

# Project Monitoring



**Project monitoring**

**RICS guidance note**

Published by the Royal Institution of Chartered Surveyors (RICS)

under the RICS Books imprint

Surveyor Court

Westwood Business Park

Coventry CV4 8JE

UK

[www.ricsbooks.com](http://www.ricsbooks.com)

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Produced by the RICS Construction Faculty.

ISBN 978 1 84219 320 4

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Typeset in Great Britain by Columns Design Ltd, Reading, Berks

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# RICS guidance notes

This is a Guidance Note. It provides advice to Members of the RICS on aspects of the profession. Where procedures are recommended for specific professional tasks, these are intended to embody 'best practice', i.e. procedures which in the opinion of the RICS meet a high standard of professional competence.

Members are not required to follow the advice and recommendations contained in the Note.

They should however note the following points. When an allegation of professional negligence is made against a surveyor, the Court is likely to take account of the contents of any relevant Guidance Notes published by the RICS in deciding whether or not the surveyor had acted with reasonable competence.

In the opinion of the RICS, a Member conforming to the practices recommended in this Note should have at least a partial defence to an allegation of negligence by virtue of having followed these practices.

However, Members have the responsibility of deciding when it is appropriate to follow the guidance. If it is followed in an appropriate case, the Member will not be exonerated merely because the recommendations were found in an RICS Guidance Note.

On the other hand, it does not follow that a Member will be adjudged negligent if he has not followed the practices recommended in this Note.

It is for each individual surveyor to decide on the appropriate procedure to follow in any professional task. However, where Members depart from the practice recommended in this Note, they should do so only for good reason. In the event of litigation, the Court may require them to explain why they decided not to adopt the recommended practice.

In addition, Guidance Notes are relevant to professional competence in that each surveyor should be up to date and should have informed himself of Guidance Notes within a reasonable time of their promulgation.

# 1. Introduction

## 1.1 Background and objectives

Project Monitoring is distinct from both project management and construction monitoring, and can be defined as:

Protecting the Client's interests by identifying and advising on the risks associated with acquiring an interest in a development that is not under the Client's direct control.

Throughout this guidance note the term Project Monitoring has been used to describe this service. In the marketplace this service is also referred to as development monitoring or acting as the bank's/funder's/tenant's surveyor as well as a number of other industry terms.

Project Monitoring is carried out on behalf of a range of alternative Client types including, for example:

- a funding institution, which will acquire the scheme as an investment upon completion;
- a tenant or purchaser which enters into a commitment to lease or purchase a property upon completion;
- a Bank or other development finance company where a loan matures at the end of the development period;
- grant funders; or
- private finance initiative funders and end users.

Although the risk profile of each of these Client groups differ, in each case the development will be designed, constructed and supervised by a Developer who will employ a design and construction team. The appointment of a Project Monitor does not replace any of these primary functions, but protects the Client's interests by monitoring the performance of the Developer and its team.

The Project Monitor's role is one of investigator and advisor to the Client. The Project Monitor is not there as a project manager or director and does not take away any of the responsibilities the Developer, and/or its design and construction team, has under funding or other development agreements. The Project Monitor is there to advise the Client on the risks associated with a development and protect the Client's interests in the development as it proceeds.

If the Client chooses to act on this advice then he or she will endeavour to reach agreement with the Developer separately. Essentially, it is for the Client to decide upon the level of acceptable risk and if appropriate, take executive action. By being proactive and providing accurate and timely advice the Project Monitor is able to improve the Client's decision making competency

The Project Monitor provides an independent and impartial assessment of the project as it progresses and in so doing gives the Client a managing tool for risk and for protecting his or her interests objectively.



It is recommended that Project Monitor is proactive rather than reactive, and act as an early warning system for the Client by anticipating potential issues which may affect the delivery of the project. In so doing the Project Monitor can also add value to the Developer's team – for example, being proactive will keep the Client abreast of material changes to the development or emerging risks and facilitate informed and improved decision making.

Typically a Project Monitor will advise upon:

- land and property acquisition matters;
- statutory consents;
- competency of the Developer, its team and any proposed project management systems;
- financial appraisals;
- development, finance, consultancy and construction agreements;
- construction costs and programmes; and
- design and construction quality.

Historically the Project Monitor has come from a number of professional backgrounds, such as building surveying, quantity surveying and project management. It is important, therefore, that Clients map the scope of service they require with the competencies available from different Project Monitors and thus choose the most appropriate Project Monitor.

As well as an assessment of the Project Monitor's technical competencies Clients should also consider the Project Monitor's performance record and sector knowledge.

Sector knowledge is particularly important as an understanding of the key risks and value drivers within, for example, the residential, commercial, retail, public and PFI sectors will help the Project Monitor to deliver added value to the Client and the wider development team.

In summary the Project Monitor is a key individual, who can provide impartial and concise support to Clients who have an interest in a development project.

The objective of this guidance note is to provide practitioners and their Clients with advice on current best practice in the field of Project Monitoring. It has been written in the knowledge that there is no 'one size fits all' solution and that Project Monitors and their Clients will often choose to tailor the service to suit the circumstances of individual projects.

This guidance note has been written with the UK Market in mind. However the practice of Project Monitoring is in increasing demand internationally and therefore, when operating internationally, practitioners will need to tailor the principles set out in this guidance note to suit local custom, practice and legal and regulatory systems.

## **1.2 An overview of the process**

Generally, whether the Client is a fund, bank, prospective tenant or government department, all funding or pre-tenancy agreements start with a valuation of one kind or another. This may be an open market valuation of the land prior to development followed by a valuation once complete; an accountant's view of the likely additional revenue on opening a new store or distribution centre in a particular location; or 'betterment' appraisal for a

community if improvements are made to a park, community centre or public building. Value is attached to everything.

It is a good practice for the Project Monitor to review the valuation and understand the financial and non-financial drivers that underpin the valuation. When an appropriate level of information is available the Project Monitor should also correlate that which has been valued with what is being built and report any discrepancies to the Client.

Once the valuations are complete, if the answer derived is positive, then the Client will typically enter into an agreement 'in principle'. That the agreement is 'in principle' is important as the Client agrees to fund or occupy a development subject to it being designed, developed and constructed properly. That is that the development is built:

- in accordance with the agreed drawings and specifications, planning laws, building regulations and other statutory legislation;
- to budget and programme (where the costs and programme are important to the Client); and
- is designed and constructed by competent and skilled designers and Contractors.

If any the above is found lacking the Client may have redress against the defaulting party.

The Project Monitor's role is to undertake a review or appraisal to ascertain the nature of the proposed development and outline the risks associated with it to the Client. This will be completed in two parts. Firstly, the Project Monitor will undertake an appraisal/audit to establish an understanding of the project and identify those risks that are of relevance to the Client and report on these in an Initial Audit Report. Secondly, during the development process, the Project Monitor will monitor progress and discharge of the Developer's duties under the terms of the agreement and typically issue monthly monitoring reports and, where appropriate, certificates for funding drawdown.

## 2. Client analysis

The different types of Client who require Project Monitors have been analysed below both by Client type and risk profile. In practice, however, it is not uncommon for Clients to cross over these boundaries. In such case both Clients and their Project Monitors need to give careful consideration to the risks that they carry and how best to manage these risks.

In many instances it is important that the Project Monitor understands the project finance strategy and in particular the split between equity, debt and mezzanine finance.

The risk headings given below can be used to develop a specific Client project risk profile.

The role of a Project Monitor in the private finance initiative is covered later in this guidance note.

### 2.1 Funding institution/institutional investor

#### Description

In this case the Client – the funding institution – enters a commitment to purchase a development when it is complete through a sale and purchase/development agreement. The Client will normally provide some form of development finance to fund the construction costs. Typically this could be drawn down through interim payments during the development process, or an initial payment and a balancing payment upon practical completion, or some other form of stage payment. Alternatively the land on which the development is to take place may be purchased outright by the Client with subsequent payments made to the Developer to settle design and construction costs. In some instances the Developer is responsible for marketing and letting the development and if this applies marketing costs will also form part of the approved development finance expenditure.

