised by computer modelling and what is actually provided, and we also know that highly conditioned spaces are often too hot and poorly ventilated. Nevertheless, we persist in seeking innovative materials or smarter services that still burn fossil fuels.

Before the Industrial Revolution, energy was extremely expensive, so buildings incorporated many simple means of adjusting the interior environment: partitioning with curtains to cut draughts, cloth hangings or wooden panelling to reduce the loss of body heat through walls in winter, louvred shutters and chimneys to ventilate on summer nights, and so on. Characteristically, most were adjustable to suit conditions and taste, as people feel much more comfortable if they know they can open a window or set a heater going. Seasonal changes were well understood, with different responses for heat and cold.

We no longer include these options in our toolboxes, but – dusted off and given a modish touch – many could contribute again to making the built environment operate efficiently.

Trust your instincts

The problem is, as one US colleague of mine observed, that we have forgotten how to “sail” our buildings. How little we now understand them has been brought home to me by Sarah Khan’s recent research at the Architecture Association on Bedford Square. The occupants of the offices used for her experiments, whose ideas about buildings might have been expected to be better than average, had significant difficulty in trusting their own instincts. They all assumed that what was needed to make their too-sunny rooms comfortable in summer was air conditioning, even though the one association building that did have it was considered to be uncomfortable.

To combat solar gain and glare, Khan reintroduced some of the original elements that had been lost, including awnings and gauze curtains. Although the improvement in conditions was immediate, assumptions about the superiority of modern ways of doing things were so engrained that, until the occupants were shown the environmental monitoring results, they were convinced it must be due to better weather rather than Khan’s changes. As they gained knowledge and experience, they quickly became enthusiastic participants.

Clearly, if we are to save energy to the degree demanded to mitigate climate change, active engagement of occupants is a prerequisite. But where are the specialists able to assess buildings holistically, and help people understand and optimise use? At present, most of the few building performance experts have backgrounds in conservation – perhaps no surprise, given that a knowledge of building history and behaviour under practical conditions is so helpful. But we need many more experts if we are to ensure effective energy use across the built environment.

Could training in building performance be offered to surveyors and architects? Or to service engineers? What form would it take, and who would provide it? Since so much knowledge must be gained at work, how would we formally recognise the level of experience and understanding gained over time? These are questions to which we urgently need to find answers.

Dr Robyn Pender is Senior Architectural Conservator at Historic England robyn.pender@historicengland.org.uk

Image © Wikimedia Commons
Summary

Natural hydraulic lime (NHL) is a binder that was commonly used for many construction purposes until the early 20th century. Today, it has had a significant resurgence, partly due to its favourable performance for traditional applications compared to Portland cement.

Composition and performance

NHLs are produced by burning impure limestone; they principally include calcium carbonate and can also contain silica and aluminium. The higher the level of impurities such as silica, the higher the amounts of hydraulic compounds formed during burning, and it is these that are mainly responsible for the strength of the material. NHLs are available in three classifications: NHL2, NHL3.5 and NHL5, with the higher numbers indicating greater strength.

Products known as hydraulic limes (HLs) and also formulated limes are available, but these are quite different to NHLs, inasmuch as they are artificially derived blends of various binder components and often contain cement as well (see BS 459 definitions). No indigenously sourced NHLs are currently available in the UK, although the import of French, German and Portuguese NHLs provides some choice in specification and procurement.

NHLs have relatively favourable performance characteristics, such as high permeability and flexibility. They must be set in context with cement mortars that are inherently less permeable and flexible. Generally, the higher the strength of the NHL binder, the lower the permeability and flexibility of the material. Compressive strength is in the range of 2–5MPa after 28 days, but continues to develop for considerably longer, and the upper limit for long-term strength in an NHL5 can be 10MPa or more.

Identification and application

NHL is used for mortars, renders and harls, limewashes, and specialised products. The major use of NHL is in wall construction, with bedding and core mortars, external pointing, renders and harls for external surface finishes being common applications.

NHL sets and hardens by two simultaneous chemical reactions, hydration – a reaction of hydraulic compounds on contact with water – and carbonation of the calcium hydroxide – that is, the reintroduction of carbon dioxide into the binder.

