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Economics

‘In 2008, 2.7m adults aged 20–34 were living at home. In 2017, the figure was 3.4m – a 26 per cent increase’

Theresa May has made it clear that tackling the UK housing crisis is a primary goal on the domestic policy agenda. In her latest initiative to ramp up housebuilding, the prime minister announced at last autumn’s Conservative Party conference that the local authority lending cap was to be scrapped.

A week before the conference, however, a less-publicised release, which set out revisions to official household growth projections, made for interesting reading. Based on more up-to-date figures about living arrangements in recent years, its forecasts for household formation were significantly reduced.

Between 2018 and 2039, the total increase is now estimated at 3.3m, when previous projections put it closer to 4.3m. The latest iterations indicate average annual household formation of just under 160,000, some 46,000 below the 2014 estimate of 205,000. Understandably, this has added fuel to the debate on whether there is an outright shortage of housing at all.

Between 2018 and 2039, the total increase is now estimated at 3.3m, when previous projections put it closer to 4.3m. The latest iterations indicate average annual household formation of just under 160,000, some 46,000 below the 2014 estimate of 205,000. Understandably, this has added fuel to the debate on whether there is an outright shortage of housing at all.

Those challenging the widely held view that the housing market suffers from a critical shortfall in supply indicate the statistics showing that additions to England’s housing stock have actually outstripped growth in households over the past decade. This case has only been strengthened by the downgrades to household formation projections.

The counterargument is that growth in the number of households will surely be curtailed by rising housing costs. Simply put, those still living at home with parents and wanting to move out are, in many cases, prevented from doing so by high house prices or rents. The data certainly appears to support this point. In 2008, there were 2.7m adults aged 20–34 living at home. In 2017, the figure was 3.4m, representing a 26 per cent increase in just nine years. Looking back as far as the records go shows a starkly different trend, with the number of young adults living at home falling by 36,000 between 1996 and 2007.

However, not everybody considers this alone to be proof of a housing shortage. Those doubting supply scarcity point to recent trends in another important housing affordability metric, rental costs. Rents are a preferred measure for some as they only reflect the cost of living in a home. Prices, on the other hand, are driven by supply and demand for housing both as a place to live and as an asset.

Interestingly, Office for National Statistics figures show rental levels across England have risen 30 per cent since 2005, but this is slower than average disposable income growth of 50 per cent. In terms of the national aggregates then, this measure of housing affordability does not seem to have worsened. Even in London, which has seen the strongest rental growth of all regions, the increase in average incomes has comfortably exceeded this, even though house prices have risen an eye-watering 109 per cent over the same period.

Just to be clear, nobody is denying that housing affordability has declined for certain groups; it is simply that the cause is not considered a supply problem in this assessment. Instead, affordability has taken a hit thanks to weakness in wages following the global financial crisis, and this has been compounded by benefit cuts, so income has become more unevenly distributed.

Another factor is that house prices have been driven higher by low interest rates – low savings returns have led to housing becoming more attractive as an investment, with the rise in buy-to-let investors or owners with multiple properties resulting in poor distribution of existing housing stock, at the expense of young people.

However, this has only occurred because housing delivery methods in the UK have stopped supply increasing in sufficient quantities to meet the demand associated with loose financial conditions. Whether this is due to the planning process, barriers to entry into housebuilding, skills shortages in the construction industry or excessive regulations on housing associations and local authorities, supply has not reacted adequately to rising house prices.

It may be that constructing more houses will only affect affordability in the long run. Still, in my opinion the government should continue to aim to scale up housebuilding significantly, despite the downgrades to household formation projections.

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Briefing

Study finds UK behind the curve on 5G

A new study reveals how the UK is lagging behind Germany and the Netherlands in the adoption of cutting-edge connectivity, such as fifth-generation (5G) technology. The research is based on a survey of 550 senior executives in the digital business, energy and utilities, financial services, real estate and infrastructure, and transport and automotive sectors, in 11 countries.

The report, by international law practice Osborne Clarke and the Economist Intelligence Unit, finds that while the UK is the most likely to anticipate greater interconnectivity in the next five years its businesses are the least likely to be prepared, with one in ten having taken no measures at all. In contrast, all German respondents have taken some steps.

In real estate and infrastructure, 89.7 per cent of European respondents feel connectivity is somewhat or very important to their business now, versus 90.6 per cent anticipating it becoming more important in five years. The biggest barrier identified is lack of talent and skills. The report shows:

• almost half of German companies – 44 per cent – have already developed a formal strategy to prepare for the new technology, compared to only 34 per cent in the UK
• as many as 36 per cent of the German executives surveyed say they have set up a division for this purpose, compared to only 16 per cent in the UK
• executives from Germany – 92 per cent – and the Netherlands – 90 per cent – are most likely to find connectivity, including 5G, important to their business, whereas UK respondents are among the least likely to see 5G as strategically significant in next five years, at 78 per cent.

bit.ly/OC5greport

KPMG publishes proptech report

Consultancy KPMG has released its latest global survey on proptech, The road to opportunity, which looks at the way real estate can make the most of technology. It highlights the perception that some proptech suppliers are not providing solutions to the actual problems faced by the sector, and examines businesses’ readiness for a tech-enabled future.

bit.ly/KPMGproptech

Property guardian association set up

Seven leading UK property guardian firms have established the sector’s first trade association. The Property Guardian Providers Association (PGPA) was founded jointly by Ad Hoc Property Management, Guardians of London, Live-in Guardians, Lowe Guardians, VPS, Dex Property Management and Camelot to provide effective representation, to formulate policy and to ensure that members are at the forefront of meeting or exceeding legal and safety standards. The founding members provide more than 80 per cent of the guardian accommodation in the UK.

After a census of members, the PGPA found that many people cannot afford to live in the city where they work, and yet property guardianship is a cost-effective way to do so. It was also found that at least 60 per cent of guardians remain in the same accommodation for a year or more, debunking the myth that they are constantly on the move.

The association, which launched formally at the Empty Homes Conference in Birmingham on 18 October, has established a constitution that sets a benchmark for the legal obligations on management companies and property owners, as well as a service quality covenant for guardians. In order to join, companies must not only meet the criteria defined in the constitution but will also be subject to an annual audit of their procedures and services.

The association’s inaugural chairman and secretary is Graham Sievers, who will hold the reins until the election of the first member chair at the organisation’s initial annual general meeting next year.

info@propertyguardianproviders.com
Research flags up Help to Buy concerns

Research from Reallymoving.com reveals first-time buyers using the government’s Help to Buy scheme are paying on average eight per cent more than those buying new homes without such help.

According to data collected from almost 70,000 first-time buyers using the platform, those purchasing a new-build home without Help to Buy pay on average £257,908, compared to £277,968 for those who do use the scheme. New homes already command a 16 per cent premium compared to second-hand properties. However, an extra eight per cent is being paid on homes sold through Help to Buy.

The scheme enables people to purchase new homes with deposits of just five per cent, with the government providing an equity loan for an additional 20 per cent, or 40 per cent in London. Help to Buy may encourage first-time buyers to choose a more expensive property so they can benefit from an equity loan, making the deposit affordable.

Beneficiaries of Help to Buy may face difficulty when selling their property on, however, as its terms put sellers of homes bought under the scheme at a competitive disadvantage when there are new homes nearby for which Help to Buy is also available. At a time when house prices are falling, first-time buyers are at even greater risk of entering negative equity.

Furthermore, buyers can only pay off 50 per cent or 100 per cent of their loan, with no option for smaller payments. Interest starts at 1.75 per cent after five years and rises every year at inflation plus one per cent. Those hoping to sell may also find, as they must repay the equity loan in full, they are unable to raise a subsequent deposit.

Forum heads for New York

The next RICS World Built Environment Forum will be taking place in New York on 13–14 May 2019. The event will explore key themes, including:

- the changing nature of work and workplace
- the impact of algorithms and tokenisation
- the outcomes for cities and citizens of investing in the built environment
- new finance models for energy and transport
- investment risk allocation.

RICS offers funding for professional research

The RICS Research Trust is now encouraging applications from around the world for up to £20,000 of research funding per project in five specific subject areas as part of a defined call, and is also accepting open-call research applications in the disciplines of land, real estate, construction and infrastructure.

To have your proposal considered at the next biannual meeting, please submit it by 5pm on Friday 8 March 2019.

Standards

Forthcoming
- Asbestos guidance note
- Code for leasing business premises professional statement
- Comparable evidence guidance note
- Conduct and competence professional statement

Recently published
- Service charges in commercial property professional statement
- Environmental risks and global real estate guidance note
Despite a lot of buzz in the press, the adoption of virtual reality (VR) has been lower than expected. In 2018, sales of hardware were reported to have been decreasing by 33.7 per cent year on year (bit.ly/vrsalesdecline). But while there has been a decline in consumer purchases, its use by corporations for customer and employee engagement is increasing, with predictions that, by 2020, 83 per cent of VR headsets will be used in the commercial sector.

The main reason for this is that barriers to growth in the consumer sector such as hardware costs and a poor gaming experience are less of an issue for corporations, which are able to create custom responses to their needs and offset outlay through increased sales, faster manufacturing times and improved health and safety, among other benefits. Thomas Cook’s use of VR in its concept stores in Germany, Belgium and the UK resulted in a 40 per cent return on investment in three months, according to Inc.com (bit.ly/vrtravelroi).

Goldman Sachs estimates that by 2025, the VR market in real estate could be worth £1.99bn and disrupt the way properties are let and sold (bit.ly/gsvrmarket). However, VR has the potential to change far more than these processes, offering a number of opportunities to engage clients and users and provide services across an asset’s lifecycle.

To envisage the way their buildings would look once complete, clients and users have traditionally relied on computer-generated imagery (CGI) and renders. However, VR’s immersive environment enables them to walk through spaces before they are built, making it easier to understand how areas will look and ensure that they are fit for purpose. A virtual world also allows clients and users to explore design options quickly: with a click of a button we can analyse different layouts, move fixtures and fittings around and change interior finishes, so the client can easily engage with the design process and create the optimum experience and spaces.
Currently, teams have to come together in a physical space to review a design, but VR enables us to change the way we work and cut down on unnecessary travel. Drawing directly from gaming technology, we can now create virtual buildings that can be visited remotely using an avatar, VR headset and hand controller. This enables teams in different locations to work together without leaving their respective offices. It also allows us to draw on the expertise of specialists from around the world to help address complex design issues and achieve optimum asset performance.

Typically, marketing for properties has used CGI and renders until a building is at a stage where potential tenants can visit the completed space. However, VR walkthroughs and models are now giving people the opportunity to view a space before it is constructed. In addition, as such models can be uploaded to websites or smartphone and tablet applications, individuals are able to access these at any time and from any location, offering the agent the opportunity to market spaces round the clock to anyone in the world.

After the handover phase, 3D models and flythroughs can be enhanced with extra layers of data to allow the user to engage with a building or development via applications on smartphones or tablets using simple cardboard VR viewers for wayfinding purposes, augmented with hotspots to provide details on local businesses, events and visitor information.

Augmenting your assets
Augmented (AR) and mixed reality (MR), which merge the physical and virtual worlds, are also being adopted to improve efficiency during the operations phase and develop a better user experience. BAM is trialling use of the Microsoft Hololens to provide facilities management staff with the real-time information they need to carry out maintenance and operate plant and equipment safely and efficiently. The company is also looking at how the technology can be used to train staff in certain tasks, making use of the camera and microphone installed in the headset to reduce the risk of errors and failure costs.

Other industries are also embracing this technology. At Boeing, AR training has already had an impact on the productivity and quality of aircraft manufacturing. In one trial it was used to guide trainees through 50 steps needed to assemble an aircraft wing section, enabling them to complete the work in 35 per cent less time than it took with 2D drawings (bit.ly/vrmanufacture).

Using software such as Ingress – the gaming application behind Pokémon Go – AR can be used to enhance the built environment, providing a way for developers and building owners to overlay maps or assets with data. Unlike the VR models that require a headset, AR data can be viewed using a smartphone application, making it easy for users to access the information they need such as local news, tenant details, retail opening times and special offers. It could even be adopted during the planning process to allow residents or planners to quickly identify a specific site, explore the proposals and leave comments.

VR and AR can also be used to improve health and safety on site. BAM has created VR toolbox talks about health and safety that enable site employees to identify and mitigate risks from the outset, and is now also developing further VR-based health and safety training.

It’s not hard to see the potential of VR for the construction and property sectors, but as with many new technologies we are still at the trial stage. To develop its use further we need all parties – client, user and project team – to come together and explore how it can most effectively achieve the best outcomes. This should also involve drawing on best practice from other sectors, such as manufacturing and retail, rather than having to reinvent the wheel by ourselves.

Andrew Pryke is managing director at BAM Design  apryke@bam.co.uk

Further information: BAM VR app apple.co/2OeLW0k

Case studies
Epworth House, London
Epworth House was refurbished and remodelled to form new category A office space. The scheme involved combining three separate buildings, including a 1930s art-deco corner property, and the creation of two new floors. To help with the project, VR panoramas were rendered and linked together to allow a virtual tour of the development, and these were then used at various stages to review design and coordination issues.

Atlantic Square, Glasgow
Using Autodesk REVIT and Lumion software, BAM Design created a virtual 3D model of the proposed Atlantic Square development. All members of the team are able to log in remotely to explore the model virtually, allowing everyone to review the design and resolve any issues.

Ainsley Street student accommodation, Durham
Completed in 2014, the scheme comprised three blocks of high-quality student accommodation, containing 223 bedrooms with communal living areas and laundry facilities. A series of VR panoramas were created to show the different types of rooms available for rent, and used on the development’s website to help market the scheme and secure lettings before construction was complete.

Virtual King’s Cross
BAM Design used the models and visualisations produced for Argent LLP’s regeneration of King’s Cross to create a near-complete virtual model of the entire development. This enables a virtual tour around King’s Cross, with hotspots giving information on each of the buildings BAM has been involved in.
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Understanding vacant possession

‘Vacant possession’ of a property is a term discussed in a range of case law, but one that can nonetheless prove problematic

Nick Dowding and Vivien King

The phrase ‘vacant possession’ arises in different contexts: it’s a requirement in a sale and purchase agreement, in a lease covenant to yield up, or even in a court order. Yielding up with vacant possession is often a pre-condition in a tenant’s break clause too. Even if not mentioned, an obligation to return the premises with vacant possession will usually be implied when a tenant vacates.

Thanks to Lord Justice Rimer’s judgment in NYK Logistics (UK) Ltd v Ihrrend Estates BV [2011] EWCA Civ 683, we also know that the phrase ‘means that at the moment that “vacant possession” is required to be given, the property is empty of people and that the purchaser is able to assume and enjoy immediate and exclusive possession, occupation and control of it. It must also be empty of chattels, although the obligation in this respect is likely only to be breached if any chattels left in the property substantially prevent or interfere with the enjoyment of the right of possession or a substantial part of the property.’