The purchase by the Client will be completed when the development is ‘practically complete’ and/or when it is substantially let. At this stage a ‘balancing payment’ less retention will be made to cover the difference between the capital value and the interim payments already advanced. It is important to appreciate that the purchase price is the agreed capital value, which bears no direct relationship to the expenditure upon which interim finance is advanced.

On some developments a mortgagee lends money secured against a development. Its interests are almost identical to those of a funding institution.

It is important to understand that the Client’s role will vary from project to project and therefore there is a need to fully comprehend the specific responsibilities and liabilities of the Client at the outset.

#### Risk headings

In these circumstances the Client retains a combination of short-term development risks and longer-term property risks. Each of these is explored more fully below.

During the development period the Client's key area of risk is default on the part of the Developer. If this were to happen the Client needs an effective contingency plan in place.

On completion of the development the Client's risk becomes longer term. The Client will require a development that is of an appropriate level of quality and thus maintains its value, that lets at an acceptable yield, and that will re-let after the initial lease expires. Alternatively the Client may wish to sell the building as part of its portfolio management. In both cases the Client will require a flexible, forward looking development with competitive lifecycle costs.

The Client will need to select from the full range of Project Monitoring services to ensure that the Project Monitor's appointment accurately reflects the Client's particular requirements. Typically these will include:

- land and property acquisition matters;
- statutory consents;
- competency of the Developer, its team and any proposed project management systems;
- financial appraisals;
- development, finance, consultancy and construction agreements;
- construction costs and programmes; and
- design and construction quality.

## **2.2 Tenant or purchaser**

### **Description**

In this case, the Client, as the intended end-user, enters into a commitment to take a lease or purchase a development when the development is complete. In both instances, either directly by way of a repairing covenant or indirectly by way of a service charge agreement, responsibility for post-completion repairs remains with the Client.

The Client's risk is managed through the agreement for a sale and purchase, development agreement, or lease. It is essential that these agreements clearly define the roles, responsibilities and risks that have been agreed between the Developer and the Client. The Project Monitor has a crucial role to play in this area.

Tenants/purchasers and their legal advisors are becoming more cautious when entering into pre-letting agreements prior to completion of the development. Whilst the scheme drawings may appear to demonstrate that the development will meet the Client's needs in terms of space and layout, in practice the information available at this stage of a development is frequently sketchy and incomplete. As a result, often following legal advice, Clients will appoint a Project Monitor to advise upon their interests in the completed development.

Under an agreement for lease the tenant rarely provides finance to the Developer. A purchaser is in a slightly different position as payment is normally made upon completion of the development.

### **Risk headings**

In these circumstances, the Developer retains the short-term risks associated with construction costs and programmes. If the Developer defaults in any

material way the Client may have the option not to complete the transaction or to seek damages or rectification. Thus the Client's main area of risk is associated with long-term interest in the property arising from purchase/lease terms and in particular any repairing covenants.

Consequently the Project Monitor will typically concentrate on:

- land and property acquisition;
- statutory consents;
- competency of the Developer, its team and any proposed project management; systems
- construction costs and programmes (for management of any variations); and
- design and construction quality.

Whilst the risk of cost overruns and programme delays remains with the Developer it is good practice for the Project Monitor to report on any significant construction cost overruns or delays. Delays, in particular, may affect the Client's existing leases and relocation plans

The Client also has a potential risk if a perception gap exists between the Developer and the Client. This could include the quality of the finished product or the specification of what is included in the finished product – for example what is the extent of the Developer's fit out and what materials are the Client's responsibility to provide.

## **2.3 Bank or other development finance company**

### **Description**

In this case, the Client enters a commitment to provide short-term finance for a development project. Typically the loan matures at practical completion or shortly thereafter.

In these circumstances the Client agrees to provide drawdowns or tranches of approved expenditure during the development process. Typically there is an initial drawdown when all conditions precedent have been met and regular monthly drawdowns thereafter up to practical completion all of which are approved by the Project Monitor. In some instances sales, marketing and letting costs also form part of the approved expenditure under the loan agreement.

### **Risk headings**

This Client's risk profile is heavily weighted towards the development period. The Client's risk normally ceases upon practical completion, or shortly thereafter, when the loan is repaid.

Consequently the Client should focus on the following services:

- land and property acquisition matters;
- statutory consents;
- competency of the Developer, its team and any proposed project management systems;
- financial appraisals;
- development, finance, consultancy and construction agreements; and

- construction costs and programmes.

If the Developer were to default the Client will typically have reserved 'step-in rights' to take over and complete the development. In this scenario and the 'sale' risk passes to the Client, therefore it is good practice for the Project Monitor to report on any material changes to the specification or plans, which may have a detrimental impact on the value or marketability of the development.

It should always be remembered that in the event of the Developer defaulting, by virtue of the step-in rights, the Client would be in contract with the consultants and contractors chosen by the Developer at the cost/price agreed by the Developer. The Project Monitor is therefore advised to give due weight to the nature of the design and construction team as a whole when advising the Client on their suitability.

Similarly when monitoring and reporting, whilst the choice of quality of the design and materials rests with the Developer (who will sell on once complete for a certain gross development value), if the Client has to step in then the issue of quality (and eventually gross development value) will rest with the Client.

## 2.4 Grant Funders

### Description

With one key exception this Client is similar to a bank or development finance company. The Client invariably operates in the public sector or not-for-profit sector, therefore, although it is the responsibility of the Client (and thus the Project Monitor), to ensure that the funds are spent wisely, the value that is derived from the use of these funds is often not measured in purely financial terms.

A grant funder typically provides part of the funding required for the development within a range of 50-90 per cent of the development costs.

This type of Client will require a drawdown process for approved expenditure during the development process. Typically there are regular monthly or quarterly drawdowns up to practical completion.

Within the public sector, the distributors of grants will need assurance that their funding represents good value, that the funds are used for the purpose they have been approved for and that a robust project management process is in place to deliver the project.

### Risk headings

This Client's financial risk profile is heavily weighted towards the development period. The Client also has a high degree of public accountability as in most cases the funds come from the public purse. Whilst the Client's financial risk may cease upon practical completion, its political risk can, and often does, continue thereafter.

Consequently the Client will need to select from the range of Project Monitoring services including:

- land and property acquisition matters;
- competency of the Developer, its team and any proposed project management systems;

- financial appraisals;
- development, finance, consultancy and construction agreements;
- construction costs and programmes; and
- design and construction quality.

The Project Monitor will be required to review the status of the Developer's 'partnership' funding – i.e. the additional funding needed to complete the development. During the delivery stage the Project Monitor will inspect the development to ensure that it meets the purposes for which the funding was approved, review proposed changes to the development, and monitor the expenditure of contingency allowances.

Grant funders expect the Project Monitor to act as their 'eyes and ears' during the pre-award and delivery stages of the development. The Project Monitor will receive and comment on progress reports and meeting notes, identifying issues and potential problems which may exist 'under the surface' and recommending appropriate action.

In some cases, where the Developer has limited experience the grant funder may require the Project Monitor to provide a 'mentoring' approach, providing guidance and assistance, but not providing professional services to the Developer. This situation requires a complete understanding between all parties at the start of the monitoring commission.

The recent growth in public private partnerships is starting to demonstrate a need for Project Monitors to assist the public sector in managing their risks and protecting their interests in complex development projects. At the time of writing, this market is in its infancy although it is expected to grow.

## 3. Types of project monitoring

In this section of the guidance note the various services available from Project Monitors have been spilt into a series of separate headings. In practice we would expect a Client to select a range of services underneath each of these headings.

