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‘Non-bank lenders face no solvency restrictions and activity can be driven by the returns sought by investors, with greater risk’

Tarrant Parsons
Economist, RICS

In the five years preceding the 2008 financial crisis, bank lending to the commercial property sector increased by 149 per cent in terms of amounts outstanding. Alongside this accumulation of debt, annual investment volumes into the UK commercial property market trebled, increasing from £21bn in 2000 to £67bn in 2007.

This rise in market activity pushed capital values up 49 per cent over five years. Given commercial property valuations then fell by 43 per cent over the next two years, it is little surprise lenders experienced serious pressures. Research by the Financial Services Authority found that, in 2011, around one-third of the outstanding stock of commercial property debt was in some form of forbearance, while many other loans were at least in negative equity.

Although capital values have appreciated 35 per cent over the past five years, this has not been accompanied by an increase in bank loans. In fact, net lending to commercial property has fallen by £40bn cumulatively since 2009. This may seem unusual given investment into the sector has surpassed levels before the global financial crisis by some margin, hitting £77bn in 2015 compared to the £67bn high previously set in 2007.

Breaking the investment data down by source reveals a significant shift in composition before and after the crisis. On average, overseas investment has accounted for nearly 45 per cent of quarterly volumes since 2011, up from 25 per cent in the seven years preceding the crash. In contrast, private property companies have averaged a share of 12 per cent in the same time, down from 22 per cent previously.

Changes in the regulatory environment offer another explanation, with banks now facing tighter limits on the capital reserves they must set aside for commercial real estate loans. However, this does not apply to some institutions, so other lender types have filled the void.

According to De Montfort’s Commercial Property Lending Report 2017, UK banks and building societies originated close to 70 per cent of UK commercial property mortgages in 2007, with this proportion having remained stable throughout the previous decade; yet this figure has fallen to less than 50 per cent over the past three years. At the same time, UK insurers have increased commercial real estate lending activity significantly, now representing ten per cent of loan origination compared to less than one per cent previously. Meanwhile, other non-bank lenders have increased market share considerably since 2011, representing 14 per cent last year.

Generally speaking, a move away from banks being such a dominant source of commercial real estate lending could help mitigate some of the threats to financial stability, because risks are no longer concentrated in one area. That said, although lending by insurers is regulated, other non-bank lenders face no solvency restrictions. This means the activity of private debt funds, for example, is driven predominantly by the level of returns sought by investors and will typically be targeted at higher-yielding assets. Lending of this nature clearly carries greater risk.

Despite this, 36 per cent of respondents to last year’s RICS UK Commercial Property Market Survey felt that the current composition of UK real estate investment makes the market less vulnerable to a severe downturn than it was before 2008. Only nine per cent feel the market is now more vulnerable, although 35 per cent believe there has been little change.

In its 2018 UK banking system stress test, the Bank of England estimated that a 40 per cent fall in UK commercial real estate prices would lead to an impairment rate half of that which prevailed during the financial crisis, due to tighter underwriting standards and reduced loan book size. Similarly, 46 per cent of RICS survey participants feel regulatory changes have made the UK financial system more resilient to potential commercial property market shocks, whereas just 23 per cent feel they have not.

In the end, a severe market downturn would invariably still have negative effects for domestic financial conditions, but the measures put in place since 2008 should at least help mitigate the effects.

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Property Briefing

Coal authority publishes updated subsidence guidance

The Coal Authority has issued a technical guidance note following review of a major instance of subsidence in the North East of England. The government body, which manages the impacts of historic coal mining across Britain, said the note comes after successful completion of the engineering works and a sustained period of monitoring.

The authority’s operations director James Lowth said: ‘Following the release of our initial recommendations last year, we have published further details to increase awareness of the risks posed by the legacy of historic coal mining. Our technical guidance note builds on the recommendations, and is relevant to local authority planners, surveyors, developers and geotechnical and engineering consultants when considering such legacy issues.’

bit.ly/CoalSub19

MHCLG clarifies fire safety advice

The Ministry of Housing, Communities & Local Government (MHCLG) has updated Approved Document B with a new definition of the term ‘filler’ in relation to cladding. It clarifies that filler material includes the core of metal composite panels, sandwich panels and window spandrel panels, adding that such material should be of limited combustibility.

MHCLG has also published an advice note on balconies in residential buildings following a fire at a property in Barking. After consulting its expert panel on fire safety from BRE, the ministry decided that ‘the removal and replacement of any combustible material used in balcony construction is the clearest way to prevent external fire spread from balconies . . . and this should occur as soon as practical.’

bit.ly/AppDocB2019
bit.ly/MHCLGbalcAN

RICS registration changes pending

Regulatory changes due to come into force next April mean at least 25 per cent of a firm’s principals must be RICS members for it to register with the organisation. Only firms registered for regulation will be able to use the RICS logo, and the chartered surveyor designation will be restricted to the trading names of such companies.

RICS estimates that there are currently about 100 registered firms that do not meet these new eligibility requirements, so the regulatory operations team will work with these companies to enable compliance or help them deregister.
**Vote in RICS Governing Council elections**

Elections are coming up for the RICS Governing Council’s 15 geographic market seats, and it’s crucial that you have your say. Our profession needs strong leadership and innovative thinking from the widest range of talent to help us navigate the challenges that lie ahead, from urbanisation through to climate change and the digital revolution.

The 15 market seats will help ensure that we have a diversity of voices setting the strategy and direction for RICS. Voting is your opportunity to choose who sits on the profession’s highest decision-making body. Please make sure you take part, and encourage other members of the profession to do so. You can vote between 17 October and 21 November.

[rics.org/elections](http://rics.org/elections)

**Journal takes sustainable step forward**

You may have noticed the new packaging for your journal, a change we have made as part of RICS’ commitment to sustainability. Manufactured from potato starch, the packaging will biodegrade naturally and can be disposed of in your food waste bin or compost heap.

**Heating market dynamics reported**

There have been positive developments in the biggest world markets for both domestic boilers and heat pumps, according to data published by building services consultancy BSRIA in July. Its research finds that, while heat pumps tend to be installed in new buildings, boilers are mostly sold to replace those in existing stock. Legislation is an important influence on the market for both products but energy efficiency, comfort and connectivity are becoming more significant, BSRIA adds.


**Standards**

**Recently published**

*Party wall legislation and procedure* guidance note, 7th edition
[rics.org/partywall](http://rics.org/partywall)

*International Land Management Standard: Due Diligence for Land and Real Property Surveying*
[ilmsc.org/the-standard](http://ilmsc.org/the-standard)

*Valuation of rural property* guidance note, 3rd edition
[rics.org/valuationruralprop](http://rics.org/valuationruralprop)

**Forthcoming**

*Code for leasing business premises* professional statement
International Fire Safety Standard
*Public sector asset management* guidance note
[rics.org/standards](http://rics.org/standards)

All RICS and international standards are subject to consultation, open to RICS members.
[rics.org/iconsult](http://rics.org/iconsult)
Emission ambition

Retrofitting energy-efficiency measures can help the UK take a huge step towards its net-zero carbon targets. But how can it do so at the speed and scale required?

Jon Warren

The UK’s piecemeal approach to installing energy-saving measures isn’t fit for purpose. A radical solution is needed — one that reduces the need to heat by so much that clean energy generated and stored on site will suffice to meet it. The technology now exists to reduce a home’s energy demand by 80 per cent by combining retrofit products, which represents a crucial step towards meeting the government’s new ambition of net-zero carbon emissions by 2050. But how can we retrofit enough homes in time?

We need a whole-house approach that works at scale, and this means a product built in the factory. A terrace of homes may all look the same but in practice they all have slightly different measurements, therefore panels have to be individually designed to achieve a tight fit, where 10mm gaps between standard one-size panels would be too big to achieve airtightness.

By creating high demand for volume and moving assembly into factories, we get bespoke measures that are quick to install while at the same time reducing costs and making products more energy-efficient. At present the target market in the UK is social housing, as this provides the fastest route to creating the necessary demand.

Reports from the Institute of Engineering and Technology (bit.ly/ietretro) as well as environmental think tank Green Alliance (bit.ly/greenenergie) have already identified Energiesprong’s standard as a viable retrofit approach that can be readily scaled up. What particularly appeals to social housing providers is Energiesprong’s long-term guarantee of affordable net-zero energy use that also ensures everyday warmth.

Energiesprong, Dutch for ‘energy leap’, is a standard for whole-house refurbishments and new builds that requires contractors to achieve affordable, year-round comfort for three decades at no extra cost to households. To meet this standard, a retrofit must provide a 21°C year-round temperature in the living room and 40 minutes of hot water a day, plus adequate clean electricity to run appliances. How these standards are achieved is left to the contractor, but Energiesprong’s Dutch experience has shown that on-site works can typically be completed in ten to 15 days.

The goal is net-zero energy use, so each refurbished home must produce enough clean energy to meet its heating, hot water and electricity needs. Money that would normally be spent on bills and maintenance pays for the works, so there is no additional cost to the occupants or housing providers. Success is judged in terms of affordable comfort in the long term.

Smaller, forward-thinking construction enterprises such as Melius Homes have already embraced net-zero energy as a badge of excellence, with managing director Rob Lambe seeing a shift in sentiment: ‘I think the industry has woken up to the need to embrace smart design, and the need for better performance.’ Recent Construction News, Ashden and EU Sustainable Energy Awards support his optimism; Melius has attracted government funding towards the cost of setting up its first Nottingham factory, and has started rolling out retrofits that will bring the Energiesprong standard to 155 homes in the city with support from the European Regional Development Fund.

EU funding has so far been essential for introducing, adapting and demonstrating Energiesprong in the UK. The National Energy Foundation led the pioneering EU Horizon 2020-funded Transition Zero project, which was designed to establish appropriate market conditions for the wide-scale introduction of net zero energy homes across Europe, and has now seen this through to demonstration phase. These adopters are two pilots, both funded
by the Interreg NorthWest Europe E=0 project, which interested stakeholders have been able to visit to understand how Energiesprong works in practice.

The first of these is a new 17-home pilot now under way, led by Nottingham City Homes with Melius carrying out the work, and prefabricated roof and wall panels were placed by crane in June. There is also a five-home pilot in Maldon, Essex being carried out by multinational utility company ENGIE for housing association Moat, which is nearing completion.

The latter bears witness to some of the challenges involved in net-zero energy retrofits in the UK. These pairs of semis all looked similar, but no two are exactly the same. Two pairs were fully retrofitted, while one side only of the third pair was retrofitted. This will test the impact of thermal bridging where an unimproved right-to-buy home sits next to a retrofitted housing association-owned property, and extra monitors will be installed in the party wall for example. The local planning authority required that the street scene be maintained, entailing compromises such as keeping chimney stacks and dormers even where they shade solar panels.

ENGIE’s regional managing director Simon Lacey concedes that ‘retrofits can be highly complex. We created bespoke measures for each of the five properties, providing the same Energiesprong result.’

One of the surprising findings from the Maldon pilot is that even a home with an average energy performance certificate (EPC) rating that would make it appear to be a lower priority for energy efficiency improvements can be expensive to heat. This is partly because these pilot homes are highly exposed to the wind, near the coast and with open land in front of and behind them. Moat’s director of property services Jason Amos says: ‘These properties had an EPC rating of a low D, but bills were particularly high. The retrofit has allowed us to build a highly insulated house around the existing property. The aim is for these homes to achieve an A rating.’

ENGIE has wrapped a super-insulated and airtight shell around the existing structures and installed triple-glazed windows. This will dramatically reduce heat loss and also limit road noise. Mechanical ventilation will pre-warm fresh air using residual heat from the stale air it expels. Roof and wall panels with 200mm of mineral wool insulation were produced off site by Mauer and installed using a crane. The wall insulation extends below the damp-proof course, and glued polybead insulation has been blown into the 300mm void below floors to prevent any through-draughts.

ENGIE opted for lightweight acrylic brick-effect external wall insulation panels from Mauer, colour-matched to the brickwork being covered. It also replaced the dormer windows to the front, with the new windows being triple-glazed and letting in plenty of light.

The chimney has been capped and sealed and high-performance doors have been added, which has kept the look of the facade consistent with the other homes in the street as the planning authority required.

A compact, fully integrated Factory Zero energy module, which contains an air-source heat pump, hot water tank, solar photovoltaic (PV) inverter and mechanical ventilation, has been connected to the back of each property, and the integrated monitoring kit will keep the energy supplier, landlord and occupant informed about performance with real-time measurements. Equipment in the module can be maintained by a third party without the owner needing to be at home. Battery storage will also enable electric energy to be stored for use when needed rather than exported to the grid, which does not offer much return. The final energy performance will not be quite zero, given that the whole roof could not be covered with PV, but the energy performance of the homes is guaranteed for 30 years.

Although the cost per individual retrofit is currently high and requires grant funding in order to be viable, the Dutch experience proves the price can fall rapidly as the work scales up. Energiesprong UK head of team Emily Braham says: ‘This pay-as-you-save model works because of the performance guarantee.’ Nonetheless, to ease this initial stage and limit costs, net energy consumption of up to 1,500kWh per year is currently allowed rather than the net zero that is desired.

Braham adds that there are 11m older, hard-to-heat homes in the UK that could be retrofitted to the net zero standard with existing technology. Today the cost is too high, but once 40,000 retrofits are in the pipeline – which is the plan by 2030 – costs can halve. It would then be entirely possible to self-finance high-volume, low-carbon makeovers from energy and maintenance savings.

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Related competencies include:
Sustainability
In 2011, the University of Salford launched a new kind of building research facility. The Salford Energy House is a replica of a Victorian solid-wall end terrace built in a large-scale environmental chamber, where temperature, solar radiation, wind, rain and snow can be simulated and controlled.

The facility was built in response to the sustainable retrofit agenda. At the time, it was clear that progress was being made in improving the understanding of energy efficiency in new properties, to meet the more stringent requirements in Part L of the Building Regulations.

Existing stock, however, was highlighted as the central problem for policy-makers in terms of meeting aspirations on climate change and fuel poverty. Sustainable retrofit — that is, retrofitting a property specifically to improve its energy efficiency — became a national priority.

The traditional ways of understanding the impact of any measure made to improve domestic energy efficiency were twofold. The performance of products such as insulation, heating or controls was often assessed using laboratory-based tests — typically as a single element, with walls tested in isolation from roofs and floors. The argument against this approach is that these tests were often not reflective of the product’s performance in the context of that whole

Controlled conditions

The University of Salford’s Energy House research facility has enabled much more practical and accurate assessment of energy efficiency

Will Swan and Richard Fitton
system, and did not account for issues caused by use, installation or interaction with other improvements, such as the interrelationship between fabric and heating systems or ventilation.

The second approach was the field trial. However, the findings of such studies are confounded by the fact that the real world is complex and messy and, sometimes, it is difficult to establish what the impact of the product or system might be. The vagaries of weather, occupant behaviour and the differences in properties mean that larger data sets are required to draw conclusions that are robust, making them expensive and time-consuming. Field trials are also notoriously difficult in terms of issues from communication to data loss and, occasionally, awkward occupants.

The Salford Energy House was therefore a bold new proposition. It countered the issues of laboratory tests as the products were installed as part of a whole system. It also provided a level of control and repeatability for tests that was impossible in field trials; weather and occupancy profiles could be run on the house both with and without the improvement, to isolate its impact by reducing the noise in the data from other factors. A more scientific approach could thus be taken to the examination of a dwelling’s thermal performance, with higher degrees of accuracy than those found in on-site measurement of single properties.

The Salford Energy House hosted a number of major research programmes during this period. Working with manufacturer Saint Gobain, a team consisting of staff from the University of Salford, Saint Gobain Recherche and Leeds Beckett University carried out two whole retrofits, using both external and internal insulation wall measures. These demonstrated the potential for a significant reduction in heating demand using off-the-shelf products.