Despite this, questions persist. What constitute chattels is a clear issue, and whether their presence would substantially prevent or interfere with the landlord’s right of possession is another.

Defining demised premises

Note that chattels include not only unfixed items but may, depending on the facts, include some fixed ones such as demountable partitions, as held in Riverside Park Ltd v NHS Property Services Limited [2016] EWHC 1313 in relation to partitions fixed to the raised floor and suspended ceiling grid with screws.

Must fixtures installed or alterations made by a tenant during the term also be removed to give vacant possession? One consideration is whether such items are part of the property of which vacant possession must be given. Often, the tenant must give vacant possession of ‘the demised premises’ or similar, so it is necessary to look carefully at that expression’s definition in the lease.

It may explicitly include fixtures and alterations, but even where it doesn’t these will usually be included by virtue of the principle that the demise includes everything that is in law part of the land — that is, fixed to it — at the time. In such cases, fixtures, alterations and similar need not be removed to give vacant possession, as they are part of the premises.

But there may be cases where the definition of what must be yielded up does not include them. For example, the demised premises may be defined as including ‘all subsequent alterations and additions but excluding tenant’s fixtures’. It might be argued in such a case that the tenant’s fixtures must be removed to give vacant possession. While this was assumed correct in Riverside, the judgment is not clear as to why, and given the judge’s conclusion was not essential to his decision it is not binding on other courts.

Another issue is whether the tenant is under a contractual obligation to remove fixtures or alterations and reinstate. If so it might be argued — as it was in Goldman Sachs International v Procession House Trustee Ltd and anor [2018] EWHC 1523 (Ch.) — that the obligation to give vacant possession requires the relevant items to be removed. That argument again appears to have been assumed correct in Riverside; likewise, the judgment contains no substantial discussion of it and it was not essential to the judge’s decision. The point was not decided in Goldman Sachs, although Mr Justice Nugee did say ‘the ordinary meaning’ of vacant possession is to return the premises free of people, chattels and legal interests.

The better view would seem to be that failure to remove the items will not stop the premises being yielded up with vacant possession, but that removal will simply form part of the claim for dilapidations. However, it is important to be aware — particularly when advising a tenant — of the possible argument the other way.

As always, the most important feature will be the words used. In Goldman Sachs, Mr Justice Nugee found, on the particular wording of the break clause, that the break was conditional on vacant possession being given, but not on compliance with the yielding-up clause; this required the tenant to remove alterations and additions, reinstate the premises to their original condition and yield them up in the condition set out in a works specification. As we write, the landlord has been given leave to appeal. Watch this space.

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Related competencies include: Legal/regulatory compliance
The new Red Book UK supplement is here. What do RICS-registered valuers need to know?

John Baguley
RICS has led the way in recognising the role of valuation standards and their effective implementation, setting up the Assets Valuation Standards Committee in 1974. Now more than ever, appropriate standards and their effective regulation are vital to ensure public confidence in the valuation process. Uniform standards help to reduce investment risk, increase confidence in financial reporting, and provide a consistent approach to portfolio and asset valuation.

Originally, the RICS Red Book was largely concerned with the UK market, but from an early date it became progressively more global in reach, and UK-specific material now supplements the global core text. Other jurisdiction-specific supplements have also been developed in recent years, reflecting the fact that RICS members operate across more than 140 countries, in many of which the Red Book is a respected reference work.

Since 2012, the Red Book global edition has formally adopted the International Valuation Standards (IVS) published by the IVS Council, RICS having been a major contributor to the development of these standards over many years. The Red Book not only implements the IVS, it also supplements them with additional standards and extensive guidance for RICS members. This is why the Red Book continues to be such an important publication.

Published for many years in a single-volume global and UK edition for the convenience of members, the Red Book was in January 2014 split into two volumes, with the UK material still firmly a supplement to the global. The global material is to be found in the RICS Valuation – Global Standards 2017, and the previous supplementary UK material in the RICS Valuation – Professional Standards UK January 2014 (revised April 2015). The latter has now been replaced by a new supplement taking effect from 14 January 2019 (rics.org/redbookuk), after extensive public consultation last summer.

The first point that this document seeks to stress is that it is just a supplement to the global edition, because it has sometimes been mistakenly assumed that the UK material is self-contained. This has never been the case, and the new edition makes that clear.

The second key point is that the format of the new edition has substantially changed by comparison with the 2014 (revised 2015) edition. The division of mandatory standards, that is UK professional standards (PS) and valuation technical and performance standards (VPs), from advisory guidance, the UK valuation practice guidance – applications (VPGs), is again intended to be clear. The balance between mandatory material and advisory guidance has been adjusted; the former accounts for less than ten per cent of the new volume and the latter rather more than 90 per cent. This restructures the balance in the current (2014, revised 2015, edition), where explanatory material in the present standards, although designed to be helpful, cannot sensibly apply in all cases. The new format reinforces the supplementary character of the UK material; most of the mandatory standards are found in the global edition.

The Basis for Conclusions document published alongside the UK supplement explains the new content in detail, including the various changes made as a result of the responses to the consultation draft. All members should read the section on structure in the Basis for Conclusions, which explains exactly how the division between standards and guidance has been reset. One of the key developments is to divide some existing guidance into a larger number of individual sections to make them more accessible. In particular, the material on valuation for financial reporting has been substantially reworked, with greater differentiation between UK Generally Accepted Accounting Principles (GAAPs) and International Financial Reporting Standards (IFRS) requirements.

Members will also notice some changes around the secured lending material, but for the moment the existing RICS residential mortgage specification continues, pending agreement of further refinements with stakeholders including trade association UK Finance and the Building Societies Association.

Ben Elder, RICS Global Director of Valuations, says: ‘The new Red Book clarifies that it is a supplement to RICS Valuation – Global Valuation Standards 2017, and redresses the balance between mandatory requirements and guidance. It has also comprehensively reviewed where guidance best sits and now comprises 18 VPGAs, regrouping many to be more user-friendly.’

John Baguley is tangible assets valuation director, RICS
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Related competencies include: Loan security valuation, Valuation, Valuation of businesses and intangible assets, Valuation reporting and research

Further information: rics.org/redbookuk

Summary of changes

- Easy-to-read and more intuitive to use, the document has been restructured to be more user-friendly and clearer about what is and is not mandatory.
- VPGs follow a logical sequence.
- Elements have been combined to avoid the need to jump between sections for a definitive answer to valuation issues, saving time and reducing risk of misinterpretation.
- The material on valuation for financial reporting has been substantially reworked, with greater differentiation between UK GAAP and IFRS requirements.
- There is a new section on valuation for commercial lending purposes.
- ‘Existing Use Value’ has become a separate VPGA.
- There is a revised section on valuation for residential mortgage purposes, although members working in this area should note that residential specifications in the RICS Valuation – Professional Standards UK January 2014 (revised April 2015) will still be recognised, pending agreement of further refinements with stakeholders such as UK Finance and the Building Societies Association.
Terms and conditions apply

Always check the terms of professional indemnity insurance to be aware of possible pitfalls

James Burgoyne
When looking for gaps in professional indemnity insurance (PII) cover, it is perhaps natural to turn immediately to the exclusions section.

However, there are more subtle restrictions that are inherent in the terms of the cover itself. If a problem or loss does not fall under the insuring clauses of the policy, then the cover is not triggered. As such the terms of the cover itself form boundaries, and matters outside of these are not covered, regardless of whether the exclusion section is otherwise silent on the issue.

This is an area that is fertile with misunderstandings and assumptions, so it is worth spending a little time considering the ambit of and triggers for a PII policy.

Definition of cover
PII might be defined as a policy to cover liability for a claim against the professional for negligent provision of professional services in the course of their business. This is a simplified version of a typical PII clause, and much turns on individual words in such definitions.

First, ‘claim’: in straightforward terms, if there is no claim then the cover is not triggered.

If a potential problem is discovered by a practitioner and mitigation is possible, it is natural for them to want to take such steps to avoid a legal claim. Often, the concern in such a situation is not only the increased costs of a legal claim but also a further deterioration in commercial relations between the parties due to the escalation of the matter.

But indemnity under a PII policy for mitigation is conceptually awkward because it precedes any claim that the insurance would cover. While the policy allows notification of potential claims – ‘circumstances’ – it does not automatically provide indemnity for any further steps taken immediately. By definition, a circumstance is something that is not yet a claim.

In practice, the sense of dealing with issues early in order to reduce costs and maintain commercial relations often prevails, and insurers reimburse the policyholder for the cost of mitigation. But what is often not understood is that they are not obliged to do so.

This becomes most apparent when a policyholder proceeds with a mitigation measure in a short timescale but does not discuss the action they are taking with the insurer and obtain its agreement to these arrangements. Policyholders sometimes become caught up in the logic of the situation, and are so convinced they have the obvious, most cost-effective solution for all concerned that they deal with the matter independently.

This is a breach of a basic claim condition — costs cannot be incurred without an insurer’s consent — but the problem is actually more fundamental because the insurer is not obliged to pay for the steps taken in the first place. If the policyholder’s logic were flawed and their enthusiastic solution is not the optimal or only one, then the problem becomes compounded.

Drafting of rights
The drafting of rights in a contract can sometimes prevent a claim becoming necessary. For example, if the contract recasts a liability issue as a debt owed to the other party then it removes their need to bring a claim — but potentially thereby has unforeseen consequences for PII. Similarly, indemnities under a contract are separate obligations, and therefore are not the same as damages claims. The reality is that insurers are often very good about such issues, but fundamentally these are settled at their discretion because the ambit of typical cover does not include them.

Regulatory problems are a further example of such issues. Many practitioners think immediately of their PII cover for any professional issue, but investigations by regulators or tribunals that are unrelated to a damages claim by a client would not fall under the core PII cover. Better PII policies sometimes contain extensions that deal with such issues, but if a practitioner is not alive to the differences then they may not be checking their insurance to ensure they have such an extension.

Professional business
The term ‘professional business’ gives rise to another set of issues: this will be defined in the PII policy, and anything outside of that definition will not be covered. The narrowest PII policies refer to the professional business described in the schedule, so with these it is very important that the description is sufficiently broad and has not left anything out.

The RICS-approved minimum wording provides a broad definition of professional business: ‘those services ... which are undertaken by members of the RICS’. Problems arise, however, for any
The wordings of PII policies vary, and even those that are all RICS-compliant may differ significantly in the breadth of cover offered

A multidisciplinary firm that also provides other services, and whose PII policy does not sufficiently address the broader nature of the business. Consequently, in the wrong circumstances, the definition ‘professional business’ can operate as one of the most general exclusions in the policy, which is often not appreciated.

The way that the term is used in the insuring clause is also important. Cover for claims ‘arising out of’ professional business carried on by the professional is not as broad as cover ‘for claims arising out of or in connection with’ that business. The former is concerned with the provision of professional services to clients; the latter is also concerned with activities around this provision.

As a practical example of the distinction, a professional received a solicitor’s letter out of the blue alleging infringement of copyright in connection with the use of an image on the professional’s website advertising their services. Under the former definition there may be no cover as the breach is not related to a job performed for a client. However, under the latter definition, the issue can be considered as arising ‘in connection with’ the provision of professional services.

The RICS-approved wording uses the form of words ‘which arises in consequence of the conduct of PROFESSIONAL BUSINESS by the INSURED’, which may provide some reassurance.

Difference in condition
These are not the only examples of favourable terms in the RICS-approved wording, but to what extent will this apply? It is usually the case that a particular insurer will draft its own policy wording as it cannot simply use RICS’ own text.

Many insurers therefore include a ‘difference in condition’ (DIC) clause in favour of the RICS policy, which states that in the event of a contradiction between their wording and this policy the RICS terms will take precedence.

On the one hand, this is a belt and braces measure to make sure that any inadvertent discrepancies are appropriately resolved, and on the other it is an immediate and easily verifiable element in the policy wording providing reassurance that the required RICS cover is in fact in place.

Certain DIC clauses, though, do not apply to the entirety of the cover under the policy: some are stated as applying only to the minimum required by RICS. Hence while the policyholder may buy cover for a substantial limit — £2m for example — the terms of the insurer’s policy will apply to the majority of that cover, and the extended RICS cover only applies to a much smaller amount based on the limit of indemnity it requires. For a consultant on their own, this is not a large financial amount at all. As such, it is not just a case of checking that the policy has a DIC clause but checking what this clause actually says.

To conclude, as this handful of examples has demonstrated, the wordings of PII policies vary, and even those that are all RICS-compliant may differ significantly in the breadth of cover offered.

Insurance is usually a fundamental component of a firm’s risk management strategy, and therefore it is important that the appropriate policy is chosen. Better policies contain additional elements that address issues discussed above, such as explicit mitigation costs extensions, or more comprehensive forms of words in insuring clauses and definitions.

Insurance should not be seen as the only component of a risk management strategy, however, and a proper understanding of the issues outside PII allows further steps to be taken, such as in the agreement of client or lender contracts to avoid insurance issues arising later.

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Related competencies include: Insurance
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Legal

‘Controllers need to let the data subjects know they are processing their data and what they are doing with it’

Adam Rose
Mishcon de Reya

Q: We have various sensors that collect information about people using a building that I manage. Are these people affected by the General Data Protection Regulation (GDPR), and how can I make sure the way we use the data collected is legal and protects privacy?

A: The starting point of any discussion on information about people is whether what is being collected is ‘personal data.’ Personal data is defined for these purposes in the GDPR (bit.ly/dataprotectreg), which was adopted in 2016 by the EU and became law across the union on 25 May 2018. In reality little changed on adoption, because the definition was already embedded in law across the EU as a result of earlier legislation, such as the Data Protection Act 1998 in the UK.

The regulation defines ‘personal data’ as being ‘any information relating to an identified or identifiable natural person (‘data subject’); an identifiable natural person is one who can be identified, directly or indirectly, in particular by reference to an identifier such as a name, an identification number, location data, an online identifier or to one or more factors specific to ... that natural person.’

In effect, any information that is held in any way that relates to a living person and which can identify a living person, is covered by the regulation. If so, that means that the data controller — the business or other entity that determines the purposes and means of the processing of personal data — has various obligations in respect of the data, and to the underlying person, that is, the data subject.

The question raises a number of key legal issues: does the information being collected in your case constitute ‘personal data’? If the answer is yes, what does the data controller — whether that’s you as building manager or the landlord themselves — then need to do?

If the data being collected would allow you to identify someone in your building, that is almost certainly personal data. This does not necessarily mean you can identify them by name, but you know the person who your system has sensed came into the building at a given time, moved to the elevator area, went up to the third floor, moved towards a kitchen area and then sat at a particular desk.

Let’s assume the data is personal data. Is the manager the controller, or is it the employer or building owner? Almost certainly the manager is. They are deciding on the manner in which the data is collected, and what the point of the data collection is. Yes, the manager is providing their services on behalf of the owner, but exactly what data they choose to collect, how they handle it, and what they do with it, means that the regulator — the Information Commissioner — would most likely take the view that the manager is the controller (see old but still relevant guidance at bit.ly/infocomdefs).