The level of service and the degree of monitoring required will also vary in proportion to the size and complexity of the development. These points are explored more fully in chapter 4 – Instructing a Project Monitor.

It is important that the Client, the Developer and the design and construction team understand the role of the Project Monitor. It is not the role of the Project Monitor to shadow other members of the development team. Indeed to do so is likely to create confusion and tension within the team. Nor is it the role of the Project Monitor to check the legal agreements in detail or to assume any liability for their accuracy. Instead the Project Monitor is there to advise the Client on its interest in, and risks associated with, the development typically by observing and commenting on the project planning and delivery processes.

It is also important that the Client and development team understand that the Project Monitor is dependant on others to provide the information needed to carry out his or her appointment. When reporting to the Client the Project Monitor should state what information he has relied upon and what information is missing or that he would like to have had the opportunity to review. Measures need to be put in place in the agreements between the Client and the Developer to require the Developer's teams to cooperate with the Project Monitor in this regard.

### 3.1 Land and property acquisition matters

#### Description

In this case the Project Monitor is appointed to advise on the Client's long-term interests in the property. Typically, when assisting the Client's solicitor, the Project Monitor is appointed to advise on the technical aspects of the Client's report on title. Such advice may include a review of matters that affect the land title (boundaries, easements, covenants, etc.) as well as other neighbourly matters (party walls, rights to light, etc.).

In the case of existing buildings the Project Monitor may need to advise on the need for surveys and specialist inspections.

Environmental factors are also becoming increasingly important for Clients. For example the redevelopment of brownfield sites and existing buildings often require extensive remedial works to treat, contain or remove pollutants and, effectively, create a clean site. Alternatively the Developer may be required to take a proactive position on enhancing the environmental impact that the proposed development will have on the local flora and fauna.

The Project Monitor will also need to review the Developer's sustainability plan to consider if it is compatible with the Client's brief.



## **Guidance**

When instructed to advise on the report on title it is the Project Monitor's responsibility to review the adequacy of the documentation supplied and to identify any areas of concern.

Similarly in the case of brownfield sites and existing buildings the Project Monitor should comment on the adequacy of the inspections/investigations carried out and on any areas that give rise for concern. In particular the Project Monitor should advise on the need for further actions or, potentially, the need for the Client to limit exposure to risk through the development agreement/agreement for lease, etc.

Agreements made with neighbours over boundaries, party walls, and the like may also need to be considered. Such matters, whilst apparently marginal, have the potential to delay commencement and affect good title to the property, so the risks associated with such matters should be made known to the Client.

If the Client requires a service that is outside the Project Monitor's competency or professional indemnity insurance the Project Monitor should advise the Client accordingly and suggest the most appropriate action. This is particularly important for asbestos and other environmental pollutants as most Project Monitors are unlikely to be able to give advice on such specialist areas. However they may be able to advise Clients on an appropriate strategy for managing these risks.

## **3.2 Statutory compliance**

### **Description**

A building developed without planning permission or compliance with building regulations or other statutory controls will be worthless, require expensive remedial alterations or at best retrospective consent. Similarly, having consent but not complying with any related conditions may render the consent invalid and prohibit beneficial occupation. In either scenario, the detrimental impact on the value of the development would be significant.

In many cases full and final consents will not be available at the time of the Project Monitor's appointment. For example, planning conditions may still need to be discharged or building regulation approvals may still be required. Whilst this is not unusual, it is important that the Project Monitor advises the Client appropriately, regarding the Client's exposure to risk, and ensures that these consents are achieved in a timely manner during the development process.

### **Guidance**

It is fundamental to any scheme that the Project Monitor establishes the statutory and other consents required and, insofar as is possible, ensures these have been obtained or are likely to be obtained prior to the Client entering into contract with a Developer.

If this is not possible the Project Monitor may need to develop a strategy and programme for ensuring the Developer obtains any outstanding consents at the appropriate time. It is recommended that this strategy be agreed with both the Client and the Developer and appropriate protocols be included in any development agreements. In order to establish a realistic programme the

Project Monitor is advised to ascertain what steps have been taken to achieve statutory compliance, which consents are outstanding and how the Developer proposes to obtain any outstanding consent. In some circumstances the Project Monitor may also need to undertake third-party enquiries to supplement the information available from the Developer.

With the benefit of this information the Project Monitor should be able to explain to the Client the risks associated with non-compliance and the most appropriate course of action for managing this risk.

Planning consent is often a particular challenge and the individual roles and responsibilities of the Developer and Client may need to be clarified from the outset.

During the development period the Project Monitor is recommended to advise on the progress achieved in gaining statutory compliance and other consents and advise the Client if the Developer is in default. Any such advice should specifically address the Client's exposure to risk.

### **3.3 Competency of the Developer, its team and any proposed project management systems**

#### **Description**

In this case the service required from the Project Monitor will vary in inverse proportion to the Client's sector knowledge. Professional funders and financiers, for example, will have a good understanding how the industry operates and tend to need less advice from the Project Monitor. However many purchasers, tenants and public sector Clients have little sector knowledge and will rely on the Project Monitor to advise on the competency of the development team and the Developer's project management systems.

The Project Monitor may be asked to advise on the whole development team including the Developer, the design team, the Contractor and any major subcontractors. The precise level of advice will, of course, depend upon individual Client requirements.

#### **Guidance**

If instructed to advise on the development team the Project Monitor has four roles to play:

- firstly to advise on the skills and experience of individual team members for discharging their appointments;
- secondly to advise on the financial ability of the development team to execute the project;
- thirdly to comment on whether the fees, scopes of services and resources individual team members propose to deploy in respect of the development are adequate; and
- finally the Project Monitor may also be required to review the procurement of the development team and in the public sector ensure that the appropriate EU procurement requirements have been followed.

It is not the responsibility of the Project Monitor to warrant that the development team has the competencies and resources required to carry out their appointments. Rather the Project Monitor should advise the Client on

any particular areas of concern. For example abnormally low fee levels might not be the direct contractual responsibility of the Client but may affect a team member's ability to complete its services in a professional and timely manner. Alternatively by considering solvency, liquidity and net worth ratios the Project Monitor is likely to be able to advise on the financial resources a Developer has available to execute the project.

The Project Monitor is likely to encounter a range of alternative scenarios. For example, on some developments, the Developer may have completed many similar schemes in the past or, alternatively, may be new to development but experienced in construction. At the other end of the spectrum the Developer may have access to finance but very little knowledge of development. Similarly, the design and construction team may vary from large multinationals to sole practitioners.

Prior to reporting to the Client the Project Monitor is recommended to assess the development team to establish their experience and ability to complete the project successfully. References from previous schemes, and details of past projects should be obtained by the Project Monitor.

The Project Monitor is advised to consider how the Developer's project management systems and processes will meet the Client's requirements. Misunderstandings and unfulfilled expectations can usually be avoided if a development has clear lines of communication, responsibilities and transparent reporting systems.

Finally the Project Monitor may wish to review the professional indemnity insurance cover available from the development team. This review should include both the financial level of cover as well as any abnormal policy restrictions. In some instances (including for example environmental pollution or asbestos) additional project specific cover may be required.

This service may also require that the Project Monitor advises the Client on the need for additional or complimentary project or latent defect insurance.

## **3.4 Financial appraisals**

### **Description**

Where appropriate the Project Monitor is advised to ask to review the Developer's appraisal. This is often a sensitive area where the Developer may feel that it is being asked to divulge commercially sensitive information. It is important that the Client is made aware of this sensitivity by the Project Monitor.

However as the appraisal is one of the principal control documents on any development it is essential that the Project Monitor is allowed the opportunity to review and comment on it. An appraisal that is professionally assembled and contains reasonable assumptions is usually (but not always) an indication of a well run project.

The appraisal should contain details of purchase and sale/rent values as well as assumptions made to justify those values and yields. Assessing those values is a matter for the client and its valuers and not for the Project Monitor.