These setting mechanisms yield stable mineral forms known as calcium silicate hydrates and calcite respectively. NHLs can set partially in damp conditions, but the lower strength NHL2 sets largely as a result of carbonation and is therefore unsuitable for prolonged damp situations.

Decay and degradation

Durability is related in part to the suitable formation of the products of hydration. The materials must therefore be cured effectively, which is why after-care is fundamental to good lime works.

Defects in NHL materials can be subdivided into two main categories: during construction, early placement and curing; and in longer-term deterioration processes. The former are a result of frost damage, lime leaching, poorly graded aggregates leading to shrinkage cracking, and poor curing regimes causing rapid dehydration.

Longer-term defects are meanwhile caused by frost and salts associated with surface erosion and spalling. Life expectancy is a function of the climatic exposure level, the driving rain index and the conditions to which the element being constructed or repaired – e.g. a chimney or exposed or sheltered wall – will be subjected.

Additional data sources

Ensuring conservation skills are retained and shared is just as important as protecting historic buildings, maintains Bryan Dickson.

We are so fortunate to work in conservation – not only do we get to spend each day in buildings that radiate history and drama, continuing to fascinate, but we share our passion with many others in the sector, in common cause regardless of financial imperatives.

Skill supply
The challenges of looking after historic buildings are endless, however: diagnosing complex problems, removing previous, failing remedies and addressing the effects of changing weather patterns, all under an ever-increasing and complex legislative framework. The skills of an accredited professional, or certified professional to use RICS terminology, have never been in such demand, and the best individuals are those who can see beyond the here and now to fulfil the full potential of traditional building works.

Although it has been said in this journal before, it’s worth repeating that there is little point in looking after our heritage if we don’t also look after the skills required to protect it. So I encourage all specifiers, project managers and other professionals involved in making decisions about built heritage to find ways to support the future of these skills.

For instance, the National Trust for Scotland undertook a recent project in the ruins of a Cistercian Abbey in Fife, with a limited budget and a straightforward brief to waterproof wall heads. However, by creative thinking at the concept stage, the project was also able to train 20-plus volunteers and local enthusiasts in traditional skills and materials, while local schools were invited to take part so they could learn about conservation careers options, and the community was enthused about the attention that a well-loved local asset received, expressing willingness to help in future.

Granted, this is not done so easily on every project; but of all the built environment sectors, we should celebrate conservation professionals’ ability to collaborate around our common causes.

Articulating demand
One of the major stumbling blocks in construction-related professions is matching supply and demand. We all play a part in enabling this, and equally we all experience the frustrations when a timescale for a project’s completion does not marry up with the availability of relevant skills. Therefore, studies that investigate skills availability, growth and associated pressure points should be more widely used.

At the National Trust for Scotland, we have long wanted to develop a skills action plan – matching our own demand with the availability of skills on the local contractor market, thereby encouraging the supply chain to invest in training and apprenticeships. Ambitious programmes of conservation are subject...
Environment Scotland and the Society for the Protection of Ancient Buildings in a comprehensive survey of all thatched buildings, which gives a snapshot of condition and latent demand. Through the promotion of planned preventative maintenance and a collaborative approach between owners, funders and the labour market at local and national level, some joined-up thinking will surely be possible. This could result in a more predictable work programme, enabling materials suppliers to be supported by land management programmes that provide confidence for the specialist contractors to invest in skills development for a new generation.

**Over here and overlooked**

On a recent trip to the USA, I visited a number of “preservation societies”, as they are commonly known. It is complex to draw parallels between our two countries when it comes to architectural heritage; however, I did get a sense that all those involved in rescuing, maintaining and sustaining historic buildings are part of a common cause.

One of the organisations I visited was Colonial Williamsburg, Virginia, a living-history museum recreating an 18th-century township that attracts more than 1m visitors a year. It interprets this fascinating period of change with authenticity, supported by historic and scientific research. When I was there, a fragment of a plate emblazoned with the crest of John Murray, the fourth Earl of Dunmore and a colonial governor of Virginia, had been uncovered, and was being studied by many specialists and researchers to inform the interpretation of the site.

I was struck by the contrast with the earl’s family seat of Dunmore House, just outside Stirling, with its renowned pineapple garden folly. This building lies unused and unloved and the family crest – beautifully carved in medallions on the masonry – gradually decays, even while its distant relation is being restored with much excitement in a lab thousands of miles away.