Controllers have a number of obligations in respect of personal data. In particular, they need to let the underlying data subjects know that they are processing their data, who the controller is, what it is doing with the data, and similar such information. In this instance, the key facts might best be put on a short sign at the entrance to the building, and perhaps at a reception desk or near the elevator, to tell people what is being done. A fuller notice should be easily found on the building’s website, and a link to it provided by way of a url and perhaps also a QR code.

Data subjects have rights to know what data is being processed about them, and to be given copies of the data in question; they can also ask for the data not to be processed, and to be corrected or transferred. There are various limits to these rights, but the manager should think about what they are doing, and how they might respond to such requests.

The manager should also consider how intrusive the data collection is for the person using the building, and its benefits to the manager and the owner. Carrying out a data protection assessment in a case such as this will highlight the key risks, and help the manager to structure what they are doing in a way that is most likely to comply with GDPR.

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In recent months, it is understood that HMRC has raised a number of enquiries into stamp duty land tax (SDLT) returns where the lower mixed-use rates of the tax have been paid on acquisitions that HMRC considers to be solely residential.

SDLT rates for residential property are up to 12 per cent, where the price exceeds £1.5m, or 15 per cent, if for instance the price exceeds £1.5m and the property is a second home, or if the purchaser is corporate. The maximum SDLT rate for non-residential or mixed-use property, comprising residential and non-residential elements, is much lower at five per cent.

Purchasers acquiring residential property such as a house and non-residential land as part of the same transaction may be subject to the lower mixed-use SDLT rates. Yet ‘non-residential’ property is not specifically defined in the legislation. Instead, ‘residential’ is defined, meaning that everything else is non-residential.

The legislation defines ‘residential’ as:

- a building that is used or suitable for use as a dwelling, or is in the process of being constructed or adapted for such use
- land that is or forms part of the garden or grounds of such a building
- an interest in land that subsists for the benefit of such a building.

HMRC’s Stamp Duty Land Tax manual (bit.ly/SDLTMan) states that: “Garden or grounds” includes land [that] is needed for the reasonable enjoyment of the dwelling, having regard to the size and nature of the dwelling. This will usually be a question of fact depending on the individual circumstances of each case’.

Cases where a transaction may be classed as mixed-use could, in theory, include those where the garden or grounds of the house is far larger than would be needed for its reasonable enjoyment, or where part of the grounds is being put to commercial use, that is the transaction includes an element of non-residential land. Cases in the latter category will usually be more clear-cut; for example, where the grounds include a revenue-generating woodland or a farmer has a formal tenancy over part of them.

However, whether grounds are larger than necessary for reasonable enjoyment may be more subjective, and more difficult to prove.

What is clear is that this is an area on HMRC’s radar. In addition to the taxpayer enquiries that have been raised, what constitutes commercial use has been the subject of recent broader discussions between HMRC and industry bodies on the definition of residential property. The published notes of these discussions include the following.

‘The question (in relation to commercial use) is whether an identifiable use precludes enjoyment of that part of the grounds. A paddock that is not used for anything else remains available for the enjoyment of the dwelling because there is no other identifiable use. A meadow that has been planted as a wildflower meadow as part of a grant scheme is still for the enjoyment of the occupants; there is no other identifiable use.

‘On the other hand, a formal arrangement involving the granting of a lease or licence to graze the land is more likely to prevent the owner’s enjoyment of that land. It will be necessary to weigh up all the factors.’

HMRC’s current position therefore appears to be that there must be formal revenue-generating arrangements if a home may be taxed at mixed-use SDLT rates. It may therefore be difficult to convince HMRC that a house with 50ha of fallow fields has a mixed use and is not purely residential – even where the house is not palatial, and the 50ha is arguably more than is reasonably needed for its enjoyment.

This does however appear to be a developing area, and it will be interesting to see the thoughts of a tribunal in the event that any of the cases currently under enquiry result in litigation.
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25th Anniversary

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RICS has had extensive behind-the-scenes involvement in Dame Judith Hackitt’s Independent Review of Building Regulations and Fire Safety, and is helping ensure the recommendations are implemented.

Gary Strong

As many of you know, Dame Judith Hackitt, former Chair of the Health and Safety Executive (HSE), was appointed to lead the Independent Review of the Building Regulations and Fire Safety in 2017, and published her interim report on 18 December last year.

RICS was heavily involved in the lead-up to this, engaging with Dame Judith’s team directly and collaborating with the Construction Industry Council to ensure that the report was based on sound factual evidence and that sector interests did not dominate. We wanted to be certain that an industry often described as fragmented came together.

In the early part of 2018, work groups were established by Dame Judith’s team to give their input into the final report, which was published on 17 May (bit.ly/HackittRev). RICS again deployed experts to these six working groups and was the only professional body to have representatives on most of them. Round-table meetings with the Secretary of State for Housing, Communities & Local Government, the Home Secretary and many professional bodies ushered in a new spirit for all involved in construction and fire safety to collaborate in the public interest.

Lost public confidence
The interim report had already been pretty damning of the industry — referring to ‘a race to the bottom’, a culture of doing things ‘as cheaply as possible’ and a ‘systemic regulatory failure’, as well as describing competence as ‘patchy’.

It was also clear to us in RICS that the public had lost confidence in the construction industry to provide fire-safe buildings, a fact that was picked up internationally. We began to hear anecdotes of investors being cautious about UK standards and, with Brexit looming, a reluctance to finance projects.

We have had a dedicated group working with Dame Judith’s team and the Ministry for Housing, Communities & Local Government (MHCLG) Building Safety Programme following the Grenfell fire on 14 June 2017. We are the only professional body to have sufficient resources to interface extensively and directly with these parties and enable many of the meetings of industry experts, and to ensure we work together in the public interest by showing leadership on this important topic.

Dame Judith’s final report made 53 principal recommendations, and more sub-recommendations, including:

- a stronger and tougher regulatory framework for higher-risk residential buildings (HRRBs), which are ten storeys or more in height
- a proposed new Joint Competent Authority (JCA) comprising fire and rescue authorities, LABC and the HSE to oversee better management of risks in these buildings through safety case reviews across their entire lifecycle
- introduction of a safety case approach and permitting regime that will only allow demonstrably safe buildings to be constructed and occupied
- clear responsibilities for ongoing, active life safety management during occupation
- mandatory incident reporting for HRRBs, with confidential reporting on structural safety to be used for all other buildings to cover every safety concern.
It was clear to us in RICS that the public had lost confidence in the construction industry to provide fire-safe buildings

Gary Strong FRICS is RICS global building standards director gstrong@RICS.org

Related competencies include:
Health and safety

**Golden thread**

The golden thread of fire safety that Dame Judith recommends — deploying digital safety case files, with gateway approval points from inception to handover to management in use — is an important step in enabling transparency and accountability.

Under the recommendations, there will be new sanctions for non-compliance, bringing criminal courts into the process, and the concept of residents’ voice will be introduced, reflecting concerns that residents of Grenfell Tower knew what was happening with the management of their own building but were being ignored.

The role of building safety manager is being created for HRRBs, the description and competencies of which are being scoped out as we go to press.

An example of the many workstreams now under way is the MHCLG Industry Response Group (IRG), which has in turn set up a competence steering group, and I represent RICS on this steering group. It has been charged with reporting to the Secretary of State for Housing, Communities & Local Government quarterly since its inception in May on the competencies that all actors in the planning, design, construction, refurbishment and management of HRRBs will have to demonstrate, making its final recommendations by early 2019.

There is some controversy over the definition of HRRB — a new term that emerged in the Hackitt Review — as a higher-risk residential building more than ten storeys high. However, the rationale for the narrow scope is simply that the new regulatory system will apply to an estimated 2,000–3,000 residential buildings, which will in itself be a significant undertaking.

While we do need to broaden this definition to include hospitals, care homes and student accommodation of any height as well, to do so now would bring the construction industry to a standstill. So the proposed new model will be put in place, tested and refined, before — we hope — being broadened out to other higher-risk complex buildings in time.

The competence of all actors including planners, architects, designers, building control surveyors, building surveyors, project managers, firefighters, installers, site supervisors and building managers will be scrutinised in future as the common framework develops and the defined competencies are checked by an overarching body that will come into being.

RICS has an established pathway and competency framework for fire safety, and we are ensuring in the IRG competency workshops that what emerges is workable and achievable for our members. We have already taken steps this year to enhance the importance of ‘Fire safety’ as a competency. What we have been most concerned about, however, is whether anyone who is not a member of any professional body can demonstrate education, training and competence in life safety in the future.

As we all know and recognise, the fragmented, subcontracted nature of the construction industry does not lend itself easily to recognising and checking competencies by formal accreditation; but for all higher-risk buildings in future, such competency will have to be demonstrated by all in order to earn the right to work on these buildings, with a quest for construction quality and building management quality driving culture change.

• clearly established key roles and responsibilities, including tackling poor procurement practices
• a fundamental overhaul of guidance, making it simpler, clearer and easier to use, to support a systems approach to building safety with more rigorous requirements where needed
• digital records to be kept for new HRRBs from initial design intent through to construction, including any changes that occur throughout occupation
• a stronger enforcement and sanctioning package, with criminal sanctions for non-compliance and large fines
• more effective leadership and assessment of competence among key roles to ensure building safety
• stronger testing, labelling and traceability of construction products that are critical to building safety
• empowering residents and giving them a voice in the system.

**Next steps**

Almost immediately after publication of the final report, the most important question was ‘What next?’ Many of the recommendations are being worked on behind the scenes, with RICS giving expert advice on these workstreams.

The change for approved inspectors was expected in some quarters, since Dame Judith says no organisation should be able to choose its own regulator. In future, the combination of the HSE, fire and rescue services and LABC in the form of the proposed JCA will oversee any plans for design and construction of HRRBs, as well as managing existing buildings (see the executive summary and Appendix F on competence in Dame Judith’s final report).

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Gary Strong FRICS is RICS global building standards director gstrong@RICS.org

Related competencies include:
Health and safety
When local authorities started to invest in commercial property, with the principal aim of generating long-term income streams, some predicted it was a passing fad or even a dangerous game. With some councils now forced to borrow funds to provide core services, it is apparent that revenue generation from commercial property is not simply a discretionary activity favouring those who thrive on risk and reward.

The Local Government Association (LGA) voiced concern about the drying up of central government funding to councils in September. With cuts of a further £1.3bn from council funding proposed in 2019/20, the LGA predicted that more than half the local authorities in England would receive no central government financial support at all (bit.ly/1ga1pt3bn).

The retention of business rates is part of this deal, and councils may take a more relaxed view on granting consent for both commercial and residential schemes if these can ensure regular income streams, and potentially one-off bonus payments. But the prospect of a radical overhaul of ratings could stymie this (bbc.in/2xXb2y3).

A glance at Figure 1 reveals a spectacular upward trend in the amount invested in commercial property by UK councils over the past four years. What is even more striking than the clear upward trend is the proportion of total investment by councils this represents: it stood at 0.16 per cent in 2014, but is now well above three per cent.

Investment in property to create an income stream is likely to remain part of many councils’ financial strategies into the foreseeable future. To the extent that direct investment gives councils significant control over their financial sustainability, and potentially a similar degree of control of local economic regeneration, it can provide multiple dividends. And while borrowing rates remain relatively low, business cases can often be made without having to consider more complex issues such as economic impact or the social value added.

Following a review of the annual investment strategies, investment board reports, treasury management strategies and similar documents across a range of councils, it is possible to identify distinct commonalities, but also wide disparities. Many councils adopt an almost identical approach to the evaluation of opportunities, in terms of the criteria to be considered.
and the weightings used. There are also some commonalities in terms of the ideal portfolio mix that can, in theory, spread risk. This perhaps contributes to the unfortunate scenario in which public money competes with other public money for the same investment opportunity. As one council’s commercial property investment strategy confirmed: ‘The property investment market is a crowded arena, particularly as local authorities … appear to be seeking similar investment opportunities in prime locations with long leases and strong covenants (bit.ly/Ketappend).

Evidence also points to councils piling into the acquisition of both department stores and shopping centres just as the retail market is going through an enormous transformation and gurus such as Bill Grimsey call for a re-imagining of the traditional retail heart of towns and cities (bit.ly/grimrev2). As with all commercial property investments, councils are buying into the future business models and market dynamics of the occupiers as much as – if not more than – into the bricks and mortar.

The shift from physical to online retailing was front-page news in the Financial Times when it noted a distinct cooling-off for retail property, leaving landlords and investors with a ‘glut of unsold shopping centres’, and adding that councils seem to have been the only willing purchasers (Financial Times, 8 October 2018, p.1).

An overarching investment criterion set out by one district council requires that no town should benefit from more than 25 per cent of the total investment exposure. This may be a case of portfolio theory and diversification as interpreted by the council overtaking what may make complete sense financially and economically. And if investing in only, say, six properties, is it really necessary to apply a spurious economic theory to spread the investment risk across sectors and geography?

This is where we see some significant differences in policy and strategy. Table 1 (overleaf) summarises the alternative approaches taken by a range of councils of different size with different local challenges.

In some instances, it is recognised that a locally based investment might not provide the same direct return, but it could enable wider community benefits. One council provides for opportunities generating between nought per cent and five per cent to be subject to a separate economic assessment if there is a belief that it could deliver modest financial returns coupled with wider local benefits to the community.

The likelihood of electing to only invest within a council’s area, or to prioritise investment in that direction, is directly related to the nature and scale of the investment opportunities available. As reported in a parliamentary research briefing from February 2018, half the councils responding to a survey acknowledging that they had invested in commercial property were district councils from the South East (bit.ly/logovinvest).