## **Guidance**

In some cases, particularly if a development is being purchased by a Client, the Developer may be concerned that giving this level of information may undermine its negotiating position. In this case relevant extracts from the appraisal should be provided.

We advise the Project Monitor to comment on the methodology, assumptions and base information used to carry out the appraisal but this should not be interpreted by the Client as underwriting the valuation/financial appraisal.

When reviewing the Developer's appraisal it is recommended that the Project Monitor uses his or her sector knowledge to focus on cost and programme benchmarks and projected cost and revenue cash flows.

If not provided by the Developer the Project Monitor may need to comment on the need for sensitivity analysis.

The Project Monitor may also consider what level of financial analysis is reasonable given the size of the development. On smaller projects, for example, running a full financial analysis may be unnecessary given the level of risk involved. However it is advised that the Project Monitor still carries out sufficient forensic analysis to satisfy him- or herself and the Client that the financial appraisal is robust and any assumptions made are reasonable.

## **3.5 Development, finance, consultancy and construction agreements**

### **Description**

The Project Monitor may be instructed to advise on technical aspects of development, sale or lease as well as consultancy and construction agreements. This will include commenting on how these agreements protect the Client's interests.

On large schemes, the Client will probably have instructed lawyers to draw up bespoke forms of contract or extensively amend standard forms. The Project Monitor will often assist the lawyers in this process by providing technical advice particularly on the scheme at hand. Where development, sale or lease agreements are required, the Project Monitor should assist the legal team in identifying technical issues that need to be addressed to protect the Client's interest and/or reduce the risk profile.

The Project Monitor is often required to provide similar service on the appointment terms of the design team, Contractor and subcontractors and to comment specifically upon their insurances and step-in rights.

In practice the Project Monitor may work closely with the Client's legal team to ensure that a coordinated set of documents is correctly prepared.

### **Guidance**

When instructed to review sale, purchase, tenancy, funding and finance agreements the Project Monitor's responsibility will include reviewing the adequacy of the technical documentation supplied and identifying any areas of concern. This will also extend to cover advice on terms that may be included in these agreements to allow the Project Monitor to discharge his or her duties and, in effect, to manage the Client's risk effectively. By way of example it is

good practice to agree a schedule of conditions precedent before drawdowns are permitted against a funding facility.

It is recommended that the Project Monitor emphasise the need for clarity in these documents. Alternatively if this is not practical, or possible, the Project Monitor could advise on the need for clear procedures for managing any uncertainty. For example, the agreement between the Client and the Developer may state the rights, roles and responsibilities of the parties in design development. The Client's right to veto or comment on the Developer's proposals ought to be clear and unambiguous.

It is particularly important that the Project Monitor ensures that the various contractual agreements with the design and construction team also protect the Client's interests and that these are put in place promptly throughout the development period. Any delays should be brought to the Client's attention immediately. It is particularly important that the Project Monitor ensures that the Client's risks are mitigated through the provision of collateral warranties and, in consultation with the Client's lawyers, oversees the completion of these documents through the development process.

It should be noted that on smaller schemes where lawyers have not been appointed, the Project Monitor may be required to review all construction contracts, consultant appointments and collateral warranties, and advise the client of the apportionment of risk and whether the terms are reasonable. In this aspect of any commission the Project Monitor is advised to exercise care not to extend beyond his or her area of professional competence.

It is up to the Project Monitor to review the fee levels proposed for the design and construction teams. The fees should reflect the type of project and the resultant services required from the design and construction teams. It is particularly important to identify any fee levels that are abnormally low when compared to industry benchmarks, as low fees will often result in a dilution in service which may not be in the Client's long-term interests.

## **3.6 Construction costs and programmes**

### **Description**

In all appointments the Project Monitor may ask to review the Developer's cost plan and development programme. Once again this is often a sensitive area where the Developer may feel that it is being asked to divulge commercially sensitive information. It is important that the Client is made aware of this sensitivity by the Project Monitor.

The Developer's cost plan and programme are two of the key documents that are used to control any development project. Invariably the Project Monitor may be required to review the contents of the documents in order to carry out his or her duties. For example, if instructed by a Client, the Project Monitor may be asked to advise on the adequacy of the cost allowances to deliver the project to the agreed specification.

For some Clients it may be critical that the scheme meets the agreed programme. For example a delay may have an adverse impact on rent commencements, tenant fit-out contracts and/or delay the Client's occupation date and publicity for an opening launch. It is particularly important that any

long-stop dates that may affect the Client are communicated to the Developer and an appropriate early warning system put in place to highlight if any of these dates are in jeopardy.

A coordinated set of documents supported by reasonable assumptions is usually, but not always, an indication of a well run project.

Where a Client has a long-term interest in a development the Project Monitor may also comment on sustainability and lifecycle costs. The Project Monitor needs to be aware that many Clients now have well developed corporate and social responsibility agenda that favour certain types of development.

### **Guidance**

It is not the role of the Project Monitor to warrant the accuracy of the Developer's forecasts for construction costs and programmes. Rather the Project Monitor may use professional expertise and sector knowledge to provide the Client with an informed overview of these documents and highlight any areas of concern and significant omissions that may present a risk.

Where a funding or debt finance agreements are used the Developer's forecasts should also be used to calculate cash flow and drawdowns.

In addition where a Project Monitor is appointed to look at quality aspects of the completed development these documents can be used to monitor variations to the agreed plans and specifications and report on actual progress against planned progress.

In each of the instances above it is important that the Project Monitor advises the Clients on any areas of concern at regular intervals (normally monthly) during the development process. It is best that cost and time overruns do not come as an unwelcome surprise upon practical completion. Although the Project Monitor has to rely on the information provided by the development team, the Client may be advised if the cost management and reporting processes are inadequate.

If asked to comment on sustainability the Project Monitor is advised try to benchmark the project against the industry standard rating systems (currently BREEAM and ECOHOMES developed by the BRE).

The data streams and methodologies used to calculate lifecycle costs are not as mature and a dominant standard has still to emerge. Therefore the Project Monitor might wish to view any lifecycle cost calculations with caution and advise the Client accordingly.

When involved with smaller developments and inexperienced Clients and Contractors, the Project Monitor, whilst strictly responsible to the Client, may also be asked to perform a hand-holding exercise with the Client and may have to develop his or her own elemental breakdown of construction costs to prove or disprove the Developer's figures. Contact with the building control and planning authorities may be needed.

Agreements made with neighbours over boundaries, party walls and the like may also need to be considered.

Such situations though not to be welcomed are frequently encountered and any agreements are clearly recorded in the Project Monitor's appointment.

## 3.7 Design and construction quality

### Description

Clients will often instruct the Project Monitor to review the design, specification and plans and monitor the works as they proceed. This is particularly common where a Client enters into an agreement to fund, purchase or lease a development that has yet to be built.

In this case the Project Monitor will rely to a large extent on information provided by the Developer's design team. The Project Monitor's advice will be based not only on opinion as to the robustness of that information but also its experience of similar projects.

When dealing with smaller projects, or when the development is still in its infancy, it is often the case that written information is scant. A copy of the planning permission and planning drawings may or may not be available. In practice, however, these documents alone are unlikely to provide the level of detail required to monitor quality effectively.

By contrast on large schemes the Developer is likely to have appointed a full design team. In these circumstances the challenge may be too much rather than too little information. In this case the Project Monitor will use professional skill to focus on the information that represents the areas of greatest potential risk for the Client.

### Guidance

It is not the role of the Project Monitor to warrant the accuracy of the design team's drawings, plans or specifications. It is important that Clients understand that when acting in this role the Project Monitor is not a designer.

However it is the Project Monitor's responsibility to advise on the robustness and appropriateness of the specification agreed between the Developer and the Client. In particular the Project Monitor will ensure that a clear quality benchmark is agreed between the Client and the Developer. For example, if information is scant the Project Monitor will need to advise the Client accordingly and propose a robust process for monitoring compliance with the agreed specification as the development progresses.