Meanwhile, work with the British Electrical and Allied Manufacturers Association provided robust evidence on the impact of simple domestic heating controls, which were found to be more effective than previously thought. This work is currently being used to inform changes to the UK’s regulatory energy model, the Standard Assessment Procedure.

One of the other benefits of controlled conditions that had not been considered when designing the facility was the development of new methods for assessing buildings. The rapid whole-house quick U-value of buildings (QUB) test and the prize-winning fast U-value measurement system were thus both trialled and developed in the energy house.

At the start, the original energy house was part of a growing sector increasingly interested in finding faster, cheaper and more effective ways of understanding buildings. Over its lifetime, we
have seen considerable change in that sector. Government-led energy efficiency schemes such as the Green Deal and Energy Company Obligation attempted to encourage retrofit in the UK, but came up against the complexities of the market, a limited understanding of buildings and a declining political will.

The National Audit Office highlighted the Green Deal as a policy failure. This failure was the result of factors such as the high cost of credit, poor consumer take-up and limited understanding of the savings that a retrofit could offer, because predicted performance was often not reflected in what was actually achieved—a phenomenon known as the performance gap. It was these kinds of issue that the energy house was designed to address.

However, the problem of energy efficiency in buildings has not gone away. Commercial and residential buildings represent 45 per cent of EU energy consumption and in the UK the domestic sector consumes more than a quarter of total energy, largely through heating and hot water use, which can account for 75 per cent of an individual home’s energy demand. So if we are to address fuel poverty, carbon emissions and energy security—which remain the energy policy triumvirate—then the built environment, and particularly housing, must be central to the discussion.

**Energy House 2.0**

Energy House 2.0 takes the original concept and extends it into a global facility. The £16m project commenced early this year, and is partly funded by the European Regional Development Fund under the Greater Manchester Sustainable Urban Development (Low Carbon and Research and Innovation) Call.

Two significant changes have been made to Energy House 2.0, when compared to the original facility. The first is that the two chambers will recreate weather conditions representing those experienced by 95 per cent of the world’s population, as opposed to mainly temperate northern climates, by achieving temperature ranges of -20°C to +40°C in both heating and cooling latitudes in each of the two chambers.

The second is that the chambers provide greenfield sites with hangar doors enabling access for diggers and lorries. This allows a variety of properties to be built, tested and then replaced. The original Energy House structure reflected around 20 per cent of UK stock and could not be modified or replaced, but the new facility can embrace any construction type, including small non-domestic buildings. This particular improvement has been made with a view to supporting international markets, as well as the growing interest in off-site and modular build methods.

Together, these changes radically alter the type of work that can be undertaken. The facility can look at off-site technology, temporary accommodation for disasters, and coatings and materials for a global market.

The Energy House 2.0 also operates in a context different to that of the original project at the start of the decade; while energy efficiency is still a major issue, buildings are now increasingly viewed as part of a more complex energy system. The links between storage, renewables, electric vehicles, smart meters and homes are taking buildings into a different environment. This model has been embraced at a policy level through The Grand Challenges, the Department for Business, Energy and Industrial Strategy (DBEIS) policy paper on the government’s industrial strategy published in May 2018 and updated in December ([bit.ly/DBEISgrandchal](bit.ly/DBEISgrandchal)).

So while the transition is likely to take time, it is happening. This may well mean a shift in some of the ways we understand buildings. The Smart Meter-Enabled Thermal Efficiency Ratings project, announced by DBEIS in July 2018, indicates a possible future for evaluating building fabric performance using smart meter data, supported by data from internal and external sensors.

More importantly, there is a movement to look not only at the energy efficiency of a property but also wider issues such as ventilation and related air-quality factors. This reflects a developing understanding of building performance as a series of interrelated factors rather than thermal performance alone.

Such approaches start to link issues of building performance to the smart and connected homes agenda, to help occupants access data that was not previously available to them.

When Energy House 2.0 is completed, it will be able to support the industry in a period when rapid technological change is expected. We can see emerging domestic energy systems linking with electric vehicles, storage, and renewables and potential new fuels such as hydrogen. There are new models of energy consumption, such as time-of-use tariffs, and virtual power stations where demand, generation and storage capacity for multiple homes are managed externally. All these changes are underpinned by the growing use of information technology such as smart meters and smart homes.

Energy House 2.0 is a vital step between the laboratory and people’s homes, providing a swift way to develop robust evidence and minimise risk in what is starting to look like a radical technological transition for UK domestic energy consumption.

**If we are to address fuel poverty, carbon emissions and energy security then the built environment must be central to the discussion**

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**Related competencies include:** Construction technology and environmental services, Legal/regulatory compliance
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Efficient estates

Consolidation of real-estate assets by Place Partnership is helping public and private organisations alike reduce costs and increase efficiency.

Andrew Pollard
Place Partnership was formed in 2015 by six forward-thinking local authorities as a unique public-sector mutual to help rationalise their land and property assets and create value for the estate. From the outset, we have recognised the need for efficiency while at the same time improving services through a more strategic approach.

With Cabinet Office support, Place Partnership evolved from the government’s One Public Estate programme to make savings from effective asset management. In practical terms, this is often realised by the development of public-sector hubs — such as the Wyre Forest facility currently under construction — that bring together several authorities and services and promote time- and cost-saving initiatives such as agile working. This is supported by rationalisation and improvement of existing procurement processes, which can enable further significant savings as well as improved efficiencies through greater economies of scale.

This programme, now in its seventh phase, has so far saved taxpayers £24m in running costs, created 5,745 jobs and released land for 3,336 homes. Ultimately, this phase includes plans for public-sector land to be developed, creating 10,000 homes and 14,000 jobs while saving taxpayers £37m in running costs.

Although Place Partnership’s beginnings were in the public sector, the company has since its launch developed its client base, returning the benefits of its commercial activity to its public-sector shareholders. Our portfolio under management comprises some £850m of assets of all kinds, while our regional service provision employs around 170 staff, including chartered surveyors, registered valuers and land and estate managers. This team has significant experience in the nuances of commercial, industrial, residential, agricultural and educational real estate, working across the service lines that underpin our business: strategic asset management, valuation, project management and facilities management.

We know the importance that real-estate assets play in service provision and the ways in which we can ensure greater efficiencies and savings for our customers and shareholders. A core element of our original brief was to save £58m between 2015 and 2025, and we are already well ahead of target, having reduced estate operating costs by £13m in addition to capital receipts realised.

Place Partnership is an end-to-end provider, uniquely offering the full suite of property services for customers and partners alike. This means that colleagues working in one team have ready access to the information from other disciplines. For instance, our asset management team can call on the expertise from colleagues in facilities management to provide fast, accurate and reliable information, gaining an holistic understanding of a building’s strengths and potential for improvement.

Strategic asset management is the key strand of our service offering because it draws on data from other areas of the business, such as energy management and facilities management, to inform an overall strategy brief. In asset management, we provide a range of functions including investment analysis and strategy, re-gearing of leases, town and county planning, acquisitions and disposals, asset data management, and development consultancy.

A good example of our work in this area includes the portfolio review we undertook for the Worcestershire Health and Care NHS Trust. At the time, it occupied a large number of properties on a leasehold basis but was seeking to streamline the operation, and it enlisted Place Partnership. Our team investigated lease documentation to assess the liabilities and costs associated with each building, taking into account location, ease of access, running costs, space requirements, working environments, and state of repair. This enabled our asset management team to identify opportunities for rationalising the portfolio and reducing costs by streamlining services, vacating some premises and transferring to existing accommodation in other public-sector offices.

Our work also enables us to show ongoing social value for our clients by using local suppliers and procurement channels, benefiting local economies. This is at the same time as reducing the total number of contracts from around 550 to 150 while preserving the benefits of regional service provision and giving a uniform service to all customers and partners.

A step in this direction is our recent agreement with facilities management firm Graham to act as our single-point service provider for hard facilities management services. This partnership will ensure substantial savings in both time and resource, streamlining service provision that is quality-assured. Graham hopes to add £7m per annum of social value as a result, which will be assessed through the government’s Social Profit Calculator.

Looking back at our first four years, it has become increasingly clear that the lines of demarcation between disciplines must be broken down if users are to unlock the full value of their assets. Only by working in a collaborative way across functions will we achieve the gains that forward-thinking clients are seeking, whether in the public sector or in the commercial world.

In this respect we value the initiatives supported by RICS in raising the profile of facilities management in business, which we regard as not only an important driver of change but of workplace strategy. Looking to the future we aim to grow our partnership, and hope to inspire others to adopt collaborative ways of working for the benefit of the organisations that seek our expertise.

Andrew Pollard is managing director of Place Partnership
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Related competencies include: Asset management, Strategic real estate consultancy
Joint ventures are one way that local authorities in East Anglia are building the homes and other developments their areas need.

Richard Gawthorpe

For local authorities under pressure to transform the land and assets they own into much-needed housing, joint venture development companies that comply with the judgment in Teckal Srl v Comune de Viano and Azienda Gas-Acqua Consorziale (AGAC) di Reggio Emilia C-107/98 [1999] ECR I-8121 are increasingly attractive. Such public-to-public companies are usually exempt from Public Contracts Regulations 2015, and need not take the traditional, resource-intensive procurement process. This means regeneration projects can be carried out speedily with a single supplier of professional and development management services, without the time or cost of procuring a development partner.

In Suffolk, two such partnerships were formed in March with the Norse Group, a company entirely owned by Norfolk County Council, to bring back into use two disused council headquarters formerly occupied by Babergh District Council and Mid Suffolk District Council. (bit.ly/NorseSuf).

In the latter district, work on supplying almost 100 homes and a new retail unit is due to begin in February through a company known as Mid Suffolk Growth. This work includes sensitive refurbishment of the grade II listed part of the council offices fronting the High Street in Needham Market, with the project due to be complete by November 2022. A separate company, Babergh Growth, has also been established between Norse and Babergh District Council to provide 57 homes on a site that is predominantly grade II and grade II* listed, overlooking the river and cricket ground in Hadleigh.

The interests of local people are protected by regular board meetings on which senior elected members and council officers are represented. By taking this approach, local authorities know they are entering into partnership with a company that has a strong public service ethos.

A similar Norse Group partnership in Norfolk, Broadland Growth, has already developed high-quality private and social housing and won a number of national awards (bit.ly/CarroRIBA; bit.ly/CarroPassiv).

Although the initial focus of the Mid Suffolk and Babergh projects will be on the two disused council buildings, each will seek to enable further development, and there have already been talks about providing a visitors centre for one of the councils. A main contractor will either be procured through established frameworks, compliant with Official Journal of the European Union rules, or via the Norse Group or relevant council procurement team. Both joint ventures are now active and set to benefit local and regional economies, meeting the environmental and housing needs of people in Suffolk.

Strategic director for Babergh and Mid Suffolk District Councils Jonathan Stephenson says: ‘All councils have a responsibility to invest in housing to meet the growing needs of local people. Our partnerships with Norse will provide what’s required while allowing effective governance. The two partnerships will see council-owned land and assets given a new lease of life. The development vehicle is working to make a positive contribution to the economic, environmental and housing needs of our communities.’

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Related competencies include: Asset management, Strategic real estate consultancy
Adiuvo are the only specialised call handling service for the Property Management Industry to approximately 540,000 properties throughout the UK where our services include Out of Hours Emergency maintenance call handling, Full 24/7 maintenance desks, Lone Worker Check-In, Reception & Overflow services.

**OUT OF HOURS:**

We take all incoming calls and under agreed procedures triage to determine whether any reported issue is deemed an emergency under our clients’ responsibility whilst protecting the asset they manage from material damage and staff, residents and visitors from any Health & safety issues.

Due to the nature of the service we offer almost every call we take comes with the belief that their call is an emergency and in order to collate information, instruct correctly and at times advise that an issue is not going to be actioned or is even their responsibility, customer service skills are at the forefront of every call.

**DAYTIME CALL HANDLING:**

Our services include outsourced switchboards, dedicated maintenance desks and overflow call answering, integrated either into the clients’ services or in combination with our out of hours call handling to provide true 24 hour coverage.
People power

Negotiating dilapidations depends as much on people skills as it does on surveying expertise. What can you do to ensure you succeed?

Mike and Simon Hazeldine
To be a good building surveyor, you need to know how buildings work; but to be a great building surveyor, you need to know how people work too.

This advice is particularly relevant to dilapidations negotiations. Surveyors are great at dealing with the technical aspects, but not so great when it comes to the negotiation stage. This is mainly because surveyors are well trained in those technical aspects, and also reasonably well trained in the legal ones, but sadly lacking when it comes to training in negotiation.

Many surveyors also believe they are negotiating when they are in fact simply haggling. Haggling is making an offer at different price points until a deal is made, and typically concerns itself with price alone. Negotiation is about getting something of equal or higher value in exchange for any concession you may make.

It is vital that you enhance your capability and confidence as a negotiator. A key principle in this is to focus as much on people as on the technical aspects. A good starting point is to understand that most negotiations go through five stages, as follows.

First, far too many dilapidations negotiators fail to plan or prepare correctly. This is a vital: without effective planning and preparation you can only react to what happens in the negotiation rather than controlling it.

It is important to consider each item on the schedule without losing sight of the overall settlement, and the implications of section 18 valuations, supersession arguments, betterment and interpretations of repair standards also need to be taken into account. It is also vital to keep up to date with relevant case law and legislation.

You should also plan for the kind of person you will be facing, as your approach to negotiating with an experienced fellow surveyor will be different from that when dealing with an uninformed tenant, and different again when facing a ruthless business owner who may be uninterested in RICS guidance and pre-action protocols.

Second, discussion: depending on the subject and the people involved, this stage can be relatively calm or it can descend into an argument. Whatever the nature of the conversation, the purpose of this stage is to review the issues fully and exchange information. It is vital that every possible effort is made to understand the other party’s point of view, and to be sure that they understand yours.

Third, signalling and proposing: each negotiation in which you are involved will typically result in an agreement that falls somewhere between meeting all your needs and meeting all those of the other party. As a negotiator, therefore, you need to be on the lookout for signs of willingness from the other party to consider movement towards your ideal outcome.

Such signals are usually followed by proposals – actions, approaches or processes that one party suggests to the other. Proposals advance negotiations and without them not a lot happens, so discussions go round in circles and increase the possibility of deadlock.

Fourth, bargaining: this stage is characterised by the two parties trading with each other so each can achieve their objectives. The key to effective bargaining is giving to get, and a basic rule of negotiation is never to make a concession without getting something of equal or greater value in return. In dilapidations negotiations, the return could come some time after the concession was made as you work your way through the schedule, so it is important you do not lose track and keep careful notes.

Some items offer less opportunity for negotiation, but there will always be some negotiation on price. It is therefore best to avoid getting stuck if you cannot find common ground on a given item. Simply suggest that you park the topic and move on to the next. Return to the trickier items towards the end of the negotiation when a sense of progress has been established.

Fifth, closing: this is when agreement to proceed is reached. Make sure you summarise clearly the agreed deal to ensure you have a common understanding.

The most important remains the first stage: up to 90 per cent of your success as a negotiator depends on the quality of the planning and preparation you do in advance. Some of the vital elements you should include in the planning and preparation are as follows.

• Objectives: what specifically do you want to achieve, and how will you measure your success? Ensure that you write your objectives down as this will make them more concrete; unclear objectives will usually lead to poor results. It is also vital to consider the objectives the other party may have, and then confirm these during the discussion stage.

• Negotiation parameters: because most agreements will fall somewhere between the ideal outcome of both parties, it is important to consider the range in which a settlement is possible. Define your own or your client’s ideal outcome, then a realistic outcome based on your knowledge to date, and finally your musts. Next, consider the likely range of the other party. If you cannot secure your musts then you must walk away and discuss alternative actions with your client, such as a part 36 offer. Part 36 of the Civil Procedure Rules allows either party to make a settlement offer; if this is not accepted and the opposing party fails to beat the offer at trial, then the court can impose costs and penalties. As a major incentive to settle, this can be a powerful negotiating tool.