To that extent, it would be unrealistic to expect investment to be constrained to the local area in all instances, although there may be a substantive case for prioritisation. Other than the political dividend for councils seen to invest locally, there could be a wide range of peripheral benefits; some with a very direct and immediate effect, others with a longer gestation period over a wider area but nevertheless attributable to the initial investment. These include:

- **short-term and immediate benefits**: for example, direct employment of local people, procurement of goods and services from the local supply chain, direct support for policy objectives, increased footfall, and consequential improvement in sentiment by many stakeholders in the community

- **longer-term and wider benefits**: for example, increase in property values, investment in infrastructure, enhancement of rateable value baseline, new homes and any associated bonus, additional inward investment by businesses, increase in the...
<table>
<thead>
<tr>
<th>Focus of investment</th>
<th>Features</th>
<th>Example</th>
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<tbody>
<tr>
<td>Within council area</td>
<td>• Investment only within council boundaries</td>
<td>• Bournemouth Borough Council</td>
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<tr>
<td></td>
<td>• Priority is investment in regeneration projects and meeting council’s</td>
<td>• Eastleigh Borough Council</td>
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<td></td>
<td>strategic objectives</td>
<td>• Lincolnshire County Council</td>
</tr>
<tr>
<td>Within ‘economic area’ as defined in</td>
<td>• Investment within boundaries of council and adjoining local enterprise</td>
<td>• Scarborough Borough Council</td>
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<tr>
<td>the relevant investment policy</td>
<td>partnerships</td>
<td>• Torbay Council</td>
</tr>
<tr>
<td></td>
<td>• Investment only occurs outside area, or there is clear preference for</td>
<td>• Northamptonshire County Council</td>
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<td></td>
<td>such an investment strategy by council</td>
<td>• Three Rivers District Council</td>
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<td></td>
<td>• Policy of clear separation between day-to-day investment and day-to-day</td>
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<td></td>
<td>asset management</td>
<td></td>
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<tr>
<td></td>
<td>• Avoidance of local political interference in investment decisions</td>
<td></td>
</tr>
<tr>
<td>Outside council area</td>
<td>• Priorities for investment starting with council area, then region,</td>
<td>• Confidential – given sensitivity of investment out of area</td>
</tr>
<tr>
<td></td>
<td>county-wide, and eventually national</td>
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<tr>
<td>Hierarchy of localities</td>
<td>• Solely driven by financial assessment of opportunity</td>
<td>• Surrey County Council</td>
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<td></td>
<td></td>
<td>• West Berkshire Council</td>
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<tr>
<td>Separation of objectives</td>
<td>• One fund for investment and one for regeneration</td>
<td>• Torbay Council</td>
</tr>
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Implicit in assessing wider benefits to a community is that financial investment appraisal can be mixed with politics. Since councils are inherently political bodies, it is surely right that politics has a part to play in crucial investment decisions, providing that the right checks and balances are in place and there is good governance.

If there were an appetite – and perhaps an ability – to carry out more economic appraisals on local investment opportunities, perhaps many schemes that on face value appear unviable would be taken forward. In theory, this sounds as though it would be the right thing to do, but the flipside is that a reliance on longer-term, non-cashable benefits may not be sufficient to plug short-term financial holes in the budget.

There is no easy solution to this dilemma, and no single investment policy is right for all councils. However, I predict:
- commercial investment will continue its upward trajectory
- the government will not intervene to limit investment to council areas
- investment policies will become more sensitive to local circumstances
- investment in the community will attract more attention and an increasing proportion

of discretionary investment funds
- the property profession and its local authority clients will become more adept at ensuring wider benefits.

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Related competencies include:
- Investment management (including fund and portfolio management)

What do you think?
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How CVAs affect landlords

Company voluntary arrangements have become a significant issue for retail landlords – but do they always entail having to take a loss?

Nathanael Young

Company voluntary arrangements, or CVAs, used to be a fairly uncommon insolvency procedure. Recently, however, the trickle of cases has become a flood, with big names such as House of Fraser, Carpetright and New Look proposing such arrangements.

The increased popularity of online shopping, business rates, uncertainty over Brexit and a squeeze on household spending have all been putting pressure on the retail sector, and the fate of Toys ‘R’ Us and Poundworld show that these are no theoretical concerns. However, with a range of insolvency procedures available, including administration, the fact that times are tough for retailers cannot itself explain the growth of CVAs. Whether justifiable or not, CVAs have increasingly become the go-to restructuring tool.

A CVA allows an insolvent company to enter into a binding arrangement with its unsecured creditors. This usually involves rescheduling or reducing its debts, and can also involve changing the wider contract terms between a company and its creditors.

In theory, the flexibility of this process can be used to address the causes of insolvency rather than simply dealing with its effects; it is also less invasive than any other insolvency process. If a CVA is entered into without the company also going into administration, it continues to exist and trade, and its directors remain in office and responsible for trading. While an insolvency practitioner implements and supervises the CVA, their role is much more limited than it is if the company has gone into administration. CVAs thus help reduce the costs of the process, and therefore the impact on creditors.

While less invasive, the CVA process is also intended to be less damaging to creditors. The CVA will not even proceed without the creditors agreeing, and the proposal will usually involve a significantly better outcome for the creditors as a whole than liquidation or even administration. Unlike most other forms of insolvency, a CVA does not result in an automatic moratorium preventing creditors from taking action against the debtor while the proposal is under consideration. Small companies can obtain a CVA moratorium, but this is relatively uncommon.

Creditor controversy

The most controversial aspect of the CVA process is that it allows for proposals that do not result in the unsecured creditors being paid in proportion to their debts. Under a CVA different creditors can be paid on different terms, as long as a sufficient number are in favour of the proposals.

This is important because only 75 per cent of the creditors, by debt value, that attend the creditors’ meeting need to vote in favour of the proposal. While at least 50 per cent of the creditors by debt value that vote in favour have to be unconnected to the company, this often allows significant connected party involvement.

A party is connected if it or its associates – such as spouses, civil partners, business partners, employees, directors and relatives – control one-third or more of the voting power of the shares or those of a parent company, or if the board of the company is accustomed to following the directions of the creditor or its associates.

In many cases, the largest creditor is the company owner, and they will have a significant say in whether or not to accept the CVA proposal. Furthermore, the owner stands to gain if the CVA is approved and is successful because they will preserve the value of their shares, whereas in most other insolvency procedures the owners lose this entirely. This has led to concerns that CVAs can be more about returning or preserving the shareholders’ investment than genuinely rescuing companies in financial difficulty.

From an insolvency point of view, the landlords are in an unusual position. They do not normally take security for the obligations owed to them by their tenants, so count as unsecured creditors. However, landlords do have other ways to protect against tenant default; particularly important is their right to forfeit, which
gives them an advantage over other creditors when dealing with financially pressured tenants that are still trading. Even if a tenant goes into administration, it is often the case that its rent obligations are up to date, and that the business and lease are swiftly sold to a solvent company. As such, the landlord will escape relatively unscathed, and other unsecured creditors will bear the brunt of the insolvency.

In a CVA, this situation is reversed. A CVA proposal may seek to restructure the company’s lease obligations by reducing future rent and preventing landlords from exercising their usual rights. Furthermore, creditors such as banks and suppliers have a vote on the terms proposed; these do not affect them, but they may have a major impact on landlords, who have no vote.

In the case of retailer CVAs, typical proposals now place premises into different categories. There will be a group of profitable premises where no changes or only minor ones are proposed to the leases. The second group are marginal premises where substantial renegotiation of leases is required. The third group is unprofitable premises that will close. Often, creditors other than landlords will be paid in full.

Landlords have options under the CVA process if they act quickly. By seeking a consensus with other creditors, particularly other landlords, they may be able to put together a sufficient bloc to resist the imposition of a CVA. Even if not, by making representations the landlord may be able to negotiate improved terms — for example, reinstating the full rent if the CVA fails. This may also help prevent particularly controversial proposals going ahead, such as removing a landlord’s right to forfeit a lease.

In terms of voting rights, a particular problem for the landlord is that part of their claim will relate to future rent arrears and dilapidations. The claim will by default be unascertainable for the purpose of calculating voting rights, and will thus be prescribed a value of only £1. Independent evidence may help here in seeking to ensure that the landlords’ claims are valued more realistically and they have a greater chance of blocking unattractive CVA proposals.

Above all, constructive engagement is important. Landlords will not always lose out under CVAs, particularly compared to the alternatives. Some proposals, such as the JJB Sports CVA, have in fact attracted wide support from landlords.

**Options for objection**

There is also a procedure for creditors to mount a legal challenge to a CVA. This can either be brought on the grounds of unfair prejudice to the interest of a creditor or material irregularity in the CVA process.

The former is an objection to the proposal’s substance. When determining whether there has been unfair prejudice, the court will look at whether the creditor has been treated differently to others — the so-called horizontal comparison — and whether the creditor’s position is worse than it would have been without the CVA — the vertical comparison. However, prejudice alone is not enough to bring a claim; it is also necessary to show that this is unfair. In most cases, CVAs are put forward on the basis that the prejudice suffered by some landlords is necessary to ensure that the business can be rescued.

Material irregularity relates to defects in the procedure followed. Whether such an irregularity has occurred depends on the specific circumstances, though the mere fact of a breach will not be enough.

As concerns about abuse of CVAs have risen, so too have calls for reform. However, although there is widespread concern that the CVA process is being misused, settling on definite proposals is more difficult. Any insolvency process will have winners and losers, and pre-pack administrations have also attracted their share of controversy.

While some reform of CVAs is possible, it seems likely this will be restricted to curbing obvious abuses. However controversial, landlords and their advisers should assume that CVAs will be a feature of the retail sector for some time to come.

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**Related competencies include:**

Corporate recovery and insolvency, Landlord and tenant
A practical guide to ground (f)

Careful consideration is needed when redevelopment is on the cards and tenants request a lease renewal

Nikki Yates and Kellie Jones

The Landlord and Tenant Act 1954 offers protection to tenants occupying premises for the purpose of their business and restricts the circumstances in which a landlord can take back possession of its property. Unless a commercial lease is ‘contracted out’ of the 1954 Act, the tenant will have a statutory right to renew their tenancy, subject to meeting certain criteria set out in the legislation. In circumstances where the landlord does not wish to renew the tenancy, it can oppose the renewal on certain limited grounds — grounds (a) to (g) — set out in the 1954 Act. Ground (f) may help a landlord planning to redevelop, and is often referred to as the ‘redevelopment ground’, although the wording of ground (f) does not actually mention ‘redevelopment’.

The landlord must serve an opposed section 25 notice and specify the grounds on which it relies. The timing of this notice needs to be carefully considered: the landlord must give between six and 12 months’ notice to the tenant, expiring no earlier than the contractual expiry date. As there is always a risk that the tenant will vacate on the date in the notice, the landlord will need to balance obtaining vacant possession with protecting its income stream, particularly where there are multiple tenants. If the tenant serves a section 26 notice requesting a new lease, the landlord can serve a counternotice specifying the grounds.

If the tenant does not want to vacate, it must issue proceedings for a new lease before the termination date stipulated in the notice. Failure to do so will result in the tenant losing its protection and the right to a new lease under the 1954 Act. It is also open to the landlord to issue termination proceedings, which it can do as soon as the section 25 notice has been served. Section 30(1)(f) of the 1954 Act states that a landlord can oppose a lease renewal if ‘on termination of the current tenancy the landlord intends to demolish or reconstruct the premises comprised in the holding or a substantial part of those premises or to carry out substantial work of construction on the holding or part thereof [and it] could not reasonably do so without obtaining possession of the holding’.

The landlord must consider all the elements of ground (f). First, it must ensure the works come within the ground (f) requirements, so are one of the following:
1. demolition
2. substantial work of construction
3. reconstruction.
There is obviously a range of works going from refurbishment to demolition, and the nearer the work is to the latter, the more likely a landlord is to meet the works element of ground (f).

‘Substantial work of construction’ can be difficult to identify, however. Each case depends on its own facts, but the courts have held that works such as moving a staircase, removing structural walls and interference with floor slabs will be sufficient, whereas putting in wooden partitions, new toilets or the installation of pipework will not.

A landlord should consider the requirements of ground (f) when putting together its proposals, and it is advisable to seek legal advice at an early stage to ensure the best chance of satisfying these. However, there is always litigation risk, as the two Global Grange Limited cases of 2003 made clear. These involved two adjoining hotels and essentially the same or very similar scheme of works, but are difficult to reconcile. The landlord was successful in one case and not the other, proving that, on a different day with a different judge, a different outcome is not impossible.

The works must be being carried out to the individual holding, which is the part the tenant occupies for the purposes of its business. This is particularly relevant for a large site with multiple holdings, as each one needs to be considered individually.

**Getting hold of the holding**

The landlord must also show that it could not reasonably carry out the proposed works without obtaining possession of the holding. The lease provisions need to be checked as to whether the work could reasonably be carried out with the tenant in situ. A clause that allows the landlord to enter the property to make improvements to it can be sufficient to enable significant works. A tenant may not be able to rely on such a reservation in the lease if it entitles the landlord to enter premises to carry out works but requires it to make good all damage. The proposed works may mean it is impossible to make good: for example, if walls are to be knocked down and not replaced or a unit is to be split into two.

The court will also consider the disruption caused to the tenant’s business during the works. Each case is considered on its facts, but as a rule of thumb, works that will exclude the tenant from the premises for more than 12 weeks will disrupt their business sufficiently to require legal possession for the work. If the works
It is strategically sensible for the landlord to disclose as much information as early as possible to prove its intention

...will result in the premises becoming entirely different to those currently occupied by the tenant and not fit for their business, then the landlord will also require legal possession.

The relevant date for the landlord to prove its intention to carry out the works is the date of the hearing. It must show not only that it has a firm and settled intention to carry out the works – the subjective part of the test – but also that it has a realistic prospect of implementing that intention – the objective part.

If the landlord is an individual, the first part can be done by way of witness statement; if a company, the necessary resolution will need to have been passed.

Whether the landlord can demonstrate that it has a realistic prospect of implementing the intention will depend on the steps it has taken in respect of the proposed development. The following should all be considered.
- **Plans**: without plans it may be said that the landlord is still considering the options, since these are necessary to obtain accurate costings.
- **Planning permission**: this is not a prerequisite, but it saves significantly on legal costs if planning permission has already been obtained by the time of the trial; otherwise, expert evidence on the likelihood of obtaining planning permission will be required.
- **Third-party consents**: consents may be required to enable the works to be carried out, such as those relating to rights of light or superior landlord consent.
- **Finance**: the landlord needs to show that it has sufficient funds to carry out the works and also what they will cost.
- **Vacant possession**: if the landlord requires possession of other properties to carry out a development, then it will need to show that it will be able to obtain vacant possession.

The further along the landlord is with all of the above and other elements such as building contracts and procurement, the more likely it is that it will be able to prove its intention to carry out the works and therefore be successful in proving ground (f).

Actions a landlord can take to have the best chances of satisfying the ground (f) requirements include:
- drawing up initial plans and discussing the proposed works to the holding with its solicitor
- serving all of the section 25 notices
- getting as many practical elements necessary for carrying out those works in place by the time of the trial.

In general, it is also strategically sensible for the landlord to disclose as much information as early as possible to prove its intention as an incentive for the tenant to settle as early as possible and save costs.

If the landlord does all the above, subject to litigation risk, it should usually satisfy ground (f) if it has a genuine and settled intention to carry out those works; if the intention is genuine, motive is irrelevant.

While this is the current position, we will have to wait and see whether the Supreme Court’s decision in *S Franses Limited v Cavendish Hotel (London) Ltd* [2017] UKSC 2017/0151 changes this once it has considered the matter (see below).

Where a tenant does not want to leave the property or wishes to remain as long as possible they can cause considerable delay, and in some cases frustrate the proposed development altogether. For example, at the planning stage, the tenant can object to the proposed works and has the option of drumming up support in this regard. It may be that the objection succeeds in ensuring that the landlord does not obtain planning permission, or at least manages to delay the matter so that it has to amend the plans and resubmit the application.