Alternatively if a full set of coordinated design information is available the Project Monitor will have to advise upon the most appropriate way to use these documents to review the design and monitor the quality of the completed development.

Wherever possible the Project Monitor is advised to ensure that a written specification and set of plans are agreed between the Client and the Developer and that a process is put in place for agreeing variations to the brief before any instructions are given to the design team. In this context it is important to anticipate that variations may be requested by both the Client and the Developer. All parties, therefore, need to understand the limits of their authority and the procedures to be followed for managing variations under any development agreement/agreement for lease, etc.

When carrying out these services the Project Monitor may also need to make contact with third parties who may have an interest in the project. For example the planning and building control authorities and adjoining owners may need

to confirm agreements that have been put in place. In order to avoid misunderstandings it is important that the Project Monitor coordinates any contact through the Developer or the Developer's design team.

Finally the Project Monitor is recommended to ensure that the agreed quality benchmark is delivered through the design and construction process.



## 4. Instructing a Project Monitor

This guidance note provides a summary of the points that the Client and the Project Monitor should consider when discussing an appointment. It is not intended for use as a detailed guide for the appointment of a Project Monitor. In practice many Clients have standard terms and conditions for the appointment of Project Monitors. For ease of reference a sample appointment letter and scope of services checklist have been included in the appendices of this guidance note.

An initial review of the scheme drawings, outline and/or detailed specifications, cost, programme and the consultants involved will allow the Project Monitor to gauge the degree of risks and therefore the level of service he or she is likely to require to fulfil the brief. It is important at this stage that the Project Monitor clarifies with the Client the agreement he or she has reached, or intends to reach, with the Developer, in order to ascertain the scope of services required from the Project Monitor.

In some cases it may be uneconomic for the Client to appoint the Project Monitor to perform a full service. On smaller schemes, for example, the time expended by the Project Monitor, and consequently the fees charged, may out-weigh their perceived benefit. This may have the unintended consequence of making a bank's funding proposal less attractive. In these circumstances it is important to point out to the Client that the reduced level of service may affect the Project Monitor's ability to manage the Client's risk.

On all developments the Client and the Project Monitor are advised to review the range of services that are available and agree upon a definitive scope of services. This is equally important where Clients have 'standard' scopes of services as, sometimes, these can benefit from greater clarity and project specific services. Full scopes of services will be published as part of the work of the RICS Appointments Working Group and will broadly follow the headings used in this guidance note:

- land and property acquisition matters;
- statutory compliance;
- competency of the Developer, it's team and any proposed project management systems;
- financial appraisals;
- development, finance, consultancy and construction agreements;
- construction costs and programmes; and
- design and construction quality.

In practice the Project Monitor will agree with the Client a detailed scope of services under each of the headings that applies to the project.

In some instances the Project Monitor may perceive a gap between the Client's standard form of appointment and the risk profile of a particular project. In this case the Project Monitor is recommended to advise the Client on the nature of the risk and its potential impact on the scheme. As such, the Project

Monitor, whilst having instructions to report on specific matters, will use a holistic approach for every appointment.

When the initial inquiry is received, the Project Monitor is advised to ensure that he or she has the capability to deliver the service prior to the written execution of any formal appointment. If the Project Monitor is not competent to provide the full range of services required he or she should advise the Client. In these circumstances the Project Monitor may appoint a specialist sub-consultant or the Client may appoint this specialist direct. If the Project Monitor makes the appointment he or she will need to ensure that the appropriate professional indemnity insurance is in place.

All appointments must be confirmed in writing within seven days of an agreement being reached.

Ideally, prior to reaching a formal agreement on its appointment the Project Monitor will have:

- agreed the Client's brief for the commission;
- understood the brief for the project;
- received and reviewed a copy of the terms and conditions of any funding, purchase, tenancy, loan or other third party agreements; as well as having confirmed:
  - he or she has suitable resources to undertake the commission;
  - he or she has the correct level of professional indemnity insurance in place (this is often the subject of negotiation between the Project Monitor and the Client); and
  - the following in writing with the Client and, if appropriate, with the Developer or other interested third parties:
    - (a) the scope of service required of the Project Monitor;
    - (b) the fees and payment schedule cross related to the key stages of the commission;
    - (c) the contractual terms of the appointment; and
    - (d) the level of professional indemnity insurance required.

At this stage it is particularly important that the role of the Project Monitor is clearly understood by both the Client and the Developer. This will allow the Project Monitor to carry out the role in an effective manner and make a positive contribution to the development team as a whole.

In some cases it may not be possible to resolve all of these factors at the time of the initial appointment. In these circumstances the Project Monitor is advised to seek to clarify any potential ambiguities as part of the initial audit report.

Acquiring an interest in a development at any time before completion, whether at schematic design stage or once construction has commenced, entails risk. The agreement between the Client and the Developer will seek to apportion this. When appointed at an early stage in the development the Project Monitor may be able to contribute to the smooth running of a development and promote a close working relationship between the Client and the Developer. By contrast, when appointed later in the development, the Project Monitor may have a more limited impact and may be less well received by the Developer and its team.

When a Client appoints a Project Monitor, RICS recommends that the potential added value that individuals can bring to the development is the key driver behind the appointment decision. An appointment based solely on the lowest fee level may not provide the optimum cost value solution. In practice an experienced Project Monitor, appointed in the right way, has the potential to add value to the development that will exceed any fees to be paid.

# 5. Key stages in a project monitoring commission

Chapter three of this guidance note, Types of project monitoring, outlines the typical schedule of duties required to be undertaken by the Project Monitor. In practice the Client will often want to select a range of services from several different sections, however most instructions fall into three key stages. These have been set out below.

## 5.1 Stage 1 – Initial audit report

The initial audit report provides the opportunity for the Project Monitor to fully acquaint his- or herself with a proposed development. Once complete, the report will be expected to provide a complete picture of the development including: the desired specification, design brief and constraints; the development appraisal and associated cost build ups; the design and construction programmes; and the design and construction team. Using his or her experience, the Project Monitor will then be able to advise the Client on the risks associated with the development and fully appreciate the consequences of variations or changes, as they arise.

It is essential that the Project Monitor understands the Client's interest in the development and the risk profile that results from this. It is equally important that the Client understands the scope of the Project Monitor's role and particularly any limitations on the Project Monitor's executive function. At the end of any discussions the Project Monitor should expect to be in a position to agree an appropriate scope of service, fee structure and form of appointment. In some instances the Client may wish to maintain a degree of flexibility over its involvement in the project – if this applies the form of appointment may need to contain options and break clauses.

The first task that the Project Monitor will complete is an initial overview of the documentation that currently exists. In chapter three, Types of Project Monitoring, reference has also been made to the quality of the information that is available at the early stages of a development. Project Monitoring is an information gathering procedure, which involves the identification of the documentation to enable the preparation of the initial audit report. The Project Monitor will use professional skill and knowledge to ascertain if the information available is insufficient or unclear. This is particularly important if the lack of information prohibits the Project Monitor from completing his or her role. The Project Monitor should also advise the Client if the lack of information unnecessarily increases the Client's risk profile.

In practice one of the ways that a Project Monitor can add most value to the development team is through identifying these information gaps and clarifying the position between the Client and the Developer.

The initial audit report, therefore, is intended to identify any gaps or inconsistencies between the Client's brief and risk profile and the development documentation. The Project Monitor is advised to pay particular attention to

the agreement between the Client and the Developer and ensure that the Client can use, or negotiate amendments to, the documentation to manage its risk effectively.

This stage involves a high level of professional analytical skill in order to extract key information from a complex range of different types of documentation including, for example, funding/development/loan/purchase/tenancy agreements and design specifications, drawings, and cost plans. Much of this information will have a commercial value and it is recommended that the Project Monitor clarify any confidentiality requirements with the Client. In particular care must be taken when disseminating information to third parties.