• Negotiable areas: what elements will the negotiation centre on? List those important to you and those that you anticipate are important to the other party. During the negotiation you will attempt to get some of what you want by trading something they want in return. Work out what each concession will cost you so you can make sure you always get something of equal or greater value in return. It is useful to look at elements such as tenant alterations that can be legitimately claimed for, but which are less important to you or your client.

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Related competencies include:
Communication and negotiation,
Conflict avoidance, management and dispute resolution procedures, Landlord and tenant

rics.org/journals 19
The effective and appropriate provision of social housing has become increasingly difficult in light of many governments’ ongoing fiscal constraints and the growing shortfall in affordable housing.

In Australia, the unmet need for social housing is currently estimated at 437,000 (bit.ly/socialaus); in the UK, the Guardian reported a national shortfall of more than 800,000 homes (bit.ly/UK1msocial) last year; in Canada there were 140,000 families awaiting rent-subsidised housing in 2015 (bit.ly/Canadawait); and a shortage of 5.3m affordable housing units was reported in the USA the same year (bit.ly/UNsocialrep).

These are not exceptions: it is clear that demand vastly surpasses current supply, so it is vital that an economically and socially sustainable framework for the provision of social housing is put in place.

**Australian social housing research**

To address this challenge, many innovative models are being explored around the world. Industry-led research by the Australian Sustainable Built Environment National Research Centre (sbenrc.com.au) from 2014 focused on collecting evidence to support investment by the public, private and third sectors. This research was funded and supported by SBenrc’s core members, including BCC Australia, New South Wales Land and Housing Corporation, Queensland Department of Housing and Public Works, Western Australia Department of Communities, and Curtin and Griffith Universities. Project partners over this time included the National Affordable Housing Corporation and Keystart Home Loans.

This evidence base aims to strengthen the policy environment for housing while providing an equal standing with other essential social and economic infrastructure such as schools, hospitals and roads.

The SBenrc Rethinking Social Housing project of 2014–15 developed a productivity-based conceptual framework to enable a common understanding for later research (bit.ly/resochou). This consolidated more than 60 outcomes and 180 indicators into nine domains that have synergies with housing — namely, community and culture; economy; education; environment; employment; health and well-being; specialist or strategic housing; social engagement; and urban amenity.

Building on this, SBenrc’s Valuing Social Housing project of 2015–16 developed a Strategic Evaluation Framework to identify attribution documentation and data sources for these indicators, along with a composite return-on-investment (CROI) approach, to address shortfalls in current ROI methodologies (bit.ly/valsochse).

The Procuring Social and Affordable Housing project then examined four parallel themes in 2017–18: social procurement approaches; housing typologies; changing demographics; and funding and financing approaches (bit.ly/procsochou). This research aimed to establish social procurement criteria that would help policy-makers to identify opportunities, some of them potentially latent, for additional social benefit from traditional asset procurement.

Improving national productivity is of interest at all levels of government. Understanding the broader productivity benefits of housing is proposed as a way of improving social housing supply. The positive impact of improved productivity in the design and construction of housing are already widely understood; but how do we account for the benefits that social housing investment can produce beyond housing?

There is a growing appreciation, as the Australian Housing and Urban Research
Institute puts it, ‘that housing outcomes may already be constraining national growth or imposing undue expenditure costs on other budgets’ — for instance, the effects of homelessness on health (bit.ly/makeconn).

This relationship between productivity and housing is considered in our SBEnrc research in terms of four objectives:

- tenant outcomes
- macroeconomic benefits
- fiscal benefits
- non-economic benefits such as improved social capital (bit.ly/rethinksochse).

**Strategic evaluation framework**

Based on this approach, SBEnrc researchers developed the 2015-16 Strategic Evaluation Framework to help collect further evidence for investment (bit.ly/vaissochse). This incorporates the nine domains, desired outcomes, and more than 180 indicators from different disciplines with broad links to housing so as to better measure outcomes and articulate the community value of greater housing security. It also includes attribution guidelines, data sources, and the CROI approach.

As a part of this work, it was important to identify causal links or associations between housing and non-housing outcomes, and the impact of these on and for policy, for example, acknowledging that ‘the provision of public housing significantly reduces health service use’ (bit.ly/sochsehealth). Identifying percentage attribution — ‘the amount of the outcome that can be uniquely attributed to the designated programme or activity’ — is also necessary to monetise the broader return on investment (bit.ly/ravisocval).

There is considerable literature, in some cases dating back more than two decades, that identifies these links between housing provision and non-housing outcomes, including the US Moving to Opportunity programme (nber.org/mtopublic) and the Scottish Good Places Better Health model from 2008 (bit.ly/scotgdplaces). Relevant sources were also identified, including statistical information, government data and longitudinal cohort-based studies. Some valuable examples include those associated with the Social Value Bank in the UK (socialvaluebank.org/#publications).

As a part of understanding this, SBEnrc researchers developed a CROI-based approach. There are already a number of ROI approaches, and it is argued that, while these provide information on economic costs and benefits, they neglect many social and environmental outcomes. The CROI includes four elements to address this.

1. **Social return on investment**: this is the ratio of impact to the amount of money invested, or an aggregated financial ROI for

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**How do we account for the benefits that social housing investment can produce beyond housing?**
defined benefits to society that may accrue from provision of social housing.

2. Well-being valuation: this method, developed by the OECD, is now used in the UK to enable community housing associations to measure the effect of their investment, monetising the impact of the broader, non-housing benefits of access to housing on an average person’s well-being.

3. Value to the individual: personal stories can be used to understand the unique value and impact of access to housing.

4. Value of equity: comparing, understanding and aggregating the value different people place on social infrastructure helps us to understand the broader value to society of equitable access.

Social procurement criteria

In building on this research to develop the framework, SBEnrc researchers then went on to consider the strengths and weaknesses of various social procurement approaches for social and affordable housing in Australia. This was done in parallel with research into the changing demographics of social housing cohorts, the need for new housing typologies, and current and emerging funding and financing models. We then developed a set of social procurement criteria to help those who are responsible for policy development, and asset and service provision.

A range of social procurement approaches were identified that can address both the housing asset and social service dimensions required to make progress. These included:
- planning mechanisms such as inclusionary zoning and value capture
- public housing transfers and renewal
- housing remote Indigenous communities
- housing for those with a disability
- partnerships
- community housing provider models
- shared equity models
- cooperatives
- social impact bonds
- build-to-rent homes
- renovating vacant infrastructure
- the common ground model.

The social procurement criteria, as shown in Table 1, focus on leveraging additional social benefit in the course of procuring housing as a physical asset. They are intended to ensure expansive and agile thinking and to leverage opportunities, including those that are potentially latent.

There were a number of further findings from the research that established these criteria. First, a diversity of procurement approaches, and housing and tenure types are needed for differing locations, cohorts, legislative, and physical environments. Second, some jurisdictions will have higher levels of experience and maturity in certain approaches than others, and we need to understand the conditions for success. Third, a diversity of funding and financing approaches is required, embracing a greater role for social investment. Last, the benefits and impacts of housing are considered from a whole-life perspective with an understanding of how benefits accrue across the short, medium and long term.

Housing is transformational; it is critical social and economic infrastructure, and it is the platform from which people engage with family, the broader community and the economy. Developing procurement approaches that recognise and integrate social as well and economic returns and benefits can thus lead to greater social and economic stability.

Dr Judy A. Kraatz is a senior research fellow at the Cities Research Institute, Griffith University, Australia and leads the SBEnrc social and affordable housing program of research j.kraatz@griffith.edu.au

Table 1. SBEnrc’s social procurement criteria

| Governmental, financial and legislative systemic focus | Builds partnerships |
| Build housing pathways |
| Builds diversity in housing stock |
| Builds the financial capacity of system |
| Supply chain focus | Stimulates industry-wide innovation |
| Develops supply chain maturity |
| Builds sector capacity |
| Learns from successful models and pilots |
| Organisational focus | Measures benefits of assets over life cycle and financial outcomes, as well as benefits and outcomes for communities over life cycle |
| Sets a time frame for realisation benefits |
| Ensures integrated service and asset provision |
| Manages risk distribution |
| Person focus | Addresses the needs of diverse cohorts |
| Addresses diversity, choice and aspirations in housing needs |
| Builds the financial capacity of individuals |
| Supports sustainable and affordable living outcomes |
| Flexibility | Enables agility and responsiveness |
| Ensures appropriate scaleability |
| Allows location-specific responsiveness |
Save up to 35% when you buy a new vehicle for business or personal use through RICS Benefits Plus and TysonCooper - make sure to ask us about the new Audi Q3 Sportback and the Q5 PHEV, just added to the scheme. Call 01473 873000 or email rics@tysoncooper.com for details of the membership discounts available on a wide range of makes and models.

Up to 35% discount savings relate to outright and funded business or personal purchases. Discounts may vary. Vehicles featured are for illustration only and may feature colours and options not available in the UK. Audi e-tron available with dealer support + government grant + additional 3.5% RICS member discount. All discounts correct at time of going to press.
The second edition of ICMS will have a major impact on life-cycle cost analysis, project reporting and facilities management

Andrew Green

The World Bank and governments around the globe have incorporated both capital and life-cycle costs into their procurement decisions, so construction cost management and procurement is increasingly demanding a whole-life, value-for-money approach. However, there is currently no international standard for classifying and benchmarking costs across all types of project or throughout the life cycle of buildings or infrastructure — leading to discrepancies in the accounting process or in comparing and predicting project finances.

Life-cycle costs is vital to the financial management of construction projects and facilities management, representing a crucial consideration in whole-life cost decisions when income and non-construction costs, such as acquisition and financing, are included.

Life-cycle costs enable critical decisions to be made about the importance of capital and longer-term costs that could ultimately affect an asset’s performance, longevity and how resilient it is. Other life-cycle costs could be part of facilities-related costs as well, such as environmental sustainability and occupancy costs such as subtenancy rent.

Recently published, the second edition of the International Construction Measurement Standards (ICMS 2) now includes other life-cycle costs such as asset renewals, operations and maintenance, and end-of-life costs. It has been developed through a process of extensive collaboration between industry representatives from 46 countries.

Since the first edition, the principle of ICMS has been to ensure global consistency when classifying, defining, measuring, analysing and presenting the entire construction and other life-cycle costs, at a project, regional, state, national or international level (see box, left). Having a common cost classification structure linking buildings and infrastructure projects and the other facilities life-cycle costs will have a major impact on the way projects are designed, built and handed over for operation, then maintenance and renewal, through to end of life or during an investor’s period of interest.

This should also have huge benefits for asset and facilities managers as it will enable stakeholders to compare costs on a like-for-like basis throughout the asset life-cycle. It will support clients formulating their sustainable estates and facilities strategy as well, by enabling control of the total ownership costs and ensuring robust analysis, benchmarking and understanding of where money is spent. This is especially important in economically challenging times.

As property, construction and infrastructure continue to be increasingly global in extent and operation, there

ICMS 2: intended uses

• Construction and other life-cycle costs to be consistently and transparently benchmarked; that is, like-for-like comparative benchmarking at various stages of project life.
• The causes of differences in life-cycle costs between projects to be identified, informing options appraisals.
• Properly informed decisions on the design and location of construction projects to be made, ensuring the best value for money.
• Data to be used with confidence for construction project financing and investment, decision-making and related purposes, including forecasting annualised budgets for the other life-cycle costs in scope.
<table>
<thead>
<tr>
<th>ICMS breakdown</th>
<th>Alternative 1</th>
<th>Alternative 2</th>
<th>Cost variance</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost categories/sub-cost groups</td>
<td>Base date Q1 2019, new-build base case option, GIFA=12,000m²</td>
<td>Base date Q1 2019, acquire/fit-out alternative option, GIFA=11,800m²</td>
<td></td>
</tr>
<tr>
<td>Acquisition costs</td>
<td>Land not included</td>
<td>£18.5m (exc. finance)</td>
<td>–£18.5m</td>
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<tr>
<td>Construction costs (cost plan no. 1)</td>
<td>£25.5m</td>
<td>£5.5m</td>
<td>£20m</td>
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<tr>
<td>Renewal costs over the 30-year life cycle (including decorations)</td>
<td>£6.3m</td>
<td>£6.5m</td>
<td>–£0.2m</td>
</tr>
<tr>
<td>Operation costs</td>
<td>Forecast over 30 years</td>
<td>Forecast over 30 years</td>
<td>Forecast over 30 years</td>
</tr>
<tr>
<td>Cleaning</td>
<td>• £8.5m</td>
<td>• £8.3m</td>
<td>• £0.2m</td>
</tr>
<tr>
<td>Utilities</td>
<td>• £14.6m</td>
<td>• £14.3m</td>
<td>• £0.3m</td>
</tr>
<tr>
<td>Waste management</td>
<td>• £1.3m</td>
<td>• £1.2m</td>
<td>• £0.1m</td>
</tr>
<tr>
<td>Security</td>
<td>• £1.2m</td>
<td>• £1.2m</td>
<td>• £0</td>
</tr>
<tr>
<td>Overhead &amp; profit</td>
<td>• £3.5m</td>
<td>• £3.2m</td>
<td>• £0.3m</td>
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<tr>
<td>Risk allowance</td>
<td>• Included</td>
<td>• Included</td>
<td>Included</td>
</tr>
<tr>
<td>Taxes</td>
<td>• £1m</td>
<td>• £1m</td>
<td>£0</td>
</tr>
<tr>
<td>Maintenance costs</td>
<td>£7.3m</td>
<td>£7.2m</td>
<td>£0.1m</td>
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<tr>
<td>End-of-life costs</td>
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</tr>
<tr>
<td>Other facilities management costs (option, if in scope)</td>
<td>Facilities management (optional)</td>
<td>Facilities management (optional)</td>
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<tr>
<td>sustainability (BREEAM rating)</td>
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<td>rental income</td>
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<td>N/A</td>
</tr>
<tr>
<td>service charges</td>
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<td>Not in scope</td>
<td>N/A</td>
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<tr>
<td>user-defined (other costs)</td>
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</tr>
<tr>
<td>Total life-cycle cost</td>
<td>£69.2m</td>
<td>£66.9m</td>
<td>£2.3m</td>
</tr>
</tbody>
</table>

Notes: GIFA = Gross internal floor area; EC includes disposal inspections, reinstatement, decommissioning, salvage and taxes

Source: FAITHFUL+GOULD, ANONYMISED OFFICE PROJECT LIFE-CYCLE COST PLAN
is a need for international consistency in fundamental life-cycle cost classifications. Historically, these processes have followed local and regional practice, making comparison across the world more difficult and leading to confusion, uncertainty and a lack of confidence among key stakeholders.

Globalisation of real estate only increases the need to make meaningful comparisons between countries, so stakeholders will benefit from a reporting system that provides internationally comparable life-cycle cost data. This will enable better financing decisions, optimum design and operation, a whole-life, value-for-money approach to procurement, and the bringing together of project and facilities financial management to give an overview of the whole-life cost of ownership.

As digitisation of construction proceeds at a rapid pace, ICMS’s uniform international cost classification is required to enable new technologies to collect cost data, identify differences and interact seamlessly with design, environmental and operational data. The value of the standards is evident from the fact that the first edition was immediately adopted by the various technology companies in the development of cost, design and facilities management software.

ICMS 2 will help facilities and asset managers in the following ways, including but not limited to:

• benchmarking historical life-cycle costs, such as renewals, operation and maintenance
• improved budgeting for future life-cycle costs and cost subgroups that are in scope during a project’s post-construction phases
• sensitivity analysis of the impact that changes to particular project and facilities specifications have on life-cycle costing
• due diligence on business case decisions, from the perspectives of facilities management cost and affordability alike
• cost management of facilities management categories, namely operation and maintenance, asset renewals and other facilities management in scope
• demonstrating value for money over the entire asset life cycle, not just the lowest-capital project costs.