The tenant may also argue that they will permit the landlord to carry out the works while they remain in situ, although whether this is possible will greatly depend on the extent of the works and also the provisions in the lease.

The tenant can put the landlord to proof and take the matter all the way to trial, which is costly and time-consuming. The onus is on the landlord to prove its intention, and therefore the major costs will fall to the landlord in proving its case under ground (f).

The Cavendish Hotel case highlighted that motive is irrelevant provided that the landlord has a genuine and settled intention to proceed with the proposed works. It does not matter that it may have contrived those works just to get rid of its tenant, or that the works made little commercial or practical sense: as long as it can demonstrate that it intends to carry out those works regardless. This case is being appealed and is still due to be heard at the time of writing.

Until the Supreme Court rules on this point, it makes sense for landlords wanting to redevelop their property to design their proposed scheme of works to ensure, to the best of their ability, that they meet the requirements of ground (f).

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Becoming a data-led business

As data becomes a vital and valuable asset, what can real-estate businesses do to understand and make the most of theirs?

Dan Hughes, Simon Hughes and Linda Chandler

Data is being discussed more and more frequently in all aspects of everyday life, whether in stories of its misuse by social media, on the use of data for targeting voters, or about the introduction of regulations for the way personal data is processed. Data is also becoming ever more important to the success of real-estate businesses. So every company in the sector should care about the data they hold and know what to do about it.

Data is simply a record of something. It could be a size, a value or a shape, but it is only a representation of something else. This may sound obvious, but it is an important point to clarify. It is also essential to know things about the data, such as who created it, how and when.

For example, we can compare two data sets that record the height of houses in a street. On the face of it, these appear to be pretty much the same; but if one measurement was taken by a surveyor using the latest data capture technology last week and the other five years ago by someone walking along the road and counting the number of floors, we can see that the two sets are very different. Both may be useful, but for distinct purposes. Knowing as much is essential in informing how we can use either set.

Of course, data and indices have been widely used across the property sector for many years, from IPD indices in the investment markets to BCIS in construction. But why are we talking about it so much now? There are a few key reasons. The first is the volume of data now being created; an often-quoted estimate is that 90 per cent of all the data in the world has been created in the past two years alone. The second is the ever-growing processing power to do things with it, as we can increasingly collect data in new and cheap ways that until recently haven’t been possible. More importantly, we can then understand it, and often extrapolate other data sets to give us even more insight.

The use of data is beginning to change the way we plan, create and use buildings. Things that have not been possible in the past will become so in future because of our ability to gain new insights from better use of data. For any company to thrive, they will
need to understand clearly what data they have, what data they need, and the role that this plays in their offering.

At LIQUID REI, we believe that there are some initial steps that all property companies should be taking.

1. Understand what is happening in the market, have a structured process to identify the challenges that your business is failing, and then innovate. We take a look at what such innovation means below.

2. It is then essential that data is thought about as part of the wider proposition. A fully formed data strategy, considering how a business uses data and the roles that data will play, will be essential to the successful companies of the tomorrow. Assuming that data you have relied on in the past will continue to remain a competitive advantage may not be the right thing to do.

3. We also need to look at the value of data itself. Using it can add value — for example, by informing better decision-making or increasing efficiency — but we also need to consider the actual value of the data as well. Again, we will go on to look at the value that can be placed on data.

**Innovation in real estate**

Discussions are happening now in boardrooms across the real-estate sector about digital disruption, technology, innovation and data strategies. Some of the questions that have been asked over the past 12 months are about how best to respond to threats from existing competitors and new market entrants.

How do we do so without affecting short-term performance? What are the right investments to make? Should we invest in proptech? Should we digitalise our business first? The answer is simpler than you might think, and nearly always the same regardless of the question:

start by unlocking innovation in your own organisation, while at the same time addressing specific problems that your clients or the market have.

It’s easy to be distracted by the bigger picture of digital disruption, innovative technologies and transforming your business to become properly digital.

The organisations that have successfully embarked on this journey have realised that changing the way they provide services is relatively easy, and has more of an impact in the short term. They realise that this is crucial before they commit to investing millions in long-term plans for major change that transform what the organisation provides — its products and services.

Amazon, which is less than 25 years old, is a great example. While it is a very different business to most of those in real estate, and much younger and more agile, its culture of continuous, incremental innovation is something that many real-estate boardrooms can learn from.

To become innovative and agile, firms need to develop an innovative culture and use that to transform the conversations they have with clients.

The LIQUID approach to innovation comprises the six steps set out below. These will improve short-term business, cut costs and make efficiencies, while building momentum, engaging staff and proving the value of innovation.

Crucially, they foster a culture of innovation and can transform the engagement that businesses have with their clients.

1. **Light the fire**: create space in the day-to-day business to allow staff to generate ideas, provide inspiration on market challenges using design sprints and ideation programmes to innovate.

2. **Establish the impact**: create a series of quick-win, prototype ideas that can be developed as investment projects towards minimum viable products (MVPs) to achieve a quick impact.

3. **Optimise the culture**: start to engage with the markets beyond what is necessary to service your clients. Ensure space is identified in the business to enable people to be agile and innovative.

4. **Create the voice**: let the market know about the changes that are happening — share prototypes, innovation initiatives and MVPs with your clients, and ensure your innovations can help them overcome their key challenges.

5. **Diversify solutions**: encourage diverse thinking and engagement in the markets. You need to embrace what is different rather than simply talking about it, fostering an environment for agile and innovative thinking.

6. **Lead the market**: be seen by your clients and chosen markets as leaders — as a credible voice on current and future challenges, offering successful responses.

Transforming the way an organisation provides its services and increases revenues and market share makes it easier to invest in larger-scale transformation of those services themselves. Too many innovation programmes fail because the expectation is that game-changing products or services will be created quickly with minimal impact on day-to-day operations and within the financial constraints of the annual budget.

Making certain that everyone is clear on the business objective of innovation is key.

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**We can increasingly collect data in ways that until recently weren’t possible, and then understand it and often extrapolate other sets**
to its success, as is the ability to implement the ideas it generates. Ensuring that day-to-day operations are resilient and transforming the way that the business provides its services, although not game-changing, are needed to foster confidence in the boardroom that your programme can achieve the desired results.

The value of data

In almost every meeting these days, data is the elephant in the room. Amid headlines such as ‘Data is the new oil,’ businesses are starting to understand that it has an intrinsic worth.

The unarticulated problem in interconnected societies and cities is that everyone needs everyone else’s data. The data your organisation owns or has access to is undoubtedly a limited subset of what you may need to develop or improve services. However, each organisation keeps its data in silos with very limited flows between companies. Once you have identified the gaps, there are further challenges along the way.

1. Discoverability: how do I even know what data is out there?
2. Quality of data: is it good enough for my purposes, such as measurements of the building heights?
3. Provenance: can I trust the source?

Only much further down the line do we even think about how much the data might cost to access.

There have been numerous attempts to solve these problems; one is the open data movement, the idea that some data should be freely available to everyone. This represents an acknowledgement that there is value in data, although it doesn’t take into account the cost for an organisation in curating and publishing that data. The concept of open data is behind initiatives such as the London Data Store, through which popular feeds — such as Transport for London’s — can be accessed to provide apps and services such as CityMapper with up-to-date information, for example.

However, open data is just one category. Others such as shared and closed data are more problematic because there can be circumstances under which incentives could be provided for sharing data, for instance where the data owner is receiving payment for it from a non-competing organisation.

In this case, how much is the data worth? Attempts at putting an upfront price on static data sets have also not been particularly successful. Valuing intangibles such as data is difficult since there is no marketplace comparison. However, there are many emerging decentralisation and encryption technologies that show promise in resolving issues of integrity, privacy and apportioning value. These are bringing decentralised data marketplaces into being — meaning that applying value to data may happen sooner than we think.

Dan Hughes, Simon Hughes and Linda Chandler are respectively CEO, chief strategy officer and CTO at LIQUID REI @PropertyDanH  @SimonHughes497 @HyperlocalLinda

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Adapting shops for sensory disabilities

Shopping centres can be made more welcoming to those with invisible disabilities, benefiting retailers and communities, as several case studies demonstrate

Nick Hobbs
In November 2018, shopping centres and retail parks across the country took part in the inaugural ‘Purple Tuesday’. This was the UK’s first accessible shopping day, with a focus on the disabled consumer and removing the barriers that prevent and discourage the so-called ‘Purple Pound’ from being spent both online and in store. With one in five people in the UK having some form of disability – whether visible or not – and disabled consumers accounting for a potential market value of £249bn a year, it is easy to see why Purple Tuesday makes sense both from an ethical and a commercial standpoint.

Although the undoubted importance of making shopping centres accessible to those with disabilities may be gaining wider recognition thanks to initiatives such as Purple Tuesday and the National Autistic Society’s Autism Hour, it is something that Workman Retail and Leisure has been working on for some time. Managing retail facilities with a focus on certain disabilities may be a relatively new idea in itself, but the notion of knowing your centre and the community it serves is part of good property management and should be nothing new to the sector.

One of Purple Tuesday’s key messages is that not every disability is visible, and this reflects a significant development in catering for the disabled customer in retail spaces. Among the first centres managed by Workman to start looking at how to better engage customers with non-physical impairments was Howgate Shopping Centre in Falkirk.

There were a number of reasons for this, but two stood out: first, members of both the on-site staff and Workman’s wider management team had been personally affected by family members and friends with dementia, autism and anxiety disorders, and were understandably keen to support others in the same position. Second, figures from Falkirk Council indicated that nearly 60 per cent of the area’s population is either under 24 or over 55, and with numbers only set to grow in coming decades, Howgate recognised that it made sense to focus on issues affecting significant sections of these two key demographics in its catchment area.

This is because younger sections of that catchment area may experience the effects and difficulties associated with autism or dyslexia more acutely than others, while older sections may be more susceptible to age-related diseases such as dementia. Using demographics in this way plays an important part in informing and shaping any strategy, and means that initiatives focusing on accessibility will often vary in nature and focus from centre to centre, town to town and region to region.

Again, this process of knowing your asset, knowing your community and providing an appropriate environment should not be anything new to an experienced shopping centre management team. What can be more challenging however, especially for those with no experience of or training in the needs of those with disabilities, is the formulation and implementation of the initiatives themselves. Studies of successful cases and the dissemination of these examples to the wider retail and leisure sector has therefore been essential.

One of the most successful initiatives that Howgate has run has been its Sensory Sundays. As the name would suggest, these focus on making the centre a more appealing venue for those members of the community, particularly children, with sensory processing disorders (SPDs) and autism, for whom the noise and normal hustle and bustle of a busy shopping centre can be intimidating and very unpleasant. Sensory Sundays see the shopping centre turn off all music from the communal areas and ask retailers to do the same, or at least reduce the volume from their own music systems. Inessential loudspeaker and PA announcements are banned and hand towels are provided in the toilets in an effort to reduce the noise from dryers.

In addition, Howgate staff have been trained by a local sensory centre to improve their service to those customers who rely on lip reading or guidance from a sighted person. Autism awareness training has been provided to staff by the National Autistic Society as well.

Sensory days have proved extremely successful outside Falkirk as well. At another Workman-managed site, the Mercury Shopping Centre, Bexleyheath

Customer feedback, Broadway Shopping Centre, Bexleyheath

It was absolutely fantastic! It made such a difference to both [children]. Thomas wanted to say thank you so much, he loved it.

We even went to JD Sports and he had a really good look round. This is one of his favourite shops, but he hasn’t until now been able to go in there. He was so happy that the music was off and he could go back in and look around. He has already made a list of clothing that he wants from there!

It was a very peaceful atmosphere at the Broadway and has made a huge difference to us, and I would imagine that many others will benefit from it.
Centre in Romford, the plan was to hold a sensory awareness day once a month, but it proved so popular it is now held every Tuesday. At the Broadway in Bexleyheath, responses to a similar initiative have been very positive too.

At all of the centres where we have implemented sensory days, we have found that improvements to the online accessibility of the centre are just as important as those made to the physical environment. Customers planning a visit to Newlands Shopping Centre in Kettering are able to download two visual guides, one aimed at children with an autism spectrum condition (ASC) and another for adults with similar conditions. In addition there is also a detailed guide available predominantly for parents and carers. These documents answer questions that those planning to visit Newlands might have, such as the following.

- What can I expect when arriving at Newlands Shopping Centre?
- How do I access the centre?
- When are the busiest and quietest times of the week?
- How can I get there? What private or public transport can I use?
- How do I find the toilets?
- How will I be supported? What do I look out for if I need help?
- What else is there to do at the shopping centre?

The guides also provide useful information such as floorplans and simple guidance on what to do if things go wrong, including a list of simple statements to help describe any of the more likely scenarios that may occur.

In addition to the guides, management provides downloadable autism awareness cards for anyone who requires them. These can be printed off, filled in and then worn as badges, stating the person’s name and that they have an ASC. These guides are now being rolled out across all centres managed by Workman.

Organisations such as Purple and events such as Purple Tuesday have done much to promote the business case for improving accessibility to retail centres for those with visible and non-visible disabilities. Beyond the immediate gains such as increased footfall and PR and social media reach, however, is the chance to have a positive influence on the lives of people in the communities that our centres and retail parks serve.

Those who may have found incredibly daunting or even impossible activities that many of us take for granted — such as going for a coffee or dropping into a shop on our way home from work — may suddenly find these options open to them. This is an opportunity, then, not just to improve the centres we manage but also to improve the lives of the people on which the survival of those same centres relies.

Nick Hobbs is sustainability and well-being manager at Workman
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**Related competencies include:** Property management

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**Top tips to make your centre more accessible**

**Do your research**
Identify what the local demographic looks like, which local charities are particularly active and what other amenities already exist.

**Speak to your local stakeholders**
Parents, relatives and those living with non-visible disabilities will offer excellent first-hand experience and points for learning. Make sure a process is in place to record, monitor and act on their ideas and feedback.

**Don’t silo yourself**
Don’t be afraid to look to other industries, assets and geographies for advice. A member of the Workman property management team visited Ibrox Stadium’s sensory room to learn more about what we could do in a retail environment for children with SPDs.

**Start by focusing on the easy wins**
Reducing or switching off lighting, turning the volume down on PA systems or changing signage to highlight that not all disabilities are visible are measures that cost very little or nothing to implement, but which can make a big difference.

**Don’t forget about your online presence**
Digital accessibility is a huge consideration and is often the first port of call for any prospective visitor to a centre, regardless of whether they have a disability. Use of easily understood icons as well as consideration of font, text size and colours all matter.

**Include the tenant space**
Communicating the benefits around sensory awareness days and other initiatives will help engage tenants. Be aware of any initiatives that they are running, too. Where vacant units exist, there may even be an opportunity to use these for quiet areas or sensory rooms.
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A call to action on the housing deficit

Surveyors can bring their experience in social housing to bear in helping to respond to the current crisis

Ted Watts

During the Second World War, around 50 per cent of the housing in Silvertown in London’s Docklands area was destroyed by bombing. The local authority housebuilding initiatives of the 1950s and 1960s were intended to replace this at rents affordable to the displaced inner-city residents, and there was cross-party agreement on the need for public funding to meet these costs.