So do we take much of our built heritage for granted in the UK compared to others? Do we regularly pass buildings that are gradually disappearing before our eyes? Would this be tolerated if they were perceived as an important part of our history and the fabric of our society? This situation requires professionals and traditional skills practitioners to do more to explain the significance of these places and help tell their stories. It is only once we attach value to them that people begin to realise the importance of traditional skills and are more willing to offer support. It may be that we need to change our language, impart a sense of urgency to what we see happening around us, and encourage our colleagues and peers to do the same.

Our networks and collaborations give us an opportunity to do so, enabling us to speak coherently as a group. RICS’ conservation certification recognises our common interests, but too often it feels that we are preaching to the converted, with many familiar faces attending conferences, seminars and meetings.

To become more effective in promoting and protecting our built heritage, we must raise our collective voice, increase the number of accredited professionals and help spread best practice. There are many good surveyors out there who might need persuading of the benefits of certification; but undoubtedly, there are many traditional building projects whose full potential and associated benefits fail to be realised.

As the RICS project awards deadline approaches and we begin thinking about the benefits that this recognition can bring to clients and practitioners alike, let’s enable historic buildings to fulfil their full potential and turn good projects into great ones.

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Conservation areas celebrate 50 years

Historic England celebrates the 50th anniversary of conservation areas this year, which were introduced by the Civic Amenities Act 1967. A number of events have been held to honour the 10,000 or more areas that are now designated. Research by YouGov has revealed that 74% of adults in England support local authority powers to restrict changes to buildings in conservation areas, while people who live in such an area are almost twice as likely to have objected to a planning proposal than those who do not. As a result, 65% of residents who are aware they live in a conservation area would relocate to another if they had to move.

Around 2.2% of all land in England lies in a conservation area, a total of 2,938 sq. km in total, with at least one area in each local authority. Wiltshire Council, a unitary authority, has the most at 246.


Economic impact of heritage reported

Heritage Counts has published Heritage and the Economy, which summarises findings from a range of relevant studies, and has also issued new research in the form of the Heritage Economic Impact Indicator Workbook 2017.

The key findings of the latter are that:

- heritage tourism generated £16.4bn in spending by domestic and international visitors in England
- repair and maintenance of historic buildings directly generated £9.6bn in construction sector output
- 278,000 people are currently employed in the heritage sector
- heritage indirectly generates £11.9bn gross value added (GVA), which comprises 2% of English national GVA.


Trust revises energy efficiency measures

The National Trust’s environmental advisor Paul Southall has reported on the organisation’s new approach to specifying and implementing energy efficiency measures on its estates, providing practical advice on overall strategy as well as easily implemented savings.


BIM guidance published

Historic England has published guidance on the application of building information modelling (BIM) in heritage projects, BIM for Heritage (http://bit.ly/2ufaA9A). This details how BIM can be used as a heritage management tool and how data can be acquired, and includes case studies of Waverley Station, Edinburgh, and Woodseat Hall in Staffordshire.

BIM for Heritage shows that, although the technology is less widely used in heritage than in other construction projects, it can offer advantages in the ongoing management of historic buildings. The Council on Training in Architectural Conservation prepared a report on BIM for heritage in 2014, which also provides useful background information (http://bit.ly/2hRXomV).

Welsh study voices church upkeep concern

The National Churches Trust invited Welsh churches and chapels to participate in a survey, the result of which have just been published. Findings show that many churches and chapels are still vital for community life; however, the job of looking after religious buildings is becoming harder as congregations decline and the availability of volunteers inevitably decreases.

The Supporting Places of Worship in Wales Survey 2017, organised by the trust on behalf of the Welsh Places of Worship Forum, highlights some of the problems. Other principal concerns involve a lack of skills needed to raise funds for repairs, allied with a demand for external financing for repair projects.


Framework due for review

The National Planning Policy Framework was published in 2012 and it is due for review, but no firm timetable is currently available.

PPG updated to help councils

Changes to planning practice guidance (PPG) were made this summer to support local authorities in preparing and publishing brownfield land registers. The PPG also offers information about the new consent route for planning permission in principle.

The PPG is only available online, but is worth monitoring for regular updates.

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