Informed clients need robust data and cost reporting for benchmarking purposes in order to assess financial viability attributes are designed to be used with drop-down lists to ease data input and subsequent analysis. It should be noted, however, that almost all building information models have the relevant data classification, such as Uniclass or Uniform 11, that is aligned to the New Rules of Measurement and also mapped to the relevant ICMS cost categories and subgroups. The worked example in Table 1 shows how ICMS 2 cost categories and sub-cost groups are typically used.

As well as providing a high-level cost reporting tool, ICMS also have a cost classification function, such that individual cost groups or subgroups are, if applicable, set out, tabulated and totalled to arrive at the overall project and other life-cycle costs, plus any other facilities management costs agreed to be in scope.

Table 1 provides transparency on the capital costs and the other life-cycle or facilities management costs, in a format that enables easy comparison for analysis and benchmarking by cost categories and by sub-cost groups. This supports identification of the option that provides the best value for money, in terms of the total life-cycle cost, as well as setting the forecast budgets for running the facilities over the defined life-cycle period; in this case, 30 years.

Having a global standard for the presentation of construction and other life-cycle costings that can be embedded in building information models and other new technologies will transform cost information for projects. ICMS 2 will help to bridge the capital and revenue divide and enable the adoption of whole-life costing as the norm for future construction and related facilities management and procurement decisions.

Andrew Green is RICS technical author of New Rules of Measurement 3, a member of the standards-setting committee for ICMS 2, vice-chair of the SFG20 technical standards committee, and director of Atkins andy.green@atkinsglobal.com

Related competencies include: Cost prediction and analysis
Residential tenants’ rights in the UK reached their zenith under the Rent Act 1977 (bit.ly/RentAct77). This provided that landlords could only charge fair rents and were unable to recover possession automatically from tenants who had fallen into arrears.

Policy-makers’ attitudes changed in the 1980s, when it was recognised that these burdens led some residential landlords to sell their properties and seek more lucrative returns in other sectors. Aiming to reverse the decline of rented housing and improve its quality, the Conservative government introduced assured shorthold tenancies (ASTs) in 1988. These provided that landlords could recover possession as of right on giving tenants two months’ written notice at certain points of the tenancy — that is, a section 21 notice. The pendulum swung further in landlords’ favour in 1997, when, subject to certain exclusions, all new residential tenancies were deemed ASTs.

The Housing Act 2004 (bit.ly/HsgAct04) prevented landlords from serving section 21 notices where the tenant had paid a deposit that was not protected by an authorised scheme; subsequently, the Deregulation Act 2015 (bit.ly/DeregAct15) attempted to prevent landlords serving section 21 notices in retaliation for complaints from tenants about a poor or unsafe property. The latter act also expanded the list of measures that a landlord must take before serving a section 21 notice, including providing energy performance and gas safety certificates.

This year has already seen the Tenant Fees Act (bit.ly/TenFeesAct19) being passed banning unfair letting fees. Most dramatically of all, the government announced on 15 April that it would consult on abolishing section 21 notices altogether — doubtless a result of campaigning by tenants’ activists, with more than 50,000 people signing the End Unfair Evictions Coalition’s petition (bit.ly/Abolsec21).

If section 21 notices are banned, many residential landlords wishing to remove their tenant will rely on the section 8 notice procedure. The main difference between these two kinds of notice is that the section 8 regime requires a landlord to prove that one or more of the statutory grounds for possession is satisfied. This allows
Section 8 requires a landlord to prove that one or more of the statutory grounds for possession is satisfied, allowing tenants to defend themselves against any allegations made. Tenants may seek to draw out any litigation under the section 8 notice to gain a tactical advantage; for example, they might bring a counterclaim for disrepair to the property, knowing that they can use the rental void caused by the delay to bring pressure to bear on the landlord.

The potency of these tactics becomes apparent when one considers that 94 per cent of residential landlords are individuals (bit.ly/EPLS18), who may need their rental income as quickly as possible to meet other financial commitments, such as paying their buy-to-let mortgage. In general, possession proceedings brought under section 8 are longer and more expensive than evictions under section 21.

Tenants can use section 8 possession proceedings in other ways. For example, a landlord wanting to present the court with a mandatory ground for possession against a tenant who has accrued arrears and pays rent monthly must show that there are at least two months’ arrears at the date of the hearing. A tenant can defeat the claim by reducing the arrears to just under the two-month threshold, and there is nothing to prevent them using this tactic again.

The landlord may then have to fall back on a discretionary ground for possession – such as seeking possession because, in the statutory wording, the tenant has some arrears. This is a second-best option, though, because it makes it effectively impossible to advise the landlord what the court will do at the hearing.

Section 8 notices may superficially appear more attractive than the section 21 regime. This is because the court may order the tenant to repay rent arrears in possession proceedings commenced pursuant to a section 8 notice. However, a money order will be toothless if the landlord cannot enforce it against the tenant. In practice, the delays to the procedure mean that a landlord is often best advised to draw a line under the arrears and focus on removing the tenant as quickly as possible. Doing so makes section 21 notices preferable to their section 8 counterparts.

The government proposes strengthening the section 8 regime to mitigate the effect of abolishing section 21 notices. Under the proposals, landlords would be entitled to possession where they wish to move into the property or sell it. However, this could cause as many problems as it resolves. A landlord intending to move into or sell the property will presumably have to prove an intention to do so, for instance. This question of intention is the subject of considerable judicial comment in the field of business tenancies, as was demonstrated with the recent Supreme Court decision of S Franses Ltd v The Cavendish Hotel (London) Ltd [2018] UKSC 64 (bit.ly/FranvCav18).

While we need to wait for the draft legislation, therefore, it seems that arguments over landlords’ intentions could be used by tenants to delay and frustrate possession proceedings, in the same way that counterclaims over disrepair are being used now.

According to the English Housing Survey 2016–17, only ten per cent of private renters who had moved in the past three years stated that they had done so because their landlord had given them notice. The statistics thus do not appear to support the popular narrative of voracious landlords preying on helpless tenants.

In their 2018 report The Evolving Private Rented Sector, Julie Rugg and David Rhodes argued that the abolition of section 21 notices would be a piecemeal measure, unlikely by itself to lead to greater tenant security (bit.ly/RuggRhodes18). They recommend further legislation only after the effect of changes to tenancy law in Scotland has been evaluated. It seems likely that landlords remaining in the sector will make increasingly stringent checks to cherry-pick the best tenants, leaving the rest more exposed than ever.

With Brexit continuing to dominate parliamentary time, it is doubtful that the proposed changes to the section 21 regime will be made immediately. Nevertheless, there is a need for a reasoned debate that avoids knee-jerk reactions on either side.

It can be seen that the relationship between private landlords and their tenants is better characterised as the swinging of a pendulum than as consistent and carefully thought-through policy. Although no system is perfect, I would submit that what is needed is not revolution but an evolution of ideas and policy.

Before making further changes, we should first assess the effects that the Deregulation Act and Tenants Fees Act have had on the rental market before deciding what to do next. It may be better to strengthen the existing legislation so as to maintain good-quality housing in the private rented sector. Certainly, legislators ought to avoid being forced into action by groups seeking to present an overly simple view of the complex issues that arise from the relationship between residential landlords and tenants.

Scott Goldstein is an associate at Payne Hicks Beach sgoldstein@phb.co.uk

Related competencies include:
Leasing and letting
Anti-money laundering

‘Suspicion for the purposes of making a disclosure under the 2002 Act is – unhelpfully – subjective and objective’

Nadia Kohli
Streathers Solicitors LLP

Q: I’m unsure whether a client I’m working for is acting in a suspicious manner or just unorthodox. Do I have to make a suspicious activity report?

A: Where someone suspects money laundering, a suspicious activity report (SAR) should be made to their employer’s money laundering reporting officer and potentially to the National Crime Agency (NCA), the UK’s financial intelligence unit, under the Proceeds of Crime Act 2002. Section 337 of this requires those acting in the regulated sector to make a disclosure if by virtue of their profession, business or employment they know or suspect, or have reasonable grounds for suspecting, that a person is engaged in money laundering, whether it is their client or not.

If you are in the know, this requirement is self-explanatory, and subjective. The main difficulty the professional faces is determining what is ‘suspect’ and what are ‘reasonable grounds’. What one person may deem suspicious another may find perfectly normal; it is difficult to gauge the threshold of suspicion, and you could be at risk of offending your upstanding client or worse, tipping off a money launderer. At the same time, failure to act could constitute a criminal offence.

Unhelpfully, suspicion for the purposes of making a disclosure under the 2002 Act is both subjective and objective. This means on the one hand that it does not matter whether there are reasonable grounds for the suspicion provided that it is genuinely held, as shown in David Lonsdale v National Westminster Bank Plc [2018] EWHC 1843 (QB). On the other hand, a disclosure is also required if an honest and reasonable person doing business in the regulated sector should have formed a suspicion.

With this in mind, one could be led to conclude that a disclosure should be made whether the professional believes they have smelt a rat or thinks they ought to have done so in their position. However, there must be a degree of satisfaction that at least extends beyond speculation and a ‘possibility, which is more than fanciful’, as reported in R v Da Silva [2006] EWCA Crim 1654, while also bearing in mind that a ‘vague feeling of unease would not suffice’, as Shah and another v HSBC Private Bank (UK) Ltd [2010] EWCA Civ 31 found.

If you resolve the moral dilemma of the reporting duty under section 330 of the 2002 Act, are you now no longer able to act or continue to act for your client unless you have received consent? Following an SAR submission, a defence against money laundering (DAML) can be requested from the NCA. However, the agency also makes clear that such a defence does not constitute clearance or permission to continue acting or proceed in general. The professional is left to make an informed decision, bearing in mind their legal and regulatory responsibilities.

If a DAML is refused, a moratorium period commences during which the NCA should keep the matter under review, provided that consent is granted if there is no longer a good reason to withhold it. However, as there is no duty on the NCA to act swiftly, the professional may face further difficulties in not disclosing an investigation to a suspect client and committing a tipping-off offence, as outlined in section 333A of the 2002 Act. Even where a DAML is granted, if there are further suspicious developments during a transaction then you should think carefully about the need for subsequent SARs.

It is clear that there is no hard and fast rule for suspecting or reporting money laundering, but a professional should consider taking their own advice and acting with caution.

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Related competencies include: Ethics, Rules of Conduct and professionalism

Further information: The RICS Countering bribery and corruption, money laundering and terrorist financing professional statement provides further guidance; see rics.org/amfps
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The price of pollution

Air pollution has significant implications for health, and with increasing data on the areas where it is most potent house prices are also likely to be affected.

Philip Wilbourn

The atmosphere is a precious, thin layer of gas surrounding the planet, and is only 12km thick at its maximum. Where would 12km take you at ground level from RICS head office on Great George Street? Gunnersbury Park to the west, Bounds Green tube station to the north, London City Airport to the east and Croydon University Hospital to the south. You can’t even get to the M25. Such is the shallowness of this gossamer layer of life-giving atmosphere. However, the air we breathe is increasingly dangerous to our health.

Globally, around 8.8m deaths a year are attributed to air pollution, predominantly in developing countries (bit.ly/88airpoll). A 2016 joint report by the Royal College of Physicians and the Royal College of Paediatrics and Child Health stated that air pollution causes the premature deaths of up to 40,000 people a year in the UK, with an estimated 29,000 caused by particulate matter and 23,000 by nitrogen oxides, allowing for some overlap between the two (bit.ly/RCPairRep).

The cost of air pollution to the UK economy has been estimated by the World Health Organization (WHO) to be £54bn a year, or around 3.7 per cent of national GDP (bit.ly/54bnAir). It is even higher in some European countries; in Bulgaria for example it is estimated to be equivalent to 29.5 per cent of GDP. Some 91 per cent of the world’s population live in places where air quality exceeds WHO guidelines for key pollutants, and that even includes those living in rural areas.

Historically, the main form of air pollution in both developed and rapidly industrialising countries has been high levels of smoke and sulphur dioxide from domestic and industrial combustion of fossil fuels. Yet the major threat to clean air is now posed by traffic emissions: motor vehicles running on petrol or diesel emit a wide variety of pollutants, principally carbon monoxide, nitrogen oxides, volatile organic compounds (VOCs), and particulate matter such as PM10, from exhaust fumes, tyre wear and brake dust. All of these have an increasing impact on urban air quality.

It is important to note too that, although electric vehicles are often referred to as generating zero emissions, they still produce non-exhaust particulate matter at a rate equal to internal combustion engines (bit.ly/NonExPM). Switching from a combustion engine to electric cars will therefore not necessarily eliminate vehicular pollution. Motorway service providers have found that the provision of electric vehicle charging points can double the energy load required. So, while the cars may not emit...
carbon the power stations do and people feel that they are green, in reality they have simply pushed the emissions out of sight and out of mind. Of course, the transition to renewable energy sources can offset this, but not entirely. We still need fossil fuel in the short to medium term to cover demand from homes and businesses for comfort cooling in more and more extreme weather conditions. Is the electric car really the way forward?

Emissions from aviation and internal combustion engines form clusters of concentrated pollution, around London’s Heathrow Airport for example, and similar hot spots can be found in urban areas and along motorway corridors. But the truth of the matter is that all parts of the UK are affected by air pollution to a lesser or greater extent; the second highest concentration of PM10 for instance is around Stanford-le-Hope in Essex, a commuter town. Furthermore, pollutants from vehicles are not only a problem in the immediate vicinity, but can also be dispersed across wider areas as a result of weather and air movement.

Inside the home, while dirty cookstoves and fuels have largely been removed in European countries, the growing popularity of wood-burning heaters increases pollution in houses and in the immediate vicinity of the property. These domestic wood-burners produced 51 per cent of all PM2.5 emitted directly into the air in 2017, as shown by a recent EU report (bit.ly/EUemRep). The UK’s National Atmospheric Emissions Inventory (NAEI) meanwhile estimates pollutant levels annually, and has created an interactive map (bit.ly/NAEImap), which gives consumers an indication of the impact on air quality from a wide range of the most common pollutants. It is not a reassuring picture.

### Bad air and buildings

Poor air quality also has an impact in the workplace, and buildings that focus specifically on minimising VOCs and enhancing ventilation enable better cognitive functioning by occupants than those with higher levels of indoor pollutants and lower fresh-air intake (bit.ly/cibseIAQ). However, the energy consumed by air conditioning systems can produce local warming and emissions that exacerbate the urban heat island effect. Global energy demand for such systems is expected to triple by 2050, while air filtration systems can also significantly increase energy usage, thereby creating a pollution multiplier effect.

There is thus a huge amount that landlords and facilities managers should be doing to improve the built environment. A good starting point would be installation of air-quality monitors in buildings to determine how best to use ventilation. There should be a company-wide clean energy strategy as part of this approach.

When it comes to the residential market, public awareness of air pollution is currently low but beginning to rise. We have to bear in mind that we spend 90 per cent of our lives indoors, and the environment in which we spend that time is vitally important. Awareness of the risks of living with air pollution were brought into sharp focus by cases such as the 2013 death of a nine-year-old in London following repeated asthma attacks, which an inquest earlier this year linked to her having lived within 25 metres of the South Circular Road.

Recent citizen-funded advertising campaigns highlight the link between air pollution and health issues, with billboards carrying slogans such as ‘These houses cost an arm, a leg and a lung,’ ‘Location, location, lung disease’ and ‘The neighbourhood’s gone to the docs’ appearing across London for example.

A variety of government and private websites such as the NAEI map or airview.blueair.com provide a new level of granularity for homebuyers to consider. According to a report in the Daily Telegraph, property agent Henry Pryor stated that people have learned that homes on opposite ends of the same street can have different levels of pollution. He estimates that pollution can reduce the price of a home by up to 15 per cent compared to a similar property in a less polluted area (bit.ly/15pcpoll). But the wind blows and air pollution is not inert, so the quality does change from location to location over time.