The quality and level of documentation available on smaller projects may be less than that available on larger schemes – detailed development appraisals, cost plans, programmes or specifications may not be available. Insisting that the information is provided is often simply not practical and in these circumstances the Project Monitor is advised to be pragmatic and use his or her experience and knowledge of best practice, as well as any project specific knowledge of the Client and Developer, to assess the overall risk and report accordingly.

The Project Monitor is advised to pay particular attention to the agreement that exists, or is proposed, for managing the contractual relationship between the Client and the Developer. This document will determine the Client's risk profile and the extent to which the Project Monitor can monitor the development on behalf of the Client. It is essential that the agreement incorporates adequate provisions to allow the Project Monitor to operate effectively and to protect the Client's interests. The Project Monitor has a responsibility to advise the Client's solicitors of the practical requirements of any such agreements.

As a general rule it is recommended that the Project Monitor ensures that the agreement between the Client and the Developer is as specific as possible. The agreement will be expected to incorporate the plans and specifications that reflect the understanding between the Client and the Developer and, where appropriate, procedures/programmes for payment and completion. The Project Monitor will use skill and expertise to ensure that these documents provide adequate benchmarks to measure the development against. If this information is not available in sufficient detail the Project Monitor may advise the Client and recommend a practical solution.

The structure of the initial audit report will often follow the Client's templates and management procedures. The Project Monitor will cross reference these standard documents to the scope of service agreed with the Client and thus ensure that the templates allow the Project Monitor to discharge his or her duties. Similarly, if standard documents do not exist the Project Monitor is advised to ensure that the initial audit report adequately covers the services he or she has contracted to provide to the Client.

At the end of this stage, it is advised that the Project Monitor provides a clear and concise report that identifies:

- the risk profile that results from the Client's interest in the project;
- how the documents available reflect the Client's interest in the project;
- recommendations that the Client take into account in respect of any current or future contractual relationships with the Developer, the design team and any other interested third parties; and

- the documents against which the progress of the development will be monitored.

If the Project Monitor is allowed to report in good time, the Client has the opportunity to bring any shortcomings to the attention of the Developer prior to entering into contract or, if the contract so permits, can have the terms amended to rectify those shortcomings.

## 5.2 Stage 2 – Progress reporting

Stage 2 generally commences upon completion of the development agreement between the Client and the Developer. In practice this often coincides with the start of construction on site or the procurement of a construction contract.

This is the biggest quantum of work for the Project Monitor and normally continues up to final completion of the development or the Client's interest in the development.

During this stage the Project Monitor's role is two-fold:

- to discharge any contractual administration or financial duties that fall to the Project Monitor under the agreement between the Client and the Developer; and
- to monitor the project by use of the information contained in the initial audit report, together with any other pertinent information, design or otherwise, that is subsequently issued in connection with the development and advise that the areas of risk highlighted in that the initial audit report (or those that become apparent during the development) are being properly discharged.

The Project Monitor would normally have the right to attend site and project meetings under the terms of the agreement between the Client and the Developer. Copies of minutes of key meetings should also be circulated to the Project Monitor. In most cases, a monthly meeting is adequate. Usually, the Project Monitor will attend the monthly project meetings or a special meeting arranged with the Developer and its principal design consultants and Contractor. Depending on the Project Monitor's scope of service a monthly site inspection should be completed at the same time as attendance at the project meeting. Alternatively if the Client requires the Project Monitor to inspect at more regular intervals or at particular stages during the construction process, this should be agreed at the time of the appointment and an appropriate allowance made within the fee agreement.

The Project Monitor may also be required to ensure that any changes to the agreement between the Client and Developer are administered professionally. Variations requested by the Client or the Developer will need to be administered in accordance with the terms of the agreement between the Client and the Developer. This will normally require them to be recorded in writing. There will often be time limits for the approval or rejection of variations, and it may be incumbent on the Project Monitor, depending upon the scope of his or her services, to review the proposed variations and advise the Client on any risks within an approval period. Similarly, agreements often have provision for variations that are not deemed to be 'material changes' to be made without the Client's authorisation. In this instance, it is recommended that the Project Monitor advises the Client whether such a change is considered material or not. The cost and programme implications of any variations should

be agreed at the time and not left to the end of the development. Alternatively an indication of the likely cost and programme should be agreed between the Client and the Developer with a firm agreement being agreed shortly thereafter. The Developer may not always realise that a variation constitutes a change to the agreement so architect's instructions and associated drawings must be checked as the development proceeds.

The Project Monitor's role will be defined by the specific scope of services agreed with the Client. However, in practice most appointments cover the following areas:

- **Land and Property**

At this stage of the development the majority of land and property issues are expected to have been resolved, However it is advised that any residual issues be highlighted and progress towards their successful resolution be regularly reported to the client.

- **Statutory Compliance**

At the time of compiling the initial audit report, it is often the case that all statutory and other consents have not been obtained. Compliance with planning conditions and section 106 agreements attached to the permission, building regulation plan approval, highways requirements, national rivers authority permissions and other consents may all be several weeks or months away.

Regardless of cost, contracts or programme, without the necessary permissions, the value of a completed building will be reduced if not eliminated altogether. Such omissions can impact upon the programme (e.g. if oversailing rights or party wall agreements are not obtained in good time) or can prevent the sale or transfer of the completed units as there will not be sound legal title. Alternatively if certain consents are not in place the Client may be prohibited from taking up beneficial occupation.

It is therefore essential that the Project Monitor establishes at the initial audit report stage the permissions that will be required prior to Practical Completion.

During construction, the Project Monitor is recommended to pursue these matters and report on a regular basis until certification of full compliance in all respects has been achieved.

- **Construction costs and programmes**

The Project Monitor may be required to provide a recommendation to the Client on the drawdown of development expenditure. Typically the Developer will submit a drawdown request including a cumulative summary of costs incurred to date together with supporting documentation (i.e. architect's certificates, fee invoices, etc.).

The Project Monitor is advised to review and check the drawdown request, and compare the drawdown request with the cashflow forecast and any budgets or cost plans provided in the development agreement or in the initial audit report. It is important that the Project Monitor advises the Client if any budgets or cost plans have been, or are likely to be, exceeded and advises on the costs and programme forecasts to complete the project.

At the end of this exercise the Project Monitor may make a payment recommendation to the Client based on the information received. When making any payment recommendations the Project Monitor may also

consider if the balance of the loan facility is sufficient to meet the full remaining costs to allow the completion of the project.

In order to complete this task the Project Monitor should also consider actual progress measured against progress planned at the time of entering into the development agreement. In practice it is often helpful to have a series of stage payments identified in the development agreement.

- **Design and construction quality**

The Developer's pursuit of construction quality and standards will often be influenced by cost and time constraints. The Project Monitor, however, may need to be alert to, and advise the Client on, any variations that may lower the quality threshold agreed between the Client and the Developer. Similarly the Project Monitor may need to advise the Client if any of its instructions are likely to raise the agreed quality threshold. Thus, in summary, the Project Monitor may need to provide a service advising if any variations to the scheme are likely to have an effect on the plans and specifications included in the agreement between the Client and the Developer or on the Client's risk profile.

Even on a relatively small project the Project Monitor may receive large quantities of correspondence, drawings and specifications. Within the fee allowable the Project Monitor cannot 'check' all of this information. Furthermore to do so would only serve to delay the project and potentially confuse the Client, the Developer and the design team. Therefore the Project Monitor is advised to clarify with the Client and the Developer that any variations which may affect the quality thresholds set within the development agreement are clearly identified before any instructions to proceed are given to the design team and Contractor.

In most instances the Project Monitor is advised to prepare a monthly report for the Client. The preparation by the Project Monitor of the progress report is key to the overall reporting process to the Client.