Subsequently, social housing has been a means of supporting those on lower incomes by subsidising rents. Many argue that the current low level of new provision in this regard props up what is no more than an emergency service for those who are desperately in need of accommodation.

Today, social housing involves many complex issues that can never be eliminated unless we build more homes. We can assume the current low level of constructing new social housing, mainly by housing associations, will continue for at least three more years. The recent deal by the government’s national housing agency Homes England, which gave £590m to eight such associations, is therefore welcome. Hyde Housing alone will be able to build 1,623 more homes, with around half of these available for social rent; local authorities will still act as statutory housing authorities and provide emergency accommodation.

In 1967, with a lawyer, a chartered accountant, four chartered surveyors, a chartered engineer and an architect, I set up Hyde Housing Association, with the aim of converting two houses a year into four flats. Fifty years later, the Hyde Group manages 50,000 dwellings. While I am no longer involved, the association continues to provide safe and secure accommodation for those in need and aims to build new homes for those left behind by the housing market.

Surveying professionals can ensure that the country is ready to build more houses, and that maintenance practices and repair methodologies are fit for purpose. This means continuing to assess the condition of existing buildings and using that experience to inform the creation of new housing and the refurbishment and improvement of current stock. While awaiting the outcome of the Grenfell Tower inquiry, we can use our knowledge of building failures to take the right approach to future renovations.

Chartered surveyors and associated professions need to work together to sort out the technical and organisational issues. Cost constraints endured by those in producing buildings for central and local governments inevitably lead to poor standards of construction. Ironically,
construction methods developed for the public sector have since been adopted by the private sector. But with few exceptions, only housing associations and government have the financial resources to rectify any defects. The freeholds of many private high-rise blocks are held by companies, their shares in turn held by the leaseholders of the apartments who sometimes, even collectively, struggle to raise funds for an expensive services upgrade or recladding.

In a market where the lowest initial cost and the highest selling price are usually the motivating factors, long-term running costs are often overlooked. Sadly, many local authorities and housing associations have also adopted this practice.

Many residential and building surveyors will know of cases where a suitable remedy to a defect has been identified, tenders obtained, and work started. But additional faults are then found that increase repair costs. Surveyors’ skills may be employed to prevent this, but without extensive and destructive investigation neither the defect nor the appropriate repair can be fully assessed, and the owner is always at risk.

In one case, the initial tender was estimated at £3m; once work began, costs escalated to £8m. The owner, an established housing association, had sufficient finance to meet the additional cost, but had these funds been invested at the outset a better form of construction could have been chosen, possibly significantly reducing lifetime costs for the project. In an estate of, say, 60 dwellings, escalating costs would raise the contribution from each lessee from £50,000 to £133,000, thus dealing a death blow to the viability of a repair.

Senior surveying professionals have worldwide knowledge of many different sectors of property and construction. We need to see more such people serve in the social housing sector, which would benefit from their detailed understanding of the property market, building construction and methods of procurement. There is no reason why our profession’s experience in resolving problems in social housing, it is time we had greater influence in its design and specification. To do this, we must have an in-depth understanding of the market, talk to owners and occupiers and establish the identity and nature of the client. Those providing the service must be trained to meet their different needs.

Because of our profession’s experience in resolving problems in social housing, it is time we had greater influence in its design and specification. To do this, we must have an in-depth understanding of the market, talk to owners and occupiers and establish the identity and nature of the client. Those providing the service must be trained to meet their different needs.

Although no end to the housing deficit is in sight, the onus is on our profession to make an important contribution to improve the safety, enjoyment and satisfaction of people living in this sector.

Ted Watts FRICS CIHM, RICS President 1992, chairs residential developer Cedar Rydal. He served on the management board of Hyde Housing for 17 years and is now an honorary life president, and he founded the Watts Group, from which he retired in 1999
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Related competencies include: Housing, strategy and provision, Planning and development management

Social housing: London figures

801,190
social homes in London in 2017

23%
of housing stock in capital comprises social housing

407,230
social homes are housing association properties

393,960
social housing units are local authority

98,488
homes are managed by arm’s-length organisations for boroughs

Source: Greater London Authority
bit.ly/GLAsochsg18

Related competencies include: Housing, strategy and provision, Planning and development management
With various schemes on offer, it helps to cut through the jargon and acronyms and demystify the sector

Max Abbott

Market rent, social rent, affordable rent, AST, ASB, EUV–SH, MV–STT ... are you confused? Although I have worked as an asset management analyst with Waterloo Housing for three years, I am still getting to grips with the social housing sector’s penchant for acronyms.

Before this, I had shared the view of many that social housing simply meant homes provided by local authorities, often referred to as ‘council housing.’ Social housing started to make its mark before the 20th century although it was not until after the Second World War, in response to the national shortage, that it became significant.

Since then, the social housing landscape has altered as governments have. Although there are far too many changes to mention here, few would disagree that the Housing Act 1980, passed by Margaret Thatcher’s government to implement the right to buy (RTB), is one of the more widely known. RTB helps eligible council and housing association tenants in England to buy their home with a discount of up to £80,900, or £108,000 in London (righttobuy.gov.uk).

A right to acquire is available to housing association tenants who have been living in homes built or bought by their association after 1 April 1997 and paid for by a social housing grant. This right is not available to housing cooperative tenants, however.

The property that the tenant wants to buy must be their only or main home; they – or their spouse or civil partner – must have been a council or housing association tenant for at least three years. Time spent in forces accommodation also counts.

Qualifying tenants are entitled to a discount from £9,000 to £16,000 depending on where they live (ownyourhome.gov.uk).

In August 2018, a partnership between the government and the National Housing Federation launched a £200m pilot for a voluntary right to buy for Midlands-based associations. Eligible tenants have been able to register for a place on the pilot, and will have the opportunity to buy their home at an RTB-level discount. As there was a fixed budget of £200m, however, the government could only fund a limited number of places through the pilot, and these were allocated by a ballot that is currently closed but may reopen (again, see righttobuy.gov.uk).

My own employer, Waterloo Housing, part of the Platform Housing Group, manages 26,000 properties from the Derbyshire Dales to Oxfordshire and the Welsh borders to the Lincolnshire coast. It works with developers and local authorities to build new properties. With an annual development spend of £110m, it aims to build more than 1,000 units a year to 2021.

Its development at Ambrose Close in Worcester (bit.ly/ambroseclose) provides affordable housing, including a proportion of shared-ownership properties. The latter falls under the label of ‘intermediate housing’, whereby individuals can purchase…
a share of the property while paying rent on the remainder. As the occupier’s wage increases, additional shares can be bought, a procedure that is commonly referred to as staircasing, and 100 per cent of the property can eventually be purchased this way.

Affordability and acronyms
Besides providing a wide range of truly affordable housing, Waterloo is exploring and addressing related factors such as fuel poverty that can affect whether a property is affordable. This includes a review of the energy performance of the organisation’s assets, and beginning various maintenance programmes — ranging, for example, from replacing windows and doors through to installing more efficient heating systems.

Waterloo Housing is a registered provider (RP) of social housing, further to section 80 of the Housing and Regeneration Act 2008, and works in a regulatory framework with corresponding standards. The regulator before 2008 was the Housing Corporation, responsible for investment grants and for regulating housing associations. It was succeeded by the Homes and Communities Agency (HCA), which managed investment, and the Tenant Services Authority (TSA), which covered regulation.

The TSA was abolished and its functions moved to the HCA in 2012. Then, in 2018, the HCA was broken up into the Regulator of Social Housing, Communities & Local Government (MHCLG), formerly the Department for Communities and Local Government (DCLG).

As well as being an RP, Waterloo is also a housing association, although the terms bandied about in and around this sector obscure its simple remit, and can be confusing and misleading. Government policy is currently driving housing associations towards providing more affordable housing. However, the term affordable housing itself is not as straightforward as it would first appear.

First, affordable housing ‘includes social rented, affordable rented and intermediate housing, provided to specified eligible households whose needs are not met by the market’ (bit.ly/housingdef). With reference to social rent, there is a prescribed calculation for working out the sum due, under which 30 per cent of a property’s rent should be based on relative property values and 70 per cent on relative local earnings.

In determining the final rent, in contrast, the latter 70 per cent is to be multiplied by a factor that depends on the size of the property, otherwise known as the bedroom weight. In effect, consideration is given to the size of the property and thereby smaller properties will effectively have a lower rent. Interestingly, the cost of any services is additional to the rent.

Affordable rent in turn is any amount up to 80 per cent of the gross market rent in an area and should be more than the applicable social rent. Unlike social rent, it is inclusive of any service charges — practitioners in this area will be familiar with the HCA Rent Standards Guidance, which advises that valuations for initial rent setting should be made in accordance with a method recognised by RICS (bit.ly/hcarentguide).

And, as the name suggests, intermediate housing refers to homes either for sale or rent that fall between social and affordable rent thresholds, incorporating schemes such as shared ownership (bit.ly/h2bsheredown) or rent to buy (bit.ly/hoarent2buy). Therefore, ‘affordable housing’ should be considered as more of an umbrella term. Equally, although meant to be affordable, rent can still be considerable in regions where it is already at a premium. There is always a good reason for keeping things simple, and social housing is no different. Cutting through the jargon makes it more accessible and comprehensible, both for those in the sector and those outside it.

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Related competencies include: Housing strategy and provision, Legal/regulatory compliance, Property finance and funding

Further information: waterloo.org.uk
Residential survey and valuation has faced a succession and resourcing crisis for many years, and now the average residential surveyor and valuer is in their late 50s. The buoyant property market of 2014 gave us a glimpse of the possible consequences of this, when surveying firms were unable to service all their instructions and lender clients were waiting up to six weeks before a mortgage valuation could be returned.

It is easy to see how we got here. For many years the market was static, there were few changes to working practices, and firms saw no need to recruit. Then the crash in 2007–08 prompted them to reduce staff numbers, resulting in the loss of a sizeable number of surveyors. A few years on, as the market recovers, there is a skills shortage that will only get worse through natural attrition. This needs to be addressed swiftly.

Larger firms have established graduate training programmes and are now bringing new recruits into the profession. This is fantastic — but it is not enough, and does not support the small and medium-sized practices that cannot sustain such programmes and may have no clear succession plans in place.

It was against this background that Sava saw the opportunity to create a qualification tailored specifically to the residential survey and valuation sector. This would address employers’ needs, as well as open routes into the surveying profession. The qualification aimed to attract talented people to the profession who would otherwise have very limited opportunities in this respect.

Sava recognised that this innovative approach meant that it needed a partner with robust technical knowledge and that was trusted by industry. Accordingly, it formed a relationship with BlueBox Partners.

Sava’s Diploma in Residential Survey and Valuation (DRSV) was launched in 2014. The course offers a vocational route into the profession for candidates who do not necessarily hold a degree, or who have previously made different career choices. Training is learner-centric and delivered over an 18–24-month period. Designed to produce surveyors who are confident and competent in residential surveying, the course can be undertaken while a candidate is still in alternative employment, although this requires a high level of commitment.

The part-time course combines classroom learning, delivered by experienced chartered surveyors and using the technical skills of BlueBox Partners, with self-driven practical assessment. Students who have reached the assessment phase must submit ten case studies. These include surveys of a variety of properties and valuations using the comparable, residual and investment methods. All case studies must be supported by a detailed analysis, desktop research and a comprehensive method statement.
The assessor, who will be a chartered surveyor, must ensure that the candidate knows the subject and, on qualification, is capable of completing survey and valuation work unsupervised. Accordingly, the submission is closely analysed and the candidates questioned to establish their understanding of the case and the reasoning behind their conclusions. To get this far is testimony to the candidates’ tenacity and commitment. At this stage, they must pass two short exams before being awarded the diploma.

Sava worked closely with both RICS and employers in developing this training, and has ensured it follows the requirements of the existing Residential Survey and Valuation pathways. The qualification is accredited to level 6 – degree level – by the Awarding Body for the Built Environment, which is part of Birmingham City University, and it has been deemed sufficiently challenging to grant direct access to AssocRICS membership.

Once students have passed the course, all that remains is for them to satisfy valuer registration requirements, if they wish to complete valuations, and they can then become a fully fee-earning surveyor. The advantage of the DRSV is that it provides a route into the profession for many prospective surveyors who may not hold a formal degree, but can bring new skills to the profession from their experience in other industries. To date, there are more than 75 graduates of the course now in work, with another 369 candidates currently studying or in assessment. Their success demonstrates the quality of the training and value of the qualification. Indeed, their skills are such that many are finding employers seeking them out before they have fully completed the course.

Sava is now looking to extend the DRSV into Wales and Scotland. Other courses are under development, including a new Diploma in Building Surveying and Housing Management, with a view to addressing the need for new skills in the industry as the residential market evolves.

Hilary Grayson is director of surveying services at Sava hilary.grayson@sava.co.uk; Fiona Haggett is operations director at Blue Box Partners fiona.haggett@blueboxpartners.com

The student’s view

Stephen Anscombe describes the journey he has taken through the DRSV

What was your role before joining the course?
I was a delivery driver and had no experience of residential surveying. I was lucky enough to obtain a trainee surveyor role a few months before the course started.

Why did you consider a residential surveying career?
I mentioned to one of my regular customers that I was thinking of a more fulfilling career. He told me he had been a chartered surveyor for the past 30 years.

I shadowed him on a couple surveys and got a buzz for it. Over the following weeks, I did many hours of research into the profession and felt a career in residential surveying would be right for me. It’s now three years later and I haven’t regretted that decision.

What attracted you to the Sava course?
After becoming engrossed in the idea of becoming a residential surveyor, I started looking into what qualifications I would need. I had reasonable A levels and received an offer of a place on a five-year part-time university course, but I felt there must be a faster route. I contacted Sava and enrolled for the February 2016 intake.

Would you recommend the DRSV?
Absolutely. Many of the other candidates, like me, were in other employment. I was not comfortable with the prospect of going to university for three to five years. The Sava route offers a degree-equivalent qualification and the option of becoming an RICS member in little more than two years. The lecturers and staff are friendly, approachable and incredibly knowledgeable in their specialist area.

What was the highlight of the qualification process?
You would think that would be obtaining the diploma after two years; however, the assessment process in the second year was my favourite part. Although the workload was intensive, you built on what you learned during your first year and put it into action.

Do you have any plans now you have qualified?
I attended the Sava careers day in Coventry in March and found it was a great way to connect with employers. I am starting a job with White Horse Surveyors and I’m looking forward to my new career.
Behind the housing crisis

Over the past 40 years, the UK’s housing surplus has become a shortfall. What caused this national crisis, and how can policy respond?