Some people are also calling for an air pollution rating for each property, which would have a significant impact on housing values: if such an initiative were developed, there is a danger that housing with the worst ratings would be the only property affordable for the most vulnerable in society.

Unless and until transportation becomes carbon-neutral, it will have an increasingly greater impact on real-estate values. Government initiatives are aiming to reduce pollution from industry and from domestic sources, but the real-estate sector has to do much more than it is currently. It needs to focus on:
- heating and cooling homes without high energy consumption
- developing passive filtration designs
- banning wood-fired heaters in urban areas, as these increase pollution in the home and its immediate vicinity.

As awareness of the health risks grows, consumers and other stakeholders such as lending institutions will become much savvier about where they choose to buy homes. Air pollution is becoming an important location factor, and with increased climate change it is likely to kill an awful lot more. This will have a significant impact on real estate in all its forms.

**Philip Wilbourn** FRICS is CEO of Wilbourn & Co. chartered environmental surveyors enquiries@environmental-surveyors.com

**Related competencies include:** Sustainability
Nipped in the bud

A streamlined process has led to a sharp rise in the number of tenancy deposit disputes being resolved before adjudication

Steve Harriott

Early intervention in deposit-related disputes between landlords and tenants across the UK has resulted in many more being resolved by agreement, without the need for adjudication (bit.ly/LATdeprep).

By law, each government-backed tenancy deposit protection scheme must offer free alternative dispute resolution (ADR) services for tenants, landlords and agents who disagree over the way that deposits should be distributed at the end of a tenancy. The Tenancy Deposit Scheme (TDS) offers this service to its landlord and letting agent members and tenant customers, resolving disputes in a range of ways from adjudication to advice and education on avoiding conflict in the first place. Dispute resolution can involve many approaches and does not automatically involve formal adjudication.

As a not-for-profit company, TDS, and its related organisations TDS Northern Ireland and SafeDeposits Scotland, have been promoting mediation and early intervention in disputes over the past year to help parties resolve their differences earlier. In England and Wales, the specific number of tenancy deposit disputes being resolved before adjudication increased by 31 per cent in the past 12 months compared to the previous year. In Scotland, the increase was 18 per cent, and in Northern Ireland 56 per cent.

Fewer than one per cent of the deposits protected by TDS in England and Wales ends in a dispute — 17,628 cases between April 2018 and March 2019. Of these cases, however, more than one-fifth — 23 per cent — were resolved at pre-adjudication stage.

These statistics highlight TDS’s commitment to making the process of deposit protection, including stressful and costly disputes, streamlined and fairer for everyone in the private rented sector.

Letting agents, landlords and tenants are all short on time and want a fair outcome. Early intervention or ADR are designed to help achieve that.

In the TDS insurance-backed tenancy deposit protection scheme in England and Wales, tenants can initiate a dispute if they disagree with the deductions their landlord requests on the deposit; agents and landlords can raise disputes if tenants disagree with their proposed deductions. Both parties are then invited to submit evidence to TDS for review.

The ADR team has introduced an early resolution step that helps both parties reach a settlement without the need for formal adjudication. SafeDeposits Scotland carries out the same process and has met with similar success.

In TDS’s custodial schemes in England and Wales and Northern Ireland, an online self-resolution process is triggered after the
By law, each government-backed tenancy deposit protection scheme must offer free ADR for parties who disagree over the way deposits should be distributed at the end of a tenancy

Parties have disagreed about the repayment of the deposit. The system helps the parties to reach their own settlement through a process of proposals and counter-proposals. TDS engages with property professionals to help demystify the adjudication and dispute resolution processes and runs regular TDS Academy training for them nationwide (tenancydepositscheme.com). The half-day foundation course focuses on best practice for tenancy deposits, including complying with the legislation, and top tips for tenancy agreements, check-in and check-out reports. The adjudication workshop focuses on TDS ADR, including how to claim deposit deductions and advice for negotiating with tenants, as well as examining the key issues that an adjudicator looks for in a dispute.

Case study: clarity on cleaning
Cleaning is one of the most common reasons for a tenancy deposit dispute. In one case, the letting agent sought £300 for a full clean of the property to return it to the condition it was in at the beginning of the tenancy. The agent provided the check-in inventory, in which the property was described as having been cleaned to a professional standard. Tenant annotations dealt with the condition of items rather than cleaning issues.

Although the check-out report did identify that a good portion of the property fell below a standard that could fairly be described as professionally cleaned, it did state that certain rooms had been returned to that standard. The tenant disputed the agent’s claim and provided photographic evidence, but this only contested minor points. The dispute led to a communication breakdown between both parties. TDS engaged with both agent and tenant early to resolve the dispute. After significant communication, both parties settled on a split of the funds, with £200 going to the agent and £100 to the tenant. They avoided a full-length adjudication process, which was a sensible outcome given there were issues with what both parties would have put forward had the case progressed to evidence-gathering.

In this sort of situation, lack of constructive dialogue and decent evidence from the parties can exacerbate the original disagreement. When it comes to cleaning, clarity in inventory reports and tenancy agreements is vital. Agents and landlords should outline exactly what they expect, and tenants should keep a paper trail of discussions and conclusions.

Constructive dialogue
Resolving disputes over a deposit is obviously beneficial for both landlord and tenant, which is why TDS encourages dialogue between them. Supporting a negotiation defuses situations and enables quick and fair settlement. All protagonists benefit from keeping control of the decision, rather than involving a third party.

Steve Harriott is chief executive of TDS steve.harriott@tenancydepositscheme.com

Related competencies include: Conflict avoidance, management and dispute resolution procedures, Landlord and tenant, Relationship management and dispute handling

Varying arrangements around UK
The dispute process varies nationwide, and there are also two types of scheme that operate: insurance-backed and custodial. In England and Wales as well as in Northern Ireland, both custodial and insurance-backed schemes are allowed, whereas in Scotland, only custodial schemes are permitted.

The differences between the schemes are as follows.
- **Custodial tenancy deposit protection:** the landlord pays the deposit to the protection provider, which looks after it for the duration of the tenancy until the landlord and tenant confirm how it should be repaid. If neither party can agree on this, the provider will hold the deposit until an adjudicator decides what to do through the dispute resolution process, or it receives a court order instructing how the repayment should be made. If the landlord doesn’t pay the money to the provider, the dispute resolution process can still go ahead. The landlord will be expected to abide by the adjudicator’s decision.

- **Insurance-backed tenancy deposit protection:** the landlord holds the deposit, and pays a fee to the protection provider to insure it. At the end of the tenancy, the landlord and tenant agree how it should be repaid, and the landlord pays this amount. If neither party can agree, the landlord should submit the disputed amount to the provider, which will hold the deposit until an adjudicator decides through the dispute resolution process how to proceed, or a court order is given to the provider instructing how the repayment should be made. If the landlord doesn’t pay the money to the provider, the dispute resolution process can still go ahead.
Selling property at a profit will usually, for individuals, be subject to capital gains tax. Private residence relief (PRR), however, has long provided an exemption from gains on dwellings that have been used by the seller as their only or main residence, subject to various conditions being met.

Where a person occupies more than one home as a residence – for example, they live in a flat close to work during the week but a family home at weekends – they can nominate one property to be their main residence to benefit from this relief, subject to HMRC agreement.

However, PRR won’t ordinarily be available for periods where the homeowner hasn’t used their dwelling as their sole or main residence. This means that where there have been periods of absence, an element of the gain may fall within the charge to tax. Taxing absent periods could lead to inequitable results if the taxpayer is not in occupancy through no fault of their own, which is why a number of ancillary reliefs have been introduced over the years.

For example, the final period exemption currently allows the final 18 months of ownership to qualify for PRR in all cases, provided that the property is or has at some time been occupied as the owner’s only or main residence, a period extended to 36 months for persons who are disabled or resident in a care home. This proves more equitable where, for example, a homeowner has been forced to relocate for work but due to a slow housing market has experienced delays in selling their previous home.

The legislation also provides a lettings relief of up to £40,000 relief, in respect of the let period, where a number of lodgers share the property with the owner, or where a whole dwelling that has at some stage been the owner’s main residence is let.

Following an announcement in the 2018 budget, however, the government is consulting on restricting both the final 18-month period and letting relief from April 2020. It is proposed that the final period exemption be reduced from 18 months to nine, the rationale being to counteract a perceived exploitation of the rules where individuals with more than one home can receive a final exemption period on both properties.

Industry bodies are concerned that this change would be inequitable for those who only own one home but are forced to move out of it before they can sell, in circumstances such as separation, relocation for work, family or health reasons. In periods of economic uncertainty, there is a risk that nine months may not provide sufficient time to secure a sale.

Lettings relief will also be reformed so that it only applies where an owner is in shared occupancy with a tenant, that is, the owner continues to occupy that dwelling as their only or main home throughout the period of the letting. It will no longer be available where a whole dwelling that has at some stage been the owner’s main residence is then let. Given that homeowners continuing to occupy their home alongside lodgers make up only a narrow part of the overall rental market, the proposed change will represent a significant restriction on this relief.

The proposed ancillary relief changes are due to be implemented at the same time as the period in which individuals must report disposals of residential property and pay any tax arising will be reduced to 30 days. Failure to do so will result in interest and penalties being imposed.

Many taxpayers may be aware of the existence of PRR and assume that any gains on the sale of their main residence will be exempt from tax. They may not be aware, however, that the relief will not always apply in a straightforward way, particularly those taxpayers who don’t have a tax adviser to bring the detail to their attention. It is hoped that the proposed changes will be well publicised by HMRC, so taxpayers can comply with their obligations.

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Proposed changes to a flawed system could affect fundamental property rights

Vittoria Mastrandrea

The system of export controls for artworks and objects of cultural interest in the UK evolved because of concerns regarding a perceived lack of protection for such items following the Second World War. In its current form, this system regulates the export of all cultural goods, and requires that individual export licences are issued for items that are 50 or more years old; the value threshold differs depending on the type of object.

If a licence is required and the item has been located in the UK for the requisite period, it will be further analysed on the basis of the so-called Waverley criteria. Doing so will ascertain whether it would be in the national interest for the item to be retained in the country. The three criteria are as follows.

1. Is the item so closely connected with our history and national life that its departure would be a misfortune?
2. Is the item of outstanding aesthetic importance?
3. Is the item of outstanding significance for the study of a particular branch of art, learning or history?

If the Reviewing Committee on the Export of Works of Art and Objects of Cultural Interest (RCEWA) deems that the item meets at least one of these criteria, it may recommend that the granting of an export licence be deferred for a specified time; this gives institutions and sometimes private individuals the opportunity to register their interest in the object. Where a serious intention to purchase the item to retain it in the UK is registered in this way, the deferral may be extended to allow a period of fundraising for this to take place.

While this is considered by many exporters and institutions to be a fair process, balancing the individual owner’s interests with those of the nation, an increasing number of incidents in recent years indicates a potential weakness in the system. For example, in instances where the export licence for an item has been deferred and funds subsequently raised to retain it, the owner is within their rights to refuse to sell at any point. An export licence will most likely be refused in such a case, but the object will remain in private hands and the prospective buyer — probably an institution — will have raised funds unnecessarily.

In December 2002, Sir Joshua Reynolds’ Portrait of Omai was referred to the RCEWA after an application for an export licence was submitted. The work was considered to meet all the Waverley
restricting the owner’s property rights. Nevertheless, it is arguable that the proposal to introduce a legally binding option agreement at the point at which an institution has registered a serious intention to purchase the work is too restrictive – the private property rights of the would-be exporter are hindered further than warranted by the 1998 Act.

As the court found in Beyeler, ‘continual uncertainty as to the legal position with regard to the work’ was considered a violation of article 1 of protocol 1 of the European Convention on Human Rights. Although the government’s proposal would not create ‘continual uncertainty’ – in that, following the deferral period, the owner would know whether ownership of the work was to be transferred – uncertainty is definitely created by the imposition of an option agreement. Whether or not the purchase of the work takes place after the deferral period, the agreement’s very existence leaves the property owner unable to act freely at this time, despite title vesting with them throughout.

Furthermore, imposing an option agreement that restricts the owner’s unencumbered property rights may be considered to place a ‘disproportionate and excessive burden’ on the applicant. A burden of such nature was considered by the court in Beyeler to violate the owner’s article 1 rights. The lack of freedom given to an exporter at this stage in the process will undoubtedly provide security for the potential purchaser and the state in retaining works of national importance, but we must be aware of the potential restrictions on fundamental property rights and the possible impact of these proposals.

Vittoria Mastrandrea is law lecturer for the MSc art, law and business programme at Christie’s Education vmastrandrea@christies.com

A National Gallery offer for a Jacopo Pontormo portrait was turned down in 2015, but an export licence was refused and the work remains in the UK
Deductive reasoning

It is not always straightforward to tell which business expenses are tax-deductible and which are not – and there are some that often go unclaimed.

David Redfern

Determining which business expenses are legitimate deductibles and which are not may seem pretty simple. However, not all companies are fully conversant with HMRC regulations – as the tax authority’s annual publication of ridiculous expense claims demonstrates (bit.ly/selfasret).

So which business expenses can you deduct from your company profits, and which must be shouldered by the business?

Common deductible expenses

Most businesses will be aware of the main areas of deductible expense such as equipment, rent and rates, insurance, advertising costs, and employee salaries. When purchasing business equipment, though, consideration should be given to whether capital allowances or the annual investment allowance would be a more efficient way of deducting those costs.

Professional fees such as those for accountants are another common allowable expense. However, any professional work such as this should be related solely to company business: if your accountant helps you with your self-assessment return, then this is a benefit in kind and is liable for National Insurance contributions. HMRC expects all business expenditure to be wholly and exclusively made in the pursuit of business activities.

Business travel is also deductible, whether you are reimbursing your employees using the approved mileage allowance payments method, which is worth 45p per mile (±8p/km) up to 10,000 miles (±1,100km) and 25p thereafter (15.5p/km), or you are deducting the cost of accommodation, meals for overnight stays and fares for employees travelling for business purposes.

Where your business provides company vehicles, you can also deduct running costs such as insurance, repairs and servicing, and breakdown cover. There are some notable exceptions in this category, though: you cannot deduct any costs associated with normal commuting or non-business travel (bit.ly/nondeduct), or the cost of any fines you or your employees pick up; HMRC’s stance is that if rules and laws are observed, the fines will not be incurred.

Commonly forgotten expenses

There are a number of other expenses that are less commonly known but should be considered in order to ensure that your business runs as efficiently as possible.

Bank charges and fees are a frequently forgotten deductible expense for example, as are any written-off bad debts. Charitable donations can be deducted from company profits before corporation tax, although sole traders using self-assessment can only deduct donations made through gift aid. Legal fees can also be deducted, so long as they do not relate to any wrongdoing or criminal activity on your part.

Additionally, training costs are allowable if they relate to improving skills used at work. Similarly, subscriptions to professional bodies such as RICS are deductible, as long as they are directly relatable to your employment and the body is approved by HMRC (bit.ly/proftax).

Staff entertainment costs such as a Christmas party can also be deducted, but there is a limit of £150 per head; this can be spread over more than one event, but events must be open to all employees, and if the total cost exceeds the £150 limit then none of it is deductible (bit.ly/dedlimit).

Non-deductible expenses

While the general rule is that any expense incurred during the course of doing business is deductible, there are a few exceptions that can catch companies unawares. One expense that is often misunderstood is client entertainment: such costs are not deductible, with HMRC’s view being that business deals can be made just as easily in an office over a coffee as an expensive meal in an exclusive restaurant. If you choose to incur these costs, therefore, your company will have to bear them.

Furthermore, unless clothing expenses are for protective workwear or a company uniform with a logo, they are not allowable as deductions but considered part and parcel of daily living along with your commute, food and accommodation.

Ensuring that your company makes full use of its deductible expenses and capital allowances will contribute to the financial health of your business by making it fully tax-efficient. However, attempting to deduct expenses that are not allowable is likely to bring unwanted attention from HMRC — so treating your expenses correctly is essential.