Typically the monthly report will follow approximately seven days after the drawdown request by the Developer. Alternatively the Project Monitor and Client may agree upon a different level of frequency for reporting based upon key stages in construction or development agreements.

Even if the Client has not agreed a monthly drawdown with the Developer it is good practice to provide a monthly report. This will provide the Client with a regular update on the project and provide an early warning of any potential problems.

When preparing the progress report the Project Monitor is advised to consider:

- the progress of the project and any variations to the agreements made between the Client and the Developer;
- the discharge of any outstanding statutory or other consent;
- forecast v actual expenditure (This should include a forecast of the Final Account taking into account the financial impact of any proposed changes, variations and claims. The Project Monitor may need to advise the Client of any emerging trends which may adversely affect contingency levels.);
- forecast v actual progress;



- the quality of work executed (The level of review will depend upon the Project Monitor’s appointment, professional qualifications and professional indemnity insurance);
- the taking of site progress photos;
- the discharge of conditions contained within the agreement between the Client and the Developer (Any conditions which haven’t been cleared at the appropriate time should be brought to the Client’s attention with a recommended course of action. These conditions may also refer to third-party agreements such as warranties, consultancy and Contractor appointments, statutory and other consents, insurances, etc.); and
- the Client’s risk profile highlighting any areas of concern;
- Finally when instructed to carry out progress inspections it is recommended that the Project Monitor clarifies the role that he or she is being asked to fulfil (see also chapter 4, Instructing a Project Monitor). Site inspections should be made sufficiently frequently to maintain a good grasp of progress and the quality of materials and workmanship. On most developments, one inspection each month is adequate. During inspections the Project Monitor is advised to assess the general quality of site management, supervision and workmanship.

The Project Monitor is not normally appointed to inspect or approve the quality of the design or construction. Consequently the Project Monitor does not have any liability for design or construction defects. However, where the Project Monitor’s scope of service requires, it is recommended that the Project Monitor advises the Client where design or construction falls short of the agreed specification or of normal standards appropriate to the nature and quality of the development. In these circumstances the Project Monitor will often need to recommend a more detailed inspection is undertaken by a specialist.

### 5.3 Stage 3 – Practical completion

Stage three commences at or around the time of practical completion under the terms of the development agreement. Prior to practical completion the Project Monitor should prepare a checklist which clarifies the roles and responsibilities of the Project Monitor, the Client, the Developer and the Developers’ design and construction team – it is good practice to ensure that this information is clearly set out in any development agreements. Any conditions precedent to practical completion should also be highlighted.

It is important to note that, whilst the Project Monitor may be instructed to certify practical completion under the agreement between the Client and the Developer, this is not necessarily the same as practical completion under the building contract. However, it is recommended that the Project Monitor take an active role in the inspections prior to practical completion under the building contract as the two events are often closely linked.

It is advisable not to agree practical completion unless the development is capable of beneficial occupation and all conditions or precedents have been satisfied. However there are occasions when the Client and Developer may choose to relax this requirement. In these circumstances the Project Monitor is

recommended to advise the Client of the potential implications of this course of action and make an appropriate statement on the Practical Completion Certificate.

In any event the Project Monitor is advised not to agree to practical completion until he or she has all the necessary supporting documentation required from the Developer and its design and construction teams.

Finally as a matter of good practice the Project Monitor may also review the service it has delivered on the development as part of an overall process of continuous improvement. In this case the Project Monitor is advised to include a section within the final report that covers lessons learnt and recommendations for future commissions. In particular this should address the manner in which the Client's risk profile was identified and managed.

The Project Monitor is advised to prepare a completion report at practical completion. This should typically include copies of the following:

- all relevant certificates;
- relevant statutory and non statutory consents;
- any defects schedules or lists of outstanding works. In some cases the Project Monitor will be instructed to prepare a list of defects on behalf of the Client which will supplement the contract administrator's list under the building contract;
- a financial report including an assessment of any balancing sums due from or to the Developer;
- a statement on the discharge on all conditions associated with the development agreement;
- a 'lessons learnt' statement and recommendation; and
- the Health and Safety File and any other operating and maintenance manuals.

If any of the documents required are unavailable at the time of writing this report the Project Monitor shall advise the Client and agree a programme for completion of the information with the Developer. A commentary on the quality of the information supplied, and on any omissions, should be provided. Any risks arising from any incomplete contractual documentation, certification or obligations should also be identified.

In some appointments the Project Monitor retains a role up to the end the defects liability period. For example, the Project Monitor may be instructed to oversee the rectification of defects, carry out any necessary inspections and approve the release of any retention held against the Developer as well as check that any information required from the Developer is supplied in a timely manner. When acting for a fund the Project Monitor may be asked to review the tenant's fit out specification. In these circumstances the Project Monitor is advised to complete an addendum report when the duties have been completed.

# 6. The role of the Project Monitor in the Private Finance Initiative

The role of the Project Monitor when instructed by a Client engaged in the provision of finance for a Private Finance Initiative and or Public Private Partnership project is often referred to as the bank or fund's technical adviser

In principle the role is similar to that provided for the Client providing development financing, however the fundamental difference is that advice given does not stop at the end of the construction phase, but includes a commentary on the lifecycle cost forecast for the period of the concession agreement.

## 6.1 Stage 1 – Initial Audit Report

Additional commentary is made on the following items during the initial report/due diligence phase over and above that described in the previous chapter of this guidance note:

- **Land and property acquisition matters**
  - Review any TUPE or other employment related issues.
- **Competency of the Developer, its team and any proposed project management systems**
  - Review the collective competency of the bidding consortia.
- **Financial appraisals**
  - Review financial models.
  - Review sinking fund provisions.
- **SPV, project and service agreements**
  - Comment on the proposed contractual agreement between the Client and the contracting consortia.
  - Advise on the allocation of risks associated with the building lifecycle.
  - Review dispute resolution and performance criteria.
  - Review milestone and payment definitions.
  - Review change control procedures.
  - Review default procedures.
  - Review project insurance procedures.
  - Review risk mitigation strategy across SPV, project and service agreements.
  - Review Project Monitoring management protocols.
- **Construction costs and programmes**
  - Review service contracts and asset management performance criteria.
  - Review default procedures.

- **Design and construction quality**
  - Review the design solution for the project, including projected lifecycle costs for compliance with the output specification and service delivery required by the Client.
  - Review asset management performance criteria.

## **6.2 Stage 2 – Progress reporting**

The stage 2 service, progress reporting, should follow a similar pattern to that referred to in the previous section of this guidance note. However once again the Project Monitor is advised to pay particular attention to lifecycle cost forecasts as well as capital cost forecasts.

## **6.3 Stage 3 – Operational monitoring**

Once the construction phase is completed the Project Monitor's role may continue throughout the duration of the lifecycle/concession of the project.

Reports are prepared on a pre-agreed basis, which could be annually or at milestones within the concession period.

This ongoing monitoring role should typically address the following key issues:

- the compliance of the concession contractor with its service provision obligations during the lifecycle of the project;
- the identification and evaluation of any variations to the services/concession contract; and
- the review of payments due under the service contract including any penalties due to non-performance of the concession contract and any steps which may mitigate such non-performance in the future.

### **The role of the Project Monitor for the end-user?**

During the concession period, the Project Monitor is advised to periodically review the obligations of the concession contractor as stated within the concession contract as well as the lifecycle cost forecast.

Increasingly the Project Monitor, when acting for an end-user, may be asked to monitor performance of the concession contractor to check that the services are being delivered in accordance with the concession contract.

This could involve a technical review (is periodic maintenance being undertaken in accordance with the agreement?) as well as a commercial review (are variations being discharged professionally and in accordance with the concession contract?).

The Project Monitor could also provide a dispute resolution service should differences arise between the end-user and the service provider.

This is an emerging area of practice that will need to be addressed in future updates of this guidance note.