Michael Sander
An undersupply of housing in the UK over the past four decades has resulted in overcrowding, households having to share, insecure tenure, high rental payments relative to income, long journeys to school and work, and homelessness. The price of housing, which is high and rising relative to incomes, has also created problems for households wanting to become owner-occupiers.

The record of successive governments since 1980 is far from creditable, with a progressive abandonment of the structure and policy that would provide sufficient social housing. Coupled with private developers’ failure to meet demand for owner-occupied housing, this is a prime cause of the massive real-term increases in house and land prices, creating an increasing affordability problem for first-time buyers.

This contrasts with the post-war push to get houses built. The 1951 census recorded that there were 6.5 per cent more households than dwellings, while 75 per cent of households were living in substandard or overcrowded conditions, or were sharing. However, all political parties supported a dynamic response to this situation and unprecedented levels of building were completed, with private development for owner-occupation paralleled by vigorous local authority housebuilding programmes and three phases of post-war new towns. Although the poorly maintained private rented sector continued its decline, over 30 years the post-war housing shortage was substantially overcome, and large numbers of households obtained their own homes. By 1976, it was roughly estimated that the number of dwellings exceeded households by 3.5 per cent.

This combination of private and public efforts is the only system that has worked to overcome the UK’s housing shortage. Since 1919, a huge asset base of local authority housing had been built up, and this was the foundation for the borrowing required to fund new housing development. It was also the basis for the national Housing Revenue Account (HRA), which not only enabled affordable rents, thanks to cross-subsidy from the those charged on earlier dwellings, but also the provision of social housing in the most expensive urban areas. Underpinning this was the empowerment of local authorities in their housing, planning and financial functions.

In 1980 there was a change of emphasis, and policy focused on how the private system might respond to demand rather than assuming that housing needs should be met by the state. The Housing Act 1980 introduced the right to buy in England and Wales giving council tenants the right to purchase their homes, and has remained unchanged for more than 35 years. It also dealt with the determination of sale price and levels of discount, which later rose to a maximum of 70 per cent of the value. No commitment was made to re-use capital receipts for investment in housing or to replace the dwellings sold, and restrictions were imposed on councils’ capacity to provide new social housing.

Since 1980, some 2.5m council homes have passed into private ownership, and virtually none of these have subsequently been made available to let on the private market or at an affordable rent. In the same period, only 750,000 council and housing association homes have been built. Between 1979 and 2015, local authority tenures fell from being more than 30 per cent of all homes including owner-occupied to seven per cent. Although housing associations increased their share from two to ten per cent, the voluntary sector has proved unable to make a sufficient contribution to fill the gap.

The combination of public and private efforts is the only system that has overcome the shortage
A robust system that once ensured provision of affordable social housing has thus been virtually destroyed. I have calculated that in 2016 the opportunity lost for social housing lettings by introducing the right to buy was running at 150,000 per annum. This compares to the 6,000 new social housing dwellings produced as part of a so-called affordable dwelling programme of 30,000 in 2016.

Price rises must prompt a policy shift
In 1981, some 58 per cent of households were owner-occupiers. Even though this is the tenure favoured by central government, the figure grew by only five per cent overall to 63 per cent in the period from 1981 to 2014, mainly due to the rise in house prices relative to incomes, the levels of deposit required and the often restricted availability of mortgage finance.

Effective urban regeneration will now require a movement away from ‘welfare housing’ and insecure tenure towards the creation of more diverse and integrated communities, broadening the eligibility for, and the availability of, council and housing association tenures. This would reinforce other policies, including those for economic development and the stability of urban and rural communities.

Specialist types of provision or tenure such as starter homes, shared equity, self-build and rent to buy have not made a significant contribution to filling the gap between housing supply and demand. They may have competed with, and have often obscured, the clear need for new programmes of social and affordable housing. The policy initiatives of recent governments have benefited only selected sections of those in need, being mere palliatives and sometimes exacerbating unaffordable prices, and thus have not provided meaningful solutions.

My research suggests that to replicate the successful 1945–80 approach now would require a new national programme, as follows.
• National targets should be set for a new housebuilding programme that deals with need and demand in all tenures and seeks an annual completion rate of between 270,000 and 300,000 new dwellings. Within that total, the aim should be to achieve 110,000 affordable housing programme completions each year.
• A system in which investment in an affordable and publicly owned housing stock ought to be progressively re-established, which is probably achievable over two to three full parliamentary terms. During that period, there could be a gradual redirection of public expenditure away from welfare and housing benefits towards investment in public-sector housing stock, held for the longer term and ensuring provision of social housing on the scale required.
• The right to buy for council and housing association tenants should be repealed, as it has been in Scotland. Moreover, the rights of council and housing association tenants to enjoy tenancies, potentially for life, should be restored, the bedroom tax repealed, and the cut-off points for benefits reviewed. The terms of assured rental tenancies should also be altered to ensure that an initial two-year term is granted, while the ability of local authorities to use section 106 agreements and the community infrastructure levy to support key land acquisition and compensation powers should be reinstated and centrally imposed HRA borrowing caps removed.
• Appropriate councils should carry out analyses of housing supply and demand, evaluating needs over housing market areas, disaggregating overall figures on the basis of sub-region and sector, and identifying the housing requirement for private sale, private housing to rent and affordable and social housing in their areas.
• Local authorities need re-empowering, preferably as part of a wider devolution process, to make them responsible for the comprehensive planning, programming and management of housing, and ensuring at least a five-year supply of land for private- and public-sector development.
• Housing association tenure ought to be encouraged, with confidence and certainty provided, where appropriate, by government offering guarantees to underwrite associations’ borrowing programmes.
• The structure and mechanisms of a national, overarching HRA should be re-established, and the role of the Public Works Loan Board reinstated, as the main source of the long-term borrowing required for a new national housing programme. Suitable early safety nets need to be provided, given that interest rates are soon likely to rise and have significant effects on mortgage arrears and foreclosures. Such measures would prevent any further decline in the level of owner occupation.
• Early progress should also be encouraged in the application of factory- and system-built technology for housebuilding through the procurement processes of central and local government and housing associations. The building industry must re-engage with training and apprenticeships as part of a national housing programme, and small builders should be assisted in getting access to land and finance, to fulfil their potential role in housing development.

Policy initiatives of recent governments have benefited only selected sections of those in need

In 50 years in practice, Michael Sander FRICS served as chief housing officer at Lewes District Council, director of housing at the London Borough of Lewisham, and chief executive of Crawley Borough Council. This article is based on his master’s thesis, The causes of the National Housing Crisis 1980–2016 (and necessary policies for its solution) msanderuk@gmail.com

Related competencies include: Housing strategy and provision, Planning and development management
Is building more houses the answer?

Property Journal has received more comments on the seemingly never-ending housing shortage

Jan Ambrose

Members continue to respond to the issues raised in ‘An holistic approach to the housing shortage’ (Property Journal, July/August 2018, pp.38–9). Here are some excerpts from readers’ comments.

Terry Glanville
Terry says he was amazed by some of Andrew Taylor’s remarks.
• ‘A greater housing supply could stabilise price.’ I spent decades in the business and saw many housing booms and busts (writes Terry). I don’t recall any time when supply at the strategic level affected price. It is common knowledge that builders only build in a rising market and then stop or leave the site — consider all the abandoned sites after the last market collapse.
• ‘Unimplemented planning permissions are not an issue.’ So why are they not being implemented at a faster rate than the drip, drip approach beloved by developers?
• ‘The main issue ... is the lethargic and politically stunted planning system ... where locally elected council members make decisions at planning committee.’ Should planning decisions be made by appointees rather than elected and accountable individuals? Who would appoint them?

Every recent government measure to help people get on the housing ladder — in other words, increase demand — merely pushed up prices (Terry continues). How is increasing supply going to help current renters buy a house?

I believe the present crisis started in the Thatcher and Blair years when some 2.5m council houses were sold and rent control removed. These council houses had kept massive demand out of the private market, until they were sold. But that huge sudden increase in supply didn’t cause prices to drop. In the short term, homeownership increased, but is now much less than when they were sold. Those houses are generally back in the rented sector but owned by private landlords.

Arguably, there is no housing shortage: the different levels of tenures have changed. Properties that would have been occupied by freeholders paying a mortgage exist but are now occupied by tenants paying high rent. Rent control should be reintroduced to give them greater security, and even save enough for a deposit.

Governments cannot make developers build at a faster rate than they want. The solution lies in the public sector. Councils should be allowed to borrow at historically low interest rates, as the government does, either to build or buy existing houses in their areas. Nationwide, the former could be built by local builders, thus stimulating local economies. Hundreds of thousands of houses were built in this way after the war.

He has lost count of the various housing initiatives over the past 20 years. RICS, he says, is correct to draw attention to the need for diversity in the housing stock: developers have constantly catered for growing families, while those who are older than 65 will have difficulty in finding suitable accommodation.

Parts of the answer, he thinks, lie in local plans, many of which are out of date or not published. There remains the potential for encouraging downsizing in stamp duty and the rating system. He draws attention to the UK Collaborative Centre for Housing Evidence (housingevidence.ac.uk), and calls for the residential group to extend its remit and make a fuller contribution to the housing debate, picking up the views of the wider membership.

Mike Basquill, RICS UK Residential Associate Director, comments: ‘We communicate to members through the Residential Roundup newsletter, Property Journal and the Communities page of the RICS website, as well as open access to the working group. Consultations are always publicised and responses sought.’

Jan Ambrose is editor of the residential section of RICS Property Journal jambrose@rics.org

Related competencies include: Housing strategy and provision, Planning and development management
The longer a property lies empty, the greater the risk of further devastating dilapidation, compounding the cost and timing of eventual remediation. So, to understand the problems that arise with a dwelling that has been unoccupied in the long term, we must consider why it became empty in the first place.

Common reasons include the following:

- **Repossessions:** if a homeowner cannot pay their mortgage, a lender will repossess it and look for a disposal, which can take time.
- **Extensive remediation after natural disasters:** an extreme case of this is in Carlisle, which was extensively flooded in 2005 and again in 2015. While many properties were insured, those without cover remained empty for even longer until funding was found to repair them.
- **Construction and materials:** some blocks of flats from the 1940s to the 1970s, for example, have ring beams and projecting balconies that suffer from concrete carbonation. Tenants may need to be relocated and blocks will therefore sit empty until funds are found to fix the problem or demolish the flats, either of which may take years.
- **Local authority policies:** some councils plan to demolish blocks of flats and build new homes on the site. But there are often cases of flat tenants or owners who refuse to relocate, so a block remains semi-empty and deteriorating.
- **Estate disputes:** where a homeowner has died then if they were intestate, or there are disputes over the estate or problems identifying a next of kin, a property can lie empty for a long time.
- **Legal issues:** resolving structural and subsidence problems may be complicated where there are adjoining properties and the Party Wall etc. Act 1996 applies. Disputes between adjoining owners can often delay the resolution of a problem.
- **Poor surveys:** council properties are often bought by housing groups that commission surveys. However, these are often just a cursory external review and a sample internal check, which fail to identify their true condition and the extent of funding needed for repairs before properties can be occupied.
- **Vegetation:** many landlords do not regularly check plants in the curtilage of their properties that may be hidden from street view. This can cause extensive...
Occupation issues

Problems with vacant properties often start when they are still occupied. Long-term neglect is usually caused by poor maintenance as budget pressures may mean owners or landlords cannot afford to look after their properties adequately. I am always reminded of William Morris, founder of the Society for the Protection of Ancient Buildings, who proposed ‘regular maintenance to stave off decay’ in his 1877 manifesto.

Disrepair may also be caused by landlords’ access being restricted over a long period. I was once involved in a case where an old man didn’t allow anybody inside his flat. His rent was always paid on time and there were no immediate external signs to warn his local authority landlord of problems. However, we had to force entry under emergency powers when there was a serious water escape from his property, which resulted in flooding and damage to the flat directly below during a period of freezing outside temperatures. We found his property to be in a severely distressed state, including a collapsed ceiling caused by a burst water tank. The local authority had to place the house on its long-term void list as the repairs had not been budgeted for.

It is not just local authorities that cannot afford to properly maintain a property. I have performed many surveys in Central London where a house is worth millions of pounds but the homeowner cannot afford to maintain it. The cycle of degradation can happen in expensive homes and council flats alike.

Recurring issues

If problems return after a renovation, they are almost always caused by an inappropriate initial diagnosis of an issue, poor-quality work or both — particularly so where commercial companies have a self-interest in the diagnosis and remediation of a problem and then often use inappropriate corrective measures.

I have seen whole streets of vacant council houses that eventually had wholesale refurbishments, including chemically injected damp-proof courses, retrofit cavity wall insulation and waterproof renders. However, when investigating subsequent problems, I found poor original diagnoses; for instance, original damp-proof courses had not failed so walls did not require chemical injections. With no budget available, these houses again sat empty and so the cycle of degradation continued.

Problems may also recur in once-vacant properties due to poor-quality repair work. Acute skill shortages mean that labour can be expensive, while tight project budgets may lead to less-experienced workers being employed or work being done too quickly. Until work is completed correctly, a property may remain empty.

Retrofit solutions may also be ill judged, poorly diagnosed and badly executed. I am presently handling a case where a council decided to pebbledash a 1920s cottage, but the work had to be redone five times because workers had not properly adhered the pebbledash to the substrate walls. The final coat also contained and leaked pyrites, which resulted in rust-like streaks running down the wall. It is difficult to prevent pyrites from leaking as they are hard to detect in certain gravels, so it is important that constructors source materials from reputable suppliers. One attempt at pebbledashing also used non-galvanised chicken wire mesh as a key to the substrate, to which the new cementitious render could adhere. However, this later corroded and caused whole sheets of render to fall off.

Damp and subsidence are the types of problem that recur because there has not been an holistic review of the property and its environment. Yet this is imperative to prove causation and the true source of a problem. Identifying symptoms without considering other defects, the building’s design or use and occupation factors means you run the risk of making a misdiagnosis that will lead to inappropriate remediation and unnecessary delays and costs.

A practical approach

The Dwelling Stock Estimates: 2017, England report from the Ministry of Housing, Communities & Local Government (bit.ly/dwellsstock) states there were 605,891 vacant properties in England on 2 October that year, up by 16,125, or 2.7 per cent, from 3 October 2016. Vacant dwellings accounted for 2.5 per cent of England’s overall dwelling stock — a huge number, and many of these properties will have physical problems.

The starting point to reduce this figure should be preventing a dwelling falling into disrepair in the first place. But where there are problems, there needs to be a full pathological assessment of the issues. Such an holistic and independent review may involve a degree of destructive and intrusive testing to fully understand the particular defects. If the diagnosis is correct, the remediation — often requiring a multidisciplinary approach — is more straightforward and should avoid problems returning.