David Redfern is the founder of DSR Tax Claims Ltd  davidr@dsrtaxclaims.co.uk

Related competencies include:
Capital allowances and taxation
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Casting light on rights

The first of a new series of articles clarifies exactly what the right to light entails and how it arises

Angela Gregson

A right to light is an easement enjoyed by one landowner over the land of someone else, and it can be asserted by anyone with an interest in land, including tenants under leases. Unusually, it can prevent a landowner from building on their own land and can be employed to restrain development even when planning permission is in place. Accordingly, rights of light are a powerful tool for those who want to resist development and are, as Lord Lindley described them in *Colls v Home & Colonial Stores* [1904] AC 179 ‘a peculiar kind of easement’.

Rights of light are often confused with other matters, so it should be noted that they are not a right to receive direct sunlight, privacy or a view. As Lord Denning stated in *Phipps v Pears* [1965] QB 76: ‘Suppose you have a fine view from your house. You have enjoyed the view for many years. It adds greatly to the value of your house. But if your neighbour chooses to despoil it, by building up and blocking it, you have no redress. There is no such right known to the law as the right to a prospect or view.’ Yet rights of light are often deployed for these very reasons, because owners want to protect their privacy or beautiful outlooks.

To clarify: the right to light is a right to enjoy natural light that enters a building through a defined aperture. The most
obvious example of an aperture is, of course, a window, although a right to light could similarly be acquired through a skylight or a window set in a door.

Although rights of light can be expressly granted, this is rare. Most are acquired under section 3 of the Prescription Act 1832 (bit.ly/PresAct1832); that is, by the enjoyment of the light for at least 20 years before the time that proceedings are commenced, without interruption and without written consent.

The second and most unusual form of prescription is by common law. This is a presumption that there has been a grant of a right to light that has been enjoyed since time immemorial, in this context meaning the year 1189. Except for a handful of buildings, it is almost impossible to prove the position of apertures for a period of more than 800 years.

A right to light can also be acquired pursuant to the doctrine of lost modern grant. This doctrine presumes that at some point in the past it was expressly granted, but that the document evidencing that grant has since been lost. Again, it is necessary for the claimant to prove that there has been a 20-year period during which the light has been enjoyed without interruption and without consent.

The main difference between the doctrine of lost modern grant and the 1832 Act is that in the former case, the required 20 years need not be the period immediately before the commencement of proceedings, but can be at any point in the past. This is particularly useful in circumstances where, for example, the building enjoying the light has been demolished or a window blocked up. Crucially, only freeholders can rely on the doctrine; a lessee cannot pursue a claim pursuant to it.

A right to light can be granted expressly in the same way as any other easement, such as a right of way. As mentioned above, express grants are rare, but reservations of rights of light—which amount to the same thing—in leases and transfers are common. Before concluding that a right to light exists, you must check conveyancing documents very carefully. For example, a tenant in a block of flats may believe that they have acquired this right by prescription because they have enjoyed the light to their window for more than 20 years. However, if the lease says that the right to light is reserved to their landlord, then they have no claim.

Once rights of light are acquired, there are still many ways in which they can be lost. One is by abandonment: to demonstrate as much, it is necessary to show that the person with the benefit of the right had a positive intention that it should be abandoned. This is virtually impossible to prove, and even the bricking up of a window or the demolition of a building is not generally enough.

Because it is impossible to acquire a right of light over your own land, it may be lost by unity of ownership. By way of explanation, assume there are two parcels of land, A and B. A has a right of light over B. If the owner of A also acquires B, they will not have a right of light over B. However, a non-related purchaser would, because both parcels are in the same ownership. There is one line of thought that the right of light could come back into existence when A sells B on, so the right is not necessarily lost, just that it does not exist while the property is in common ownership.

As previously stated, the demolition of a building will not extinguish rights of light unless the landowner had a positive intention to abandon them. If a new building is subsequently constructed on the site of the old one then, assuming the new apertures coincide with the position of the old ones, they will enjoy rights of light to the extent that there is overlap with the position of windows in the old building. Given the potential exposure to a claim, developers that are acquiring sites should carry out due diligence as to which buildings historically surrounded those sites. This is something that could be raised in pre-contract enquiries.

A claimant under section 3 of the 1832 Act must demonstrate that the light had been enjoyed for 20 years without interruption; section 4 provides that to be effective, an interruption must continue for at least a year. Therefore, if a right to light has been obstructed for more than a year, then the claimant will have lost their claim under the act but could still bring a claim under one of the other methods.

A physical obstruction such as a wall or hoarding that has been in position for a year or more will constitute an interruption pursuant to section 4 of the 1832 Act, but section 4 of the Rights of Light Act 1959 (bit.ly/RoLact1959) provides a far simpler way of obstructing the passage of light by the registration of a light obstruction notice; doing so has the same effect at law as if a physical obstruction had been constructed. Any rights arising under the 1832 Act will be defeated unless the light obstruction notice is challenged by court action within a year of registration. Rights of light arising under the doctrine of lost modern grant, however, are unaffected.

The next article in the series will consider how rights of light are measured and when they are infringed.

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Related competencies include:
- Development appraisals, Inspection

Conflict comprehension

RICS’ first review of a professional statement shows the importance members place on managing conflicts of interest – but divergence over how these conflicts are understood

Sean Agass and Ellie Scott

The effective identification and management of conflicts of interest is essential to professionalism. The RICS Rules of Conduct state that members and firms must ‘act with integrity and avoid conflicts of interest and avoid any actions or situations that are inconsistent with its professional obligations’. The global RICS professional statement Conflicts of interest came into effect on 1 January 2018 and underpins the rules by setting mandatory requirements and providing supporting guidance in this challenging area.

A recent review of the professional statement, entitled Conflicts of interest: implementation and impact, presents the findings from two phases of research. Phase one surveyed all 10,051 RICS-regulated firms with email addresses, 40 per cent of which responded. A large majority of respondents – 94 per cent – were small firms with fewer than ten staff, most of which are based in the UK. For phase two of the research, RICS interviewed contact officers or specialist staff representing 31 firms, this time focusing on a greater proportion of large firms and those operating internationally.

Following this work, the review:
• sets out how the professional statement has been received by the market
• identifies how well conflicts of interest are understood, identified, managed, recorded and communicated
• details the specific actions RICS will take or has already taken to mitigate any risks that have been identified.

The review was carried out with the aim of measuring levels of recognition and usage of the professional statement and identifying common themes, areas of weakness, risk and good practice. The findings are already being used to inform the future development of professional statements, policies and guidance.

The review is also accompanied by materials that are designed to strengthen implementation of the professional statement, although these documents do not constitute formal RICS guidance.

The following are some of the key points identified in the review.
• Almost all RICS members and firms consider managing conflicts of interest to be important, with a combined 93 per cent believing this is either critically important or very important.
• The vast majority – 87 per cent – of firms believe staff are quite familiar with the professional statement.
• The process for identifying, managing and informing clients about conflicts of interest varies significantly from firm to firm. Some have a less formal approach in place, which may lead to inadequate record-keeping or management of conflicts of interest.
• Identifying and managing conflicts of interest comprehensively can be complex and challenging for professional services firms and, as a result, they stressed the need for maximum clarity and more supporting material to be provided.

• When representatives were asked to explain what they understand a conflict of interest to be, both from their reading of the professional statement and their broader knowledge and experience, about half their responses demonstrated the lack of a clear and accurate comprehension of the term.

RICS continually monitors feedback from the profession on the useability and application of its standards. Considering the review findings, the organisation has already made a number of changes to its publication and consultation process. This includes a greater focus on plain English, enhanced design and accessible layout, as well as detailed user questionnaires to engage with the right stakeholders as early as possible.

In light of the review findings, RICS will assist members in the following ways.
• Support on standards: professional statements will be supported with guidance and good practice case studies where possible, to illustrate practically how they should be applied.
• Provide training: training will be delivered on all aspects of the professional statement through means such as online modules and webinars.
• Focus on smaller firms: additional assistance will be offered to smaller firms to ensure they meet the obligations of the professional statements.
• Raise awareness: new developments with professional statements will be highlighted to smaller firms, which may not have the resources available to monitor changes in the regulatory environment.

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Related competencies include: Ethics, Rules of Conduct and professionalism

Further information: Conflicts of interest: implementation and impact and supporting materials are available for download at rics.org/coireview. The e-learning course on conflicts of interest can be found at rics.org/conflicttraining.
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More than a feeling

What value does health and well-being certification offer for landlords, property managers and occupiers, and how can this be measured?

Nick Hobbs
Health and well-being is one of a group of new terms that have entered the property lexicon, and which now forms part of several overarching sustainability assessment tools and benchmarking standards such as the Building Research Establishment Environmental Assessment Method (BREEAM) In-Use and the Global Real Estate Sustainability Benchmark (GRESB). Specific certification tools have also started to emerge, with the WELL Building Standard and the Fitwel system being the early leaders.

What isn’t new is that health and well-being needs a business case to prove it is not just a short-lived fad. WELL and Fitwel argue that they play an important part in developing that business case; but why should the property professions take notice of them?

To explore this in more detail, we must first appreciate that many concepts identified by WELL and Fitwel are factors that most property owners, asset managers, managing agents and occupiers have been considering for years. For example, while it may not have been the norm in the past to monitor air quality in managed assets with a view to improving occupier health, no-smoking policies, air curtains and requirements for safely storing hazardous substances have existed for decades. Similarly, access to natural light and views of nature may well now be specified in healthy building certifications, but atriums and biophilic design are nothing new.

What Fitwel and WELL are doing effectively, however, is building on experience, collating thinking from across the property sector and learning from academia to advance existing concepts, discover new ones and generally prompt us to look at the familiar in unfamiliar ways. Here, perhaps, is the first element of a business case for health and well-being certification — it offers a way to meet the demands of the modern occupier, and to show that, as property owners or managers we are forward-looking and proactive.

The value in certification for an agent such as Workman is that it increases assurance that we have considered all reasonable angles when it comes to promoting health and well-being at assets under our management. We may not be able to effect positive change in all of these areas, but where we can, we do; and where we can’t we are able to identify those gaps, formulate a reasoned response and develop potential courses of action.

Furthermore, health and well-being offers managing agents a way to start looking at the important but challenging issue of tenant engagement. Conversations around arrears, service charge budgets and leasing will always be at the core of the relationship between property manager and tenant, but the chance to start discussing innovations that benefit all involved with an asset should not be missed. It is our hope and indeed expectation that these conversations only help to develop and enhance the relationships we have with those who occupy the buildings we manage, and certification systems can help anchor such discussion.

Indirectly, tenant engagement is also a crucial part of GRESB, which has grown hugely in importance for landlords and investors in the past few years. More directly, GRESB now makes credit available for formal certifications including Fitwel and WELL; with health and well-being certification’s increased importance to this benchmark, the business case for WELL and Fitwel is being strengthened for landlords and asset managers alike.

Health and well-being is complex, multi-faceted and still quite alien to many of us

There is one important link that still needs to be developed, however, and in many people’s opinion it is the most important — namely, occupier demand. One supporting argument for health and well-being in offices is that it not only helps attract tenants but also ensures satisfied occupiers, who in turn are happy to keep renewing their leases. Yet, while CBRE research from 2016 indicates that 78 per cent of millennials see workplace quality as important when choosing an employer, and 69 per cent would trade other benefits for better workplaces (bit.ly/LWP2016), the body of evidence still hasn’t proved categorically that most occupiers would choose a building that is Fitwel- or WELL-rated over one that isn’t. Providing evidence for this will help maintain the uptake of health and well-being certifications for office assets, and for Workman’s part we are looking at ways to start monitoring this on the Fitwel projects we have undertaken or will undertake.

For all involved in commercial property management and investment, there is little doubt that the sector is moving towards greater efficiency. Improvements in energy, water and waste performance are higher up the agenda than ever, and health and well-being is the logical continuation of this, thinking on the macro scale of climate change while adding a personalised element. One of the major differences is that, while we have had decades to develop measuring and monitoring tools for electricity, gas or water consumption, health and well-being is complex, multi-faceted and still quite alien to many of us, who struggle to define it as a concept alone know how to measure it. Rapidly evolving certification tools such as Fitwel and WELL are crucial to expand our knowledge.

A clear correlation between health and well-being-certified buildings and occupier demand may not have been fully established yet, but the building blocks are all in place. As the concept of health and well-being in the built environment gathers pace, WELL and Fitwel can inform decisions on where to concentrate available resource. Beyond that, as health and well-being becomes more commonplace, the need for identifying and demonstrating successes will become more and more important. Having driven growth, certification tools will then quantify that difference and help worthy assets to stand out from the crowd.

Nick Hobbs is sustainability and well-being manager at Workman LLP nick.hobbs@workman.co.uk

Related competencies include: Asset management, Property management, Sustainability, Valuation
Wheels of fortune

As well-being climbs up the built environment agenda, cycle parking is becoming an issue that developers and landlords cannot afford to ignore

David Farr

It is now considered that the third most desirable quality for prospective office occupiers, after the price of rent and internet connectivity, is a building’s health and well-being provision. An important part of this is that buildings support sustainable transport options such as cycling; but how can developers and owners assess how effectively they are doing so?

One means of ensuring that assets are bike-friendly is accreditation such as the CyclingScore system, which rates premises from silver to platinum according to their suitability. With landlords and developers beginning to recognise the business case for best-in-class facilities and services for occupiers, CyclingScore is often asked ‘How do we build a platinum-rated building?’

A number of factors contribute to the rating. For instance, infrastructure comprises 60 per cent of the overall scoring process and considers access, surfaces, wayfinding, routes, showers, lockers and other amenities for cyclists. Cycle parking products and ratios make up a third of the infrastructure component given their importance in planning a new development.

CyclingScore benchmarks against both the floor area of a building and the expected maximum occupancy figure; this calculation is vital, as benchmarking based on area alone can often skew outcomes, because different types of businesses across different sectors will almost certainly have different cycling cultures. The lowest score is expected to be in finance, whereas media, advertising and government organisations can anticipate two to three times more cyclists in their workplaces.

Thirty per cent of the overall scoring process is attached to a building’s ongoing occupier engagement services, so it is vital that asset managers continually support those who already participate in active lifestyles, and those who might. A bicycle user group is a great way of connecting tenants by encouraging them to share routes and information as well as inspiring would-be cyclists to get riding. On-site cycle repair events, training sessions to promote safer cycling, and police bike tagging all help foster communities that encourage health and well-being.

The final ten per cent of the overall score is concerned with ensuring an asset is properly supported as the number of active commuters grows. London has seen exponential growth in cycling numbers over the past five years, yet the cycle parking capacity of buildings completed just six or seven years ago is already full, and finding new space is always going to be tricky.

The skyscraper under construction at 22 Bishopsgate in the City of London is taking this on board, and is designed to include 1,750 bike parking spaces – a huge commitment, and a fantastic example of how cycling numbers are expected to grow in coming years. Manchester is another interesting case in point, where although cycling numbers are relatively low at present, they are expected to grow significantly over the coming five years as £1.5bn is invested in pedestrianisation and improved, segregated cycle lanes.

Earmarking space for future cycle parking and facilities is thus a good idea when planning a new development.

It costs relatively little to improve a building’s health and well-being provision, and this can certainly boost the allure of office space. Clever use of floor and wall art will create a vibrant space, improve wayfinding by simplifying complex routes and providing skid-resistant surfaces. Floor art and wall art is recommended in all areas, but especially for routes as they act as wayfinding as well as slip resistance. This is a low-cost yet effective way to obtain some powerful marketing imagery; it can often enable the creation of a unified theme for a building as well, helping to attract prospective occupiers.

With cycling set to increase significantly over the coming years, so will the demand for buildings to support this. Those with substandard health and well-being facilities will soon be deemed less attractive, so landlords and developers have a very simple decision: either they can react to occupier complaints as bike numbers increase, or they can invest now and promote cycle parking as a key feature of their buildings.