Mike Parrett is a building pathologist, chartered building surveyor and founder of Michael Parrett Associates. He is an Eminent Fellow of RICS and the lead author on the Damp section of isurv info@michaelparrett.co.uk

Related competencies include: Building pathology, Housing maintenance, repairs and improvements
Empty homes: the true picture

Jan Ambrose

The first in a series of articles examines why there are so many unoccupied residential properties in England

Stories about the property profession prove that bad news sells papers. Articles about the ever-worsening housing deficit have been overtaken by shocking statistics on the increase in vacant dwellings in England.

RICS is committed to assisting the government to find ways of easing the housing crisis. But if bringing empty homes back into use could be an easy win, why is more not being done?

Recently, seemingly horrifying figures from an online estate agency were reported throughout the media. These indicate that the number of long-term vacant homes in England — those that have been empty for at least six months — rose to reach 205,293 in 2017, according to Ministry of Housing, Communities & Local Government statistics (bit.ly/govempty18), and are worth a collective £49.7bn.

The City of London experienced a 229 per cent rise in vacant properties in 2016/17, while York saw a 322 per cent increase during the same period. Overall, the total of long-term empty homes in London grew from 19,845 in 2016 to 20,237 worth £9.6bn (bit.ly/LonEmpty). The report also shows the top ten towns and cities in England outside London for long-term vacant properties (see Figure 1).

Meanwhile Croydon, with 1,264 vacant homes, leads the top 10 London boroughs for long-term unoccupied properties, followed by Kensington and Chelsea at 1,230. With 734 such properties, Lambeth is at number 10 in this unenviable list.

Interestingly, although the estate agency was prepared to release these figures, it was not willing to go further and say how local and national governments are responding. Is anyone taking this issue seriously?

One organisation taking action is Empty Homes (EH), an independent charity that campaigns for more vacant properties to be brought back into use. It holds accurate government data on unoccupied homes in every local authority in England. These are exact numbers reported via the council tax database, showing percentage occurrence and year-on-year change. The figures may not be headline-grabbing, but are still deeply concerning.

Chris Bailey, campaign manager for EH, urges extreme caution on the estimated monetary value of empty homes quoted in the report as these are notoriously difficult to assess. Although EH does not estimate such values, he makes the following comment: ‘The data omits to mention that 85,856 of the recorded long-term empty homes are in council tax band A — the lowest-value property — 42 per cent of the national total. Only 1,929 — 0.9 per cent of the total — are in the highest-value property band H. These figures will not include rarely used investment property, which is not recorded by the government data. There will also be a regional factor, with 60 per cent in the North and Midlands and almost a further ten per cent in the South West. On the face of it, this makes the value estimates look dubious.’

EH highlights the dangers of taking changes in local authority data at face value in its report Empty Homes in England 2018 (bit.ly/emptyhomes2018). It notes that, despite the recorded change in the numbers for York, its level of empty homes is still less than half the national average and at 0.4 per cent, far lower than the 1.12 per cent Yorkshire and Humber regional level. However, EH recognises that there are many questions to be answered about why properties remain unoccupied, and Chris responds to some that are frequently asked.

Q: Why are homes vacant?

A: Some are unoccupied — often for many months — due to normal market processes, such as inheritance, probate or owners moving into long-term care. But England still has far too many long-term empty homes, usually for one of three reasons:

• EH has found 37 of 53 council areas where 1.2 per cent of homes have been long-term empty are in the North of England
• generally, there are higher proportions in areas with lower house prices, people on low incomes, and more substandard
private rented sector and pre-1919 terraced housing. EH has seen a link between neighbourhoods with high levels of empty homes and where industrial decline over recent decades has caused substantial job losses; houses in such areas are still in demand, but although the asking prices seem low compared to those in London they are too expensive for people on low incomes.

EH confirms there is no shortage of people willing to move elsewhere in England when once-empty properties are renovated as good-quality affordable housing, even in previously lower-demand areas; with a nationwide housing crisis, lengthy council housing waiting lists and plans for housing growth in such lower-demand areas, every empty property is obviously a wasted asset.

Q: What are central and local governments doing?
A: EH thinks that the government response is unlikely to have a real impact on the worst-affected areas (bit.ly/EHCCI2018).

At present, there is no government funding targeted to help such regions. The last such, the Clusters of Empty Homes Fund, ended in 2015 (see Empty Homes in England 2018, and the 2016 report, bit.ly/EHLevels16).

Mike Basquill, RICS UK Residential Associate Director, notes that the repair and improvement grants for major technical problems are no longer available either.

At local authority level, actions range from enforcement measures to casework approaches. Some councils employ specialist empty homes officers and include refurbishment and resale programmes and loans to bring property back into use.

EH works with community-based charities and social enterprises on demonstration projects around the country, which examine how they can bring empty homes back into use, with an initial report now available (bit.ly/EHCommunity18).

Although the autumn budget 2017 introduced welcome new powers for local authorities to tax empty homes, this may not help England’s left-behind and underinvested communities, as it is not enough incentive.

EH does not think that empowering local authorities to charge a 100 per cent council tax premium will help, and empty homes therefore continue to blight such areas. Targeted funding is needed to allow councils, charities and social enterprises to renovate these properties. Crucially, the agency believes that local solutions should be enabled through a nationally led and funded approach.

The next issue will consider EH’s ongoing programme, look at how councils are tackling the problem, and provide an update from Andrew Malone on the situation in Salford.

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Related competencies include:
Housing strategy and provision
Further information: emptyhomes.com
If the UK housing sector is to meet its needs, it must engage with an ever-increasing elderly population who may be interested in downsizing

Nick Sanderson

Awareness of the UK’s ageing demographic is nothing new, and neither is the crisis in the housing market. However, appreciation of the societal challenges and demands of future generations has led to growing recognition of the importance of retirement housing. In providing care to people in their own homes as and when they need it, retirement villages are starting to have their time in the sun. After a long period of emphasis on first-time buyers the political focus is changing, and the sector is at the heart of housing, health and social care discussions, with the 2017 housing white paper for the first time compelling the housing secretary to issue guidance for local authorities on how to address older people’s housing needs.

The vital role that this housing model can play in easing pressure on the NHS is expected to be explored in a social care green paper, although this has been put back several times. Originally scheduled for summer 2017, it was further delayed until the end of 2018, and there is still no firm date for its publication.

Even realising that such scrutiny is necessary is indicative of the government’s recognition of this sector’s growing importance, both now and in the future. The facilities on offer, coupled with suitably adapted properties, mean that those living in retirement villages are less likely to be admitted to hospital or enter a care home at all, as the NHS social care and support guide makes clear (bit.ly/nhscarehomes). Research in 2015 by Aston University (bit.ly/Astonextrac) found that, on average, costs for lower-level social care needs were 18 per cent less than in general accommodation, and 26 per cent less for high-level social care needs.

In addition to these clear societal benefits is the older generation’s willingness to downsize. Those over the age of 65 account for 40 per cent of the nation’s wealth, possessing more than £1.7tr worth of mortgage-free housing (bit.ly/ukhsgwealth), and 48 per cent of them — 5.7m — would consider downsizing (read.bi/2REdEsL).

Interestingly, more than half — 51 per cent — of homes in England owned by people of all ages, not just the over-50s, are underoccupied (bit.ly/ukunderoccupied), revealing an element of uncertainty about both the individual benefits and the process itself.

Downsizing is after all a major decision, regardless of whether it represents a realisation that a family home has become too big to manage or releases equity to enjoy life. While doing research can help to alleviate some people’s initial concerns, my organisation finds that informal local events can help both to raise...
Specialists can also help with the relocation process.

- Companies such as the Senior Move Partnership (seniormoves.co.uk) can see people through the whole process; they will take care of the details from planning where all furniture will go to packing everything up on the day.
- Solicitors can guide prospective movers through the finer details of inheritance tax alongside other financial considerations specific to the older generation. Once the decision has been taken to move, using a solicitor who understands the process of buying a property in a retirement village makes things significantly easier.
- If there is any worry that the selling of the former property may cause delays, part-exchange can help minimise stress and avoid estate agent fees, as well as offering flexible moving dates.
- Technology is increasingly part of the downsizing process and can help future owners to visualise themselves there. Computer-generated images provide flythroughs of the interiors and exteriors, and virtual reality rooms offer a more immersive experience. Interactive models can let prospective buyers see a detailed, physical model and select their preferred plot. While technology cannot necessarily take the place of a visit in person, it offers a glimpse of the future and therefore an element of control for those struggling to come to terms with leaving their home.

The standard of design should not be overlooked at any point. Given that, according to Audley Group’s own research (bit.ly/Audleyrepacc17), 99 per cent of senior citizens do not want to live in a care home, quality is vital. Retirees want the place they live as they age to be adaptable to changing health needs.

Subtle features such as wide doorways, walls reinforced to accommodate grab rails if required and discreet alarm systems alongside round-the-clock care
allow people to remain in the same property for the long term. The baby boomer generation today is more demanding of the options available to them. But there is further work still to be done to show that retirement housing can properly fulfil people’s aspirations.

This work has already begun: the sector is beginning to dominate conversations from institutional investors and media to the political sphere. Indeed, the government has announced plans for £76m to be invested annually in new properties designed for those who are frail, elderly or disabled (bit.ly/eldshsg76m).

Housing developers will be able to bid for funds, and one scheme is already using this to develop flats with on-site facilities including a spa, beauty salon and bistro. Recognition of the benefits of accommodation that enables independent living as people age is welcome, if long overdue.

**Striving for supply**

The JLL Housing with Care index 2017 provides some interesting statistics (bit.ly/jllhwcindex17). In mid-2016 there were 12.4m people of pensionable age, a figure set to rise to 16.3m by 2041. Furthermore, the number of people aged 85 and over is projected to double from 1.6m in 2016 to 3.2m in 2041. However, there are still only 725,000 purpose-built retirement units in the UK, and the number of housing-with-care units is much smaller, at around 66,700. The number of new units built annually would need to be more than double the current rate to maintain existing levels of provision as the number of older people increases in coming years (bit.ly/ukfutageing). Audley Group and other providers are striving to develop the momentum to achieve this.

Since launching in 1991, Audley has championed and reinvented the retirement property market. Its model means it not only builds and develop the villages, it also manages them. This puts it in control of all aspects, and assures property owners there that its priorities and values are aligned with their own.

The success of the organisation would not be possible without a deep understanding of its customers. By using extensive consumer research and insight, it creates aspirational properties with strong design values in desirable locations across the UK. It then undertakes a carefully planned sales and marketing programme using direct marketing, local and national advertising and online activity, including search engine marketing and social media campaigns.

This market insight ensures the group’s services, products and offerings are in line with changing customer needs, and allowed it to determine the potential for contemporary mainstream retirement accommodation. The result is the launch of Mayfield Villages, which taps into the underserved mid-market representing around 4.5m British consumers – nearly twice the size of the luxury retirement sector. Despite its scale, the mid-market has only one-fifth of the 0.5 per cent penetration of the luxury market.

Others are now recognising the potential in the sector. New entrants over the past few years include institutional investors such as L&G and AXA. Overall, retirement properties are ranked as the second highest sector for investment in PricewaterhouseCoopers’ 2018 real-estate trends report (pwc.to/2OeLCRJ), behind only logistics facilities and above student housing and private rented residential properties.

The UK needs to continue to engage with the downsizing generation, to evolve and address any remaining concerns, because otherwise it will be unable to realise the potential of the retirement housing sector. More could still be done in terms of education about the benefits, both at an individual and a systemic level.

For the Audley Group’s part, it began with a vision: to create retirement living options that would improve older people’s lives. That vision continues to drive it as it grows and expands into the mid-market. Change is about more than one company, though. I believe it’s the role of the whole sector, supported by the Associated Retirement Community Operators of which I am chair. Scale in the sector would help to raise awareness, so we welcome all new entrants, and it is encouraging to see the growing political recognition that will inevitably support the growth of retirement living.

**Nick Sanderson is CEO of Audley Group**

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**Related competencies include:** Housing strategy and provision, Planning and development management, Purchase and sale

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Tales from
the 20th
century

A research project has been uncovering the story of the British antiques trade in the past century

Dr Eleanor Quince

From 2013 to 2016, researchers at the Universities of Leeds and Southampton worked on 'Antique dealers: the British antiques trade in the 20th century, a cultural geography'. Funded by the Arts and Humanities Research Council, this project aimed to create an impression of the profession across a 100-year period.

One outcome was an oral archive, built up throughout the project, with additional histories collected in 2017 and 2018. It included interviews with people who had spent a lifetime in the trade and those who followed in the footsteps of parents or even grandparents.

The result is a fascinating insight into buying and selling antiques in 20th-century Britain. It describes vast change in the second half of the century as traders modified practices to meet the challenges of a shrinking market and a shifting consumer landscape.

Antiques dealers were asked how they started out. Second- or even third-generation traders said it was because they had always been involved. Harry Apter of Apter-Fredericks remembers going on an antiques hunt as a child with his father and grandfather, visiting auction rooms, house sales or other dealers’ shops. The panic moment — stopping the car to check whether their purchase was genuine — provided a thrill that was hard to replicate. Entering the family business, for some, was a natural step.

Education was required for those who entered the trade because of personal interest. In the 1960s and 1970s, apprenticeships were common. Unlike today’s formal apprenticeships, these were ad hoc arrangements with low pay, and tasks included cleaning, waxing the furniture and moving heavy items around the shop.

Andrew Jenkins of Avon Antiques started his apprenticeship in 1963 in a shop belonging to David Tron and Gordon Sutcliffe in Chelsea. He asked for a subsidy from his parents, who were baffled by his career choice, as he could not live in London on his £5-a-week salary. Besides manual tasks, Andrew was given objects to identify and research and time off to visit the furniture galleries at the Victoria and Albert Museum. He had to write a weekly essay on his findings.

Ideas of what an antiques shop should look like have been shaped by popular culture, from Dickens’ 'The Old Curiosity Shop' in the 19th century to the 1980s soap parody 'Acorn Antiques'. Interviewees recalled the era of piling it high — stacking antiques of every conceivable

Interior of Keeble, Carlisle Street, London, showing its Oak Room in 1927, suggesting contemporary taste in antiques
The project gives a fascinating insight into buying and selling antiques in 20th-century Britain

Many dealers chose to stop trading because of the ensuing financial difficulties.

Surviving and thriving

Although the closing decades of the 20th century were difficult for antiques dealers, many businesses survived. Dealers who modified their practices, reducing the scale or nature of their business — for example, by seeking to specialise and appealing to niche markets, or creating a personal shopping model — thrived. They had to compete with new ways of marketing and selling, such as the internet.

The opening years of the 21st century suggest the future looks bright — even brown furniture is apparently making a comeback.

The research team hopes to secure funding to make 2019 the year of the antique dealer, with plans for an exhibition at the Bowes Museum, County Durham, hidden-history object trails at museums across the country, in-conversation events featuring antique dealers, museum professionals and academics, and the restaging of *Quinneys*, a 1914 play about life in an antiques shop.

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Further information: Interactive map – search for antique dealers in your area  antiquetrade.leeds.ac.uk
Antique dealer’s blog  bit.ly/antqdlrsblog
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