David Farr is managing director of CyclingScore david@cyclingscore.com

Related competencies include: Asset management, Sustainability
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Fewer local authorities than ever are using empty dwelling management orders because of difficulties with administration

The Ministry of Justice (MoJ) has responded to a Freedom of Information (FoI) request from modular smart home provider Project Etopia, to reveal that local authorities have almost entirely abandoned powers to tackle the rising number of empty homes (bit.ly/EtopiaFoI). The MoJ said it could not reveal how many of these applications were successful because of changes in the way it treats court records under the Freedom of Information Act 2000. This response has prompted calls for the legislation to be scrapped, and replaced with a scheme that is easier for local authorities to use.

Applications for empty dwelling management orders (EDMOs) have hit an all-time low amid concerns they are too difficult to administer. The original aspiration was for more than 1,000 applications a year, but this is now in tatters as the response shows that the number of orders sought dropped to just six in 2018, more than halving since the preceding year.

EDMOs were introduced in 2006 and now, more than a decade later, thousands of people remain locked out of the housing market due to rising prices, exacerbated by lack of supply. The influential House of Lords Select Committee on Economic Affairs concluded in 2016 that the country needs to build 300,000 homes every year to tackle the housing crisis (bit.ly/UKhousing). Figures from the Ministry of Housing, Communities & Local Government (MHCLG) reveal there are 205,293 long-term vacant properties — those that have been unoccupied for more than six months — in England, and the overall number of empty homes grew between 2016 and 2017 (bit.ly/Englishemptyhomes).

The number of EDMO applications has fallen more than 85 per cent since their peak in 2012, when councils applied to use the power a modest 41 times. In 2006, only two applications were recorded because they had only come into force that July. At their introduction, then housing minister Yvette Cooper said empty and abandoned homes caused considerable distress for neighbours and local communities. In April 2008, Cooper’s successor Caroline Flint told the Commons: ‘I want to ensure that the orders we provided can be used. If there is a reason why they cannot, I want to hear about it. However, simply not using them is no excuse.’
Despite the fighting talk and clearly well-intentioned legislation, the EDMOs fell far short of the 1,000 applications a year envisaged at the outset. Between 2006 and 2018, only 229 applications were made in total. As explained in the previous edition (Property Journal July/August, pp.38–39), taking control of an empty property involves much more than slapping an EDMO or compulsory purchase order on the home in question. There may be issues with ownership, which require many months — sometimes years — of detective work to sort out. The council may also be unaware that the property is empty, and, if the unoccupied home is in an undesirable area, it may struggle to find a tenant. And this is all before the cash-strapped local authority can arrange the necessary resources for essential repairs, which again may take a long time.

Regardless of the arguments, it is obvious that changes must be made. Joseph Daniels, CEO of Project Etopia, says: ‘More than a decade has passed since EDMOs were introduced, and it is clear the policy is not working. If they are too difficult to obtain, then these powers should be replaced by a new scheme that councils are able to use more effectively.’

‘Councils want empty homes to be returned to use, and we should support them. Local authorities should be given new powers that recognise the challenges involved, from respecting the difficult circumstances that can sometimes result in these homes sitting vacant to the rights of those who own these properties. This is a cross-party issue that urgently needs the attention of everyone in Westminster. Politicians need to come together in the national interest to see that EDMOs are replaced or reformed.’

Daniels’ call for action is made more urgent by the current extent of empty housing. On 11 March this year, the Guardian published an article on the shocking rise in long-term empty homes, which is the highest since 2012 (bit.ly/Engemphsg19), based on MHCLG figures. This is a year-on-year rise of ten per cent with increases in two-thirds of local authorities, and one in ten of them seeing numbers rocket up by 30 per cent or more. The total number of empty homes now stands at more than 634,000.

Two days later, then housing minister Kit Malthouse made a presentation at the Local Government Housing, Planning and Infrastructure Conference. He responded to the Guardian article by saying: ‘Local authorities have a range of powers at their disposal to tackle long-term empty homes, and I expect them to make full use of them.’ These words echo those used by Flint in 2008.

However, Will McMahon, director of Action on Empty Homes, said: ‘When Malthouse commented on empty homes’ numbers rising at the fastest rate in a decade, he cited councils’ powers to act. Project Etopia’s FoI request shows these powers are simply not being used to good effect. Councils’ much-vaunted enforcement powers, such as EDMOs and rising council tax premiums, seem toothless. They must be empowered to act on boarded-up homes, which blight communities and lock out those in need.’

On 18 March, the Guardian published an article stating that homelessness and social housing waiting lists are peaking, with more than 80,000 families and 120,000 children condemned to live in temporary accommodation where rooms can be as small as 13m², at a cost to the nation of £1bn a year (bit.ly/Vagractrpl). The streets of our cities are home to thousands. Landlords receive more than £6bn a year in housing benefit and are not even required to provide a decent standard of housing in return.

Alongside this, there are 1.1m people on social housing waiting lists. Shortage of supply, particularly of social homes, has resulted in housing being treated as an asset first and accommodation a poor second. Local authorities cannot even enforce council tax premiums until a home has been identified as empty for more than two years — four times the length of most current private-sector tenancies. This is far too long. Although government collects and reports data on empty homes, there is no statutory duty on local authorities to bring them back to use.

The last targeted government funding stopped in 2015, and it is no coincidence that numbers of vacant properties have risen since. That funding worked, and it is time that the government supported local authorities with investment to bring long-term empty homes into use for those in housing need, through incentives and leasing and purchase schemes, as well as through the currently failing enforcement regime.

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

Related competencies include: Housing strategy and provision, Legal/regulatory compliance
Structured for security

When entering a joint venture, parties must take care to ensure that lenders are satisfied with their legal arrangements

Matthew Grogan

A joint venture is a business or project in which two or more companies or individuals have invested time, resources, expertise or funds, with the intention of working together. Sounds simple — but when that joint venture requires finance, it is imperative that the parties are organised and obtain expert legal advice.

One of the fundamental issues for a lender in providing a loan facility to a joint venture is the structure of that venture, as this will determine the terms of the loan and the extent of the security required. In property transactions there are two common types of joint venture, both of which have advantages and disadvantages from a funding perspective.

• Limited company or limited liability partnership (LLP) joint venture: this structure will most likely be a special purpose vehicle, which lenders prefer because the venture will be a clean entity, with no existing debt or security, making funding easier. However, the limited nature of the vehicle’s liability means that a lender will most likely request some form of personal guarantee to support the loan.
• Contractual joint venture: in this arrangement, each party will control its own assets, making it easier to identify their respective obligations. However, while this structure creates flexibility it can preclude the granting of certain security types such as floating charge, which covers assets such as bank accounts and debtors, and this may affect available finance.

Once the type of joint venture has been determined, the parties will need to agree the key terms of the deed that regulates it; these will be set out in a shareholders’ agreement, partnership agreement or a separate joint venture agreement depending on the type of arrangement. The terms of a joint venture agreement are pertinent in a lending situation, as the parties will need to avoid conflicting with the lender’s requirements. While each transaction will need to be considered on a case-by-case basis, there are two fundamental issues that must be considered in the agreement.

• Control: who has control over the joint venture’s decision-making? The answer to this question will depend on the nature of the project. As an example, in a development project a lender will require the developer to have overall control of decisions affecting the development, such as build costs, appointment of professionals and completion of the scheme.
• Payments and distributions: does the agreement allow payments to be made to the joint venture’s parties during the term of the loan, and when are those payments due? While a lender may agree to certain payments such as a salary allowance, it will be very unlikely to agree to the payment
of any capital or interest while the loan is outstanding. This may be of concern to investors in the joint venture.

The loan facility will set out the terms on which the funding will be provided. Such a facility can be a complex document, and the joint venture must consider all aspects carefully; while many of the terms will not depend on the fact that the loan is being made to a joint venture, there are certain terms that may be fundamental to a lender where one is involved.

- **Representation, warranties and undertakings:** In property funding, the obligations on the joint venture can be extensive and will cover everything including financial warranties, reporting, corporate governance and property. The venture should consider which party is to comply with the various representations, undertakings and warranties.

- **Conditions precedent:** A facility will require satisfaction of a number of matters before funds are made available for drawdown—these are known as conditions precedent. The parties in the joint venture must be organised and agree which of them is responsible for the satisfaction of the conditions precedent, to avoid any delay in the drawdown of funds. A facility’s conditions will be broken down into sections that cover such matters as financial information and information about the property.

  In a property transaction, a lender will seek to obtain a full security package including a legal charge over the target site, a debenture over the assets of the venture, guarantees (see below), and in some cases a charge over its shares or the equitable interest of the LLP. In our experience, most lenders will not entertain changes to their standard security documents; however, it is imperative that the parties in a joint venture ensure that the security package works for everyone. As an example, a landowner that is not the borrower for the purposes of the facility will need to provide a legal charge over the site; but that legal charge should, if possible, include a limited recourse clause so that the landowner is only liable for the facility up to the value of the site.

  A lender will more often than not seek one or more guarantees to support a facility, particularly when that facility is being used to fund a development project. This could take the form of a capital guarantee—that is, a guarantee to pay sums that are due from the joint venture—or may be required to cover interest shortfalls or cost overruns, the latter in particular being used if the project is a development.

  It is essential that the parties in a joint venture agree how to deal with guarantees at an early stage, and may want to consider the following.

- **Provider:** which party or individual will be required to provide a guarantee? This should be discussed as early as possible to avoid delays in obtaining funding. As an example, a party that is only investing in a joint venture is highly unlikely to agree to provide a guarantee—particularly if it is a corporate investor that provides equity as its main business.

- **Limitation:** will the guarantee be limited? A guarantee may be limited to an upper amount, but in certain cases can cover the full facility. The parties in a joint venture that are providing the guarantee should ideally seek to agree a cap on their liability and may even want to seek an indemnity in the joint venture agreement should the guarantee be called on by the lender.

If the joint venture requires so-called mezzanine or additional funding to complete the project then the issue of subordination will arise. This issue will also apply if one of the parties requires supporting security over the property to protect its position, as is commonly seen in a contractual or investment joint venture where only one party is providing funds.

The subordination of debt and security can be a contentious issue, and the deed regulating the position between the lender and other parties can be heavily negotiated. To avoid a delay in obtaining funding for the project and incurring professional fees, the parties should seek to agree sensible terms for any subordination as early on in the process as possible.

The key aspects to agree on are:

- the level of priority of the debt being provided by the senior lender, and whether it will have unlimited priority
- whether the junior lender is entitled to receive any payments while the senior debt is outstanding; this would be particularly important to a joint venture investor or junior lender that may be expecting the payment of an interest coupon on a monthly or quarterly basis
- whether the senior lender should provide the junior lender with notice of its intention to enforce; a notice period may allow the parties time to settle the default in question or allow a junior lender the right to buy out the senior debt.

Obtaining funding for a property transaction is complex and each lender will have different criteria. This is intensified when that transaction is a joint venture as there are more parties involved in the decision-making process. To avoid increased costs and delays, it is therefore essential that the parties in the joint venture are organised and take good-quality legal advice at an early stage.

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Related competencies include:

- Accounting principles and procedures
- Business planning
- Legal/regulatory compliance
Data analysis adds value

Surveyors must be on board if the sector is to make best use of the large amounts of property data now becoming available

Rebecca Ewart

In April, RICS published the insight paper _The use and value of commercial property data_, which looks at the growing field of data analysis. The property professions are at a tipping point, it suggests, and it is no longer enough simply to possess data; the value lies in being able to use it. Those who can analyse data add value and offer a competitive advantage.

Increasingly accurate data is becoming readily available, and while there is no doubt that owning a data set on real-estate transactions is advantageous, comprehensive property data from a range of different sources will rapidly become available to everyone. Although this might take two, five or even 15 years, what is certain is that, to prosper, chartered surveyors need to adapt their skill set to make the most of a market dominated by data.

Leaders in this field are already using data collected from real estate and the built environment to change the way they charge for services, improve local services and track the intentions of their tenants and customers. Surveyors thus need to be aware how important data is, and how using it effectively can benefit the property sector.

Benefits can only be achieved by sharing data, which remains an alien concept to many. Results from a survey of property professionals that was carried out by Remit Consulting in June 2018 showed that 40 per cent believe the reluctance to share data is the biggest barrier to property performance and to opening up information for wider use.

Those who can analyse data and add value for their clients will have an advantage over their competitors, and the value of simply owning, or having access to, data will decline. Property professionals are already having to use skills beyond those traditionally associated with surveying — Data management is a mandatory competency for the APC — so the sector needs to attract data analysts and scientists as well.

Nevertheless, many valuers do not trust the accuracy of others’ data and are not comfortable relying on this alone, and therefore databases need to be improved. The sector must develop globally applicable and open-source data standards. As a profession, we should also attract graduates, and new members, with backgrounds in data science. We need to be extracting value from data and changing processes where necessary to ensure consistent work that meets the standards set by RICS.

Remit Consulting for instance recently helped a property company to find a system that helped to analyse available government land for development in England and Wales, so as to identify suitable building sites more quickly.

The UK Land Registry has opened up its data, and third-party software houses have packaged it into easy-to-use formats. Having analysed the data, our client worked with one such software supplier to develop systems that automated much of the site selection and planning process.

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**Surveyors need to be aware how important data is, and that using it effectively can benefit the property sector**

**Related competencies include:** Big data, Legal/regulatory compliance, Strategic real estate consultancy

**Further information:** _The use and value of commercial property data_ insight paper can be downloaded at rics.org/compropdata.
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Care in the communities

To realise their full potential in the UK, retirement communities need to be better understood and receive clearer support from the planning system

Michael Voges
A cross-party alliance recently called for the retirement community sector to quadruple in size to house 250,000 older people by 2030, in line with Associated Retirement Community Operators (ARCO) Vision 2030 (bit.ly/ARCOsurvUS). With more than 100 members and affiliated organisations, ARCO is the main body representing the sector in the UK, identifying the housing options available for older people.

Vision 2030 supporters want ARCO to help tackle the housing shortage and challenges facing the UK health and social care systems. Even if achieved, the UK would still have roughly half the provision of other countries, at a time when the UK population aged more than 75 is expected to double in the next 30 years.

One of the largest problems is lack of clarity and a fundamental misconception of what comprises housing with care for older people. The differences are clarified in Table 1. Retirement communities promote independent living for as long as possible by providing aspirational homes for older people, giving them access to flexible and tailored care. Residents live in their own flats — either rented, bought or part-owned — and can use on-site health and leisure facilities, so they are able to remain independent while being part of a community. The sector’s ethos is about placemaking and inviting the wider community to use the facilities.

A major issue for the ageing population is that healthy living hasn’t kept up with increasing life expectancy, and older people are living with conditions that affect their independence and quality of life. But while we await the social care green paper, there’s been a quiet revolution among retirement communities. Research has revealed their benefits, which understandably raises suspicions about older people who live in housing with care are happier, healthier and less lonely (bit.ly/oldlonely). The average length of stay in a care home is now considerably shorter than two years, but there are increasing numbers of older people who need an alternative form of provision, with flexible care and support of the kind that is found in retirement communities.

People are living longer and are more discerning, which is why retirement communities are growing in popularity. However, the planning system is only just beginning to recognise the retirement community sector. Despite welcome ministerial guidance, there is not enough clarity that local authorities ought to categorise specialist housing with care and support under the C2 land-use type (bit.ly/C2resinst). In addition, the government has not adequately calculated future demand for this form of provision, categorising it with care homes or normal residential development.

The Town and Country Planning Act 1987 remains the cornerstone of planning. This only covers care homes as understood then rather than today’s homes, which cater for end-of-life care or high-level needs such as dementia. The average length of stay in a care home is now considerably shorter than two years, but there are increasing numbers of older people who need an alternative form of provision, with flexible care and support of the kind that is found in retirement communities.

People are living longer and are more discerning, which is why retirement communities are growing in popularity. But since local authorities confuse retirement communities with care homes, they often do not encourage this class of property, believing it will place further pressure on the social care system. In his Fixing the Care Crisis report for the Centre for Policy Studies (bit.ly/CPSCareCrisis), MP Damian Green writes that: ‘The current planning system discourages local councils from investing in social care and housing for older people.’

By not building housing with care provision, councils are moving the burden on to other local authorities or already overburdened families, thereby increasing the likelihood that older people in their own areas end up in care homes. If every council pushed ahead with plans for retirement communities, people could stay in a familiar place near their families.

One issue is that some housebuilders have previously promised to provide housing-with-care services to gain preferential treatment for their planning application. Unfortunately, a few developers do not fulfil their promises, which understandably raises suspicions.

### Table 1. Living options for older people

<table>
<thead>
<tr>
<th>Retirement housing</th>
<th>Retirement communities</th>
<th>Care homes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Sheltered housing or retirement flats</td>
<td>Extra care, retirement villages, housing with care, assisted living or independent living</td>
<td>Nursing homes, residential homes or old people’s homes</td>
</tr>
<tr>
<td>Self-contained homes for sale, shared ownership or rent</td>
<td>Self-contained homes for sale, shared ownership or rent</td>
<td>Communal living with residents occupying individual rooms, often with an en-suite bathroom</td>
</tr>
<tr>
<td>Part-time warden and emergency call systems</td>
<td>Staff on site 24 hours, with optional care and domestic services available</td>
<td>Care and support 24 hours, including meals</td>
</tr>
<tr>
<td>Usually have a lounge, laundry facilities, gardens and a guest room</td>
<td>Range of facilities including a restaurant or café, usually alongside leisure facilities such as gyms, hairdressers, activity rooms, residents' lounges and gardens</td>
<td>Range of facilities and activities, including gardens, lounges and dining rooms</td>
</tr>
<tr>
<td>Typically 40–60 units</td>
<td>Typically 60–250 units</td>
<td>Sizes vary considerably</td>
</tr>
</tbody>
</table>

Source: ARCO, fixes.org/journals
Residential property  Retirement communities

with planners when they subsequently receive applications from genuine retirement community operators.

The current system needs to develop a clear category for housing-with-care schemes for the long term, accompanied by a clear system of monitoring that can punish operators for not providing the promised services.

In Fixing the Care Crisis, Green recommends fundamental changes to social care funding in the form of compulsory insurance to ‘transform the incentives [that] currently prevent the construction of enough care homes and retirement housing’. He proposes that a new use class is created, with councils required to meet local need, helping to improve choice and affordability in suitable accommodation for older people and mitigating reliance on social care.

Another potential obstacle is that people increasingly find the word ‘downsizing’ offensive, with its suggestion that older people are stubbornly refusing to move. ‘Rightsizing’ is a better choice of word, though ARCO believes the whole argument reveals flawed thinking.

Most current schemes for housing with care are fully occupied, and in many cases long waiting lists demonstrate that people want to move. This isn’t about older people refusing to move from their large homes, otherwise we’d see empty retirement communities nationwide; the problem is that there is nowhere for them to go.

The emphasis must be shifted firmly on to supply, not demand, and the definition of housing, care and support services fit for the 21st century.

Michael Voges is the executive director of ARCO michaelvoges@arcouk.org

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

Chalfont Dene retirement community

ARCO member the Audley Group recently opened a retirement village on a suburban site in Chalfont St Peter, Buckinghamshire. Before it acquired the site in 2013, a different developer had intended to use it for ‘normal’ residential development under a C3 use; C3(a) covers various arrangements that constitute a single household under the Housing Act 2004, while C3(b) specifically covers up to six people living together as a single household and receiving care (bit.ly/UseClasses). C2 usually has a more beneficial section 106 and community infrastructure levy obligation than those under C3.

In this case, village residents formed a pressure group, Sensitive Enhancement Not Sensational Exploitation for Chalfont St Peter (SENSE4CSP), and successfully fought the earlier residential development proposal at application and appeal. In contrast, when Audley proposed a retirement village with on-site support and care services, ARCO approached SENSE4CSP and the parish council before applying to the planning authority. Both bodies supported the application and, although the development would be in the green belt, ARCO received 48 letters of support following a public exhibition.

The reasons for supporting a retirement village instead of residential development were that:
- it would have a low impact on traffic
- it would provide aspirational accommodation for older people
- it would offer high-quality support services on site
- the landowner and operator had a long-term interest in the project
- the design was of high quality
- the development would release family housing
- the scheme offered landscape and ecological benefits and renewable energy.

Benefits of social care

89% of care at ARCO schemes rated good or outstanding by Care Quality Commission, 2017

18% lower risk of falls than general-needs accommodation

Lower-level care needs cost 17.8% less than in general-needs accommodation

High-level care needs cost 26% less than in general-needs accommodation

Source: ARCO

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

Related competencies include: Housing strategy and provision, Planning and development management
The efficiency effect

As the need to decarbonise Europe’s building stock climbs the political agenda, how can we identify the impact of energy efficiency on property value? A recent RICS insight paper examines this question

Prof. Sarah Sayce and Prof. Sara Wilkinson

Climate change is now widely acknowledged to require the urgent decarbonisation of all aspects of the economy, including buildings. The latest scientific findings indicate that an 80 per cent reduction in carbon by 2050 is not enough (bit.ly/CCCnetzero).

The UK target has therefore shifted to zero carbon by 2050; other European countries are moving in a similar direction, with the Netherlands and Germany in particular taking strong measures.

The challenge is primarily old builds: estimates suggest a mere three per cent of European residential stock is fully energy-efficient. This situation becomes increasingly apparent with the introduction of measures such as energy performance certificates (EPCs). These have informed the development of regulations on the energy efficiency of existing stock as well as new builds; for example, minimum standards for UK investment stock are now in place.

Although energy-efficient buildings reduce costs for occupants – and a business case for retrofitting is made on this basis – payback periods may render savings insufficient other than for long-term owner-occupiers. This is particularly the case for investor-owners who suffer from the so-called split incentive problem, where the landlord spends the money but the tenant gains the cost savings.

From occupier and owner-occupier perspectives, a stronger case may be made for energy-efficient buildings on the basis of health and well-being, as some popular retrofitting and energy-efficiency measures provide increased levels of comfort and feelings of security.

Earlier this year, RICS published an insight paper entitled Energy efficiency and residential values: a changing European landscape for valuers and other stakeholders (rics.org/changeurland). This looked at the impact of energy efficiency on the value of residential property in selected EU nations.

The paper, based primarily on EU-funded research, considers the valuer’s role, and how – through their data collection and reporting processes – they can promote more energy-efficient housing. It reviews the context in which energy efficiency is climbing the European regulatory agenda, and the impact this has on value.

A review of the many large-scale quantitative studies conducted in Europe on value and energy efficiency found no single, firm relationship between the two qualities, as it varies between countries and study parameters, although there is a slight trend for positive relationships.

Most studies use hedonic pricing analysis and examine either capital or rental value in relation to EPCs. One large-scale study notes that energy-efficiency upgrades may result in higher values but that these may not outweigh the costs, whereas another study found a high return on investment. One study suggests that the small supply of energy-efficient stock leads to a skewing of demand and that, as new energy-efficient stock is developed, the premiums observed may fall. However, if legislation bites then inefficient stock may lose value.

There is limited qualitative research, but where it has been undertaken it reveals that individual property characteristics that have an impact on energy efficiency are more influential in terms of value than EPCs. But to date energy efficiency has not been a major factor in value.

The paper also examines as case studies a number of business-led initiatives aiming to change the market, including the work of social housing providers and the green mortgages movement, the latter encouraging retrofits and being designed to reduce credit risk.

Overall, the evidence reported in the insight paper points towards energy efficiency beginning to affect value, although it has a small impact compared with traditional factors. While column inches are often devoted to certification, specific visible characteristics such as good quality, climate-appropriate glazing may have greater important influence on value.

However, in the light of the rapidly changing policy environment, energy efficiency is likely to inform decisions by both owner-occupier and investor-owner more and more frequently, including those relating to lending and mortgages; this will in turn be reflected more clearly in reported property values.

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Related competencies include: Sustainability, Valuation

rics.org/journals 59
ESOS: boost or burden?

Recent research has found retailers reluctant to implement the energy savings recommended under ESOS phase one – yet it offers a great opportunity to save money across their portfolios.

David Oliver

At least half of the retailers surveyed recently by energy consultancy Inenco (inenco.com/esos-report) have failed to act on the efficiency recommendations they received under the first phase of the government’s Energy Savings Opportunity Scheme (ESOS) — meaning they’re missing out on significant savings.

ESOS requires more than 10,000 businesses to complete energy efficiency audits across their organisation and submit data on energy consumption, as well as identified recommendations to reduce it, to the Environment Agency every four years. Any organisation with more than 250 employees or an annual turnover of €50m and a balance sheet of €43m must comply with the scheme or face financial penalties.

Undertaking an ESOS assessment requires eligible businesses to measure total energy consumption across buildings, transport and industrial activities. They must also conduct an energy audit across at least 90 per cent of their total consumption and identify opportunities for cost-effective ways to save energy. Crucially, although ESOS identifies energy efficiency opportunities, there is no obligation on businesses to enact any of the measures that have been recommended.
Phase one of the scheme concluded in 2015, but with the phase two deadline just around the corner businesses will once again receive a raft of recommendations to drive down cost and consumption across their savings.

When surveyed, retailers cited a lack of support from their boards as the most significant reason for their inaction thus far, while 44 per cent stated that they do not have the budget to implement the recommendations, and more than ten per cent said energy efficiency is not a priority for their business. However, with the deadline for the second phase now only a few months away, retailers could face fines of up to £50,000 for non-compliance.

Many retailers will have complied with ESOS during the first phase of the scheme, which ended on 5 December 2015. Whether or not they complied on time is another matter, however, as around 2,800 organisations had to inform the Environment Agency that they would be late in reporting compliance in phase one.

In fact, just 16 per cent of businesses were fully compliant on their first submission, so the majority of those who completed their reports on time were required to carry out remedial actions after the deadline. Businesses that were late to submit or required to carry out remedial actions ran the risk of incurring serious penalties, such as the £50,000 fine mentioned above.

The problems businesses experienced during phase one prompted the Environment Agency to extend the deadline for a few weeks. But such leniency is highly unlikely to be repeated in phase two given that the scheme is now well established and businesses have had plenty of time to prepare for compliance. This means that all eligible businesses need to have been working already to comply by conducting energy audits across their organisation and having them signed off by a lead assessor in time to meet the phase two deadline on 5 December.

Yet Inenco’s research has revealed that 80 per cent of retailers have not yet begun their ESOS phase two audits. This is by far the largest proportion from any industry, and almost 20 per cent higher than the average across businesses from a range of other sectors. Their indifferent approach to compliance may be explained by the fact that 67 per cent of the retailers surveyed said they don’t think ESOS phase one was worth it. For these firms, there may seem to be little point in investing any more resources in ESOS compliance than is strictly necessary the second time round.

If retailers take a fresh approach to their ESOS obligations, however, they may think differently. Reporting schemes represent an opportunity for them to save money, thanks to the insight they can gain into their energy usage as they work towards compliance. By concentrating their efforts into deriving as much value from their ESOS audits as possible, retailers can ensure it is much more of a boost than a burden.

Energy costs for businesses across all sectors have risen by up to 25 per cent in the past four years, putting pressure on many retailers. As these increases are forecast to continue to rise substantially over the coming years, improving energy efficiency will increasingly become a priority for the retail sector. Therefore, the value of ESOS lies in the requirement for retailers to identify a number of energy efficiency measures that they could reasonably implement in their organisation — the only sure way to save costs as prices continue to rise. They must assess the cost-effectiveness of adopting each measure by comparing the reduction in energy consumed or energy spend with the cost of implementation, which should simplify building the business case for improvements.

Inenco analysed data from the customers it supported through ESOS phase one to identify the most common recommendations for retailers. Lighting emerged as top for savings among businesses across all sectors, including retail. Improvements such as retrofiting high-efficiency lighting or installing lighting controls, sensors and timers typically require relatively little upfront investment and take an average of three and a half years to provide a return on investment.

Energy management, which includes measures such as encouraging behavioural change among staff, monitoring energy usage and optimising procurement strategies, was another key area for savings among retailers: on average, investment in energy management is returned in just 18 months. While the third most common recommendation for retailers — installing or upgrading heating, ventilation and air conditioning systems — requires a slightly higher upfront investment, focusing on this can also reduce costs significantly in less than two and a half years.

Retailers don’t need to adopt their efficiency recommendations to achieve compliance, but if they simply shelve their ESOS audits without acting on them then they could be missing out on an average 13 per cent saving in energy use each year. The research found that, by implementing recommendations, many retailers could cut costs by five per cent within just three months, and see further significant savings over the financial year.

Savvy retailers will recognise that unless they act on their ESOS recommendations they risk falling behind competitors that are making the most of the scheme in terms of savings and reduced carbon footprint. ESOS audits offer a chance to cut costs and improve their competitiveness.

David Oliver is a lead consultant at Inenco
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Related competencies include: Asset management, Sustainability
More than just the minimum

A recent RICS Regulation case highlights why managing agents must review fire risk assessments

Gary Strong

We have previously drawn attention to the requirement in the Regulatory Reform (Fire Safety) Order 2005 for managing agents to commission a fire risk assessment (FRA) and to review and implement any of its recommendations (see Property Journal May/June, pp.16–17). This is not only to ensure that they comply with current legislation, but that the buildings they manage have been assessed for fire risk and, where practical, safety measures have been improved. The greatest risk to life still remains in tall and complex buildings, particularly those where people sleep.

A recent case is worth highlighting. RICS Regulation has just imposed sanctions – comprising a reprimand, a substantial fine and an order for costs – on a firm that had not properly reviewed an FRA and ensured the building was safe. As a result, someone had unfortunately died in a fire, and there was a court conviction.

It is imperative that commissioning an FRA is not just seen as another tick-box exercise. Once received, this assessment has to be reviewed in the light of knowledge of the building and the type of occupants – particularly if they are elderly or infirm – and its recommendations followed up.

RICS has previously highlighted the need to commission appropriately qualified fire risk assessors who belong to an accreditation scheme, such as that run by the Institution of Fire Engineers (ife.org.uk/fire-risk). In the light of the Hackitt review, reforms with regard to assessing competency are expected in the next year or two; but in the meantime managing agents must ensure the following.

• The qualifications and experience of the fire risk assessor are carefully scrutinised and are appropriate for the type of building. Due diligence enquiries are expected.
• Once received, the FRA is reviewed as discussed above, and questions are asked if something does not appear correct.
• The FRA recommendations are put in place. This is not about minimum compliance: when it comes to fire safety, professionals need to try to improve existing buildings wherever possible, and you won’t be thanked for doing the minimum. Existing buildings are where the real problem lies, as fire safety protection can often be totally inadequate.

The greatest risk to life remains in tall and complex buildings, particularly where people sleep.

• Existing active protection measures such as fire alarms, magnetic door holders, automatic smoke vents, emergency lighting, dry risers, fire alarm control panels and sprinklers, must be checked to make sure they have been regularly inspected and certified as in good working order.
• Specialist contractors should be appointed to carry out the recommendations in the FRA, as well as any recommendations by other specialist professionals.
• Agents must also follow up the commissioned works to check they have been properly installed and inspected.
• Agents should carry out an inspection annually, or possibly more frequently for high-risk buildings such as taller or more complex residential premises.
• A new FRA should be commissioned at least every five years regardless, because the building and its occupancy profile can change significantly in this period. For high-risk buildings, we recommend an annual FRA.

RICS has been taking a lead on improvements in fire safety after the Grenfell Tower fire: this is an issue where the reputation of the profession is at stake.

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Related competencies include: Health and safety, Inspection
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