## 7. Professional practice

This section of the guidance note should be read in conjunction with the RICS Rules of Conduct. Prior to undertaking a commission for the Client the Project Monitor must ask him or herself whether he or she can deliver the service. If the Project Monitor is unable to offer the full range of services they should advise the Client accordingly.

For example the Client may require specialist advice on the building structure and/or its services. This may require the Client to employ specialists and the most appropriate way to appoint these specialists would be discussed and agreed between the Client and the Project Monitor.

In particular situations, it is possible the Client may appoint the Developer's own architect or surveyor to provide a Project Monitoring service. In doing so, there is potential for a conflict of interest to arise. For example the architect or surveyor being asked to undertake the Project Monitor's role may have a long-term relationship with a Developer, often receiving repeat business. The Client, in asking them to provide a Project Monitoring service, must be made fully aware of any relationship with the Developer. If the Project Monitor is a chartered surveyor, then in all instances that surveyor's primary duty is to the Client and he or she must report to the Client independently with regards all risks on a particular development.

It is suggested that such dual appointments be restricted to smaller developments. However, as a general rule, the RICS recommends that an independent Project Monitor be appointed.

A Chartered Surveyor must advise the Client of any potential conflict of interest before accepting any joint instruction. If still instructed, the Project Monitor and the Client should agree appropriate working practices (e.g. Chinese Walls) to address any difficulties arising out of potential conflicts of interest

With an appointment in place the Project Monitor should always observe the highest professional standards including:

- respect the confidentiality of information received – the Project Monitor should at all times exercise tact, diplomacy and good judgement;
- comment on the performance of other organisations objectively – comments need to be factual with examples stated where applicable, opinion and facts should be separated;
- comment on the accuracy of the development/construction documents with caution – unless a detailed audit and analysis as been undertaken by the Project Monitor;
- advise on the basis of auditing and opinion – if the level and/or quality of information is not available it is suggested that the Project Monitor state the basis of the advice given. If the Project Monitor is in any doubt, he or she can ask for clarification or additional information. Similarly any advice given must consider current legislation and industry best practice;

- undertake the commission in accordance with the terms of the appointment – The Project Monitor is advised not to assume additional powers or responsibilities over and above that stated within his or her appointment;
- allocate adequate time and skilled resources to perform the project monitoring service required by the Client;
- avoid speculation and relying on the opinion of others when reporting to the Client; and
- avoid statements that may imply acceptance where the Project Monitor is not required to comment – When instructed to comment on the quality of construction, the Project Monitor is advised to exercise caution and not comment on issues beyond professional training and competence.

A successful appointment will flow from a professional relationship with the Client, the Developer and the Developer's design and construction team. The Project Monitor should complement and not compete with the other consultants appointed on the development and provide impartial and concise advice that will enable the Client to manage its interest in the development in the most effective manner.

It is recommended that when acting as a Project Monitor a chartered surveyor will advise the Client:

- if the appointment is likely to require the Project Monitor to provide services that are outside its technical competencies;
- if the fee allowance is inadequate to cover the time required to undertake the commission;
- of any variations to the appointment or scope of service that may affect the fee agreement; and
- immediately if any inappropriate approaches are made which may compromise the impartiality and/or independence of the Project Monitor.

## 8. Summary and conclusions

To summarise we recommend that the Project Monitor possesses a fundamental knowledge of the intricacies of the development, design and construction process, should be a tactician and a diplomat but above all needs to provide accurate, impartial and concise advice to the Client. The Project Monitor will act as the eyes and ears of the Client during the development process.

The benefits to the Client are:

- enhanced risk management;
- enhanced financial management;
- enhanced programme management; and
- enhanced quality management.

This all adds up to giving greater protection to the Client's interests and thus improving the probability of delivery of the right product, at the right price, on time.

When appointed in the right way and at the right time the Project Monitor is likely to make a valuable contribution to the successful completion of the development.

# Appendices

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# Appendix A: Appointment checklist

Typically a Project Monitor may provide all or some of the following services. For ease of reference this Scope of Service follows the same structure as sections three and five of this guidance note. In practice many of the services will cross over these boundaries.

A Project Monitor is advised to agree a clear brief with the Client to ensure that the Client's interests are adequately protected and that the appropriate services are selected from this list.

<b>PROJECT MONITOR SERVICES</b>	
<b>1. BASIC SERVICES</b>	
<b>1.1 Generally</b>	
1.1.1	Provide (insert number) copies of the Documents as provided for under this agreement.
1.1.2	Attend Client, Project, Design and other meetings as provided for under this Agreement.
<b>1.2 Initial Audit Report – Preparation, design and pre-construction (RIBA Outline Plan of Work 2007)</b>	
<i>1.2.1 Advise on land and property acquisition matters</i>	
1.2.1.1	Review the Client's interest in the Project. Advise on the technical adequacy of the Report on Title and any other documentation supplied and on any areas of concern.
1.2.1.2	Identify and advise on restrictions that may affect the Client's interest in the property including, for example, boundaries, easement and covenants. Identify and advise upon any non-statutory consents arising.
1.2.1.3	Identify and advise on any liabilities that may arise from the Client's interest in the Project. Advise on any areas of concern.
1.2.1.4	Review any technical reports prepared for, or on behalf of, the Client in connection with the acquisition of an interest in the Project. Advise on any areas of concern.
1.2.1.5	Advise on the need for further specialist surveys, reports and advice including, for example, environmental reports, party wall awards, rights to light surveys, building surveys and measured surveys.
1.2.1.6	Advise on the risks arising out of the information supplied or out of the lack of information available. Recommend a strategy and programme for managing these risks.
<i>1.2.2 Advise on statutory compliance</i>	
1.2.2.1	Review the statutory consents in place. Advise on the adequacy of the documentation supplied and on any areas of concern.
1.2.2.2	Identify any further statutory consents required, including the discharge of any conditions associated with any statutory consents in place. Recommend a strategy and programme for obtaining any outstanding consents.
1.2.2.3	Advise on the risks arising out of the information supplied or out of the lack of information available. Recommend a strategy and programme for managing these risks.
<i>1.2.3 Advise on the competency of the developer, Professional Team, the Contractor and any proposed project management systems</i>	
1.2.3.1	Confirm the details of the developer, the Professional Team and the Contractor. Advise upon their skills, experience and financial stability in respect of the Project.
1.2.3.2	Review any consultancy agreements and the Building Contract. Advise on the adequacy of the documentation supplied and on any areas of concern.
1.2.3.3	Review the fees, scopes of services, insurances and resources of the Professional Team and the Contractor. Advise on the adequacy of the documentation supplied and on any areas of concern.

1.2.3.4	Review the project management systems proposed by the developer, the Professional Team and the Contractor. Advise on the adequacy of the proposals and on any areas of concern.	
1.2.3.5	Review the proposed procurement strategy. Advise on any EU implications. Advise on the adequacy of the proposals and on any areas of concern.	
1.2.3.6	Advise on the risks arising out of the information supplied or out of the lack of information available. Recommend a strategy and programme for managing these risks.	
<i>1.2.4 Advise on financial appraisals</i>		
1.2.4.1	Review the Client's and/or the developer's financial appraisal. Advise on the methodology, assumptions and cost and programme benchmarks used in the appraisal. Advise on the adequacy of the appraisal and on any areas of concern.	
1.2.4.2	Advise on the need for sensitivity analysis to support the Client's and/or the developer's appraisal.	
1.2.4.3	Advise on the risks arising out of the information supplied or out of the lack of information available. Recommend a strategy and programme for managing these risks.	
<i>1.2.5 Advise on development, finance, consultancy and construction agreements</i>		
1.2.5.1	Develop the Client's Brief which summarises the Client's interest in the Project and its risk profile. Prepare, and agree with the Client, a technical/performance/output specification. This specification should cover the Client's sustainability requirements.	
1.2.5.2	Agree Appointment Terms, Scope of Service and fees for acting as Project Monitor on behalf of the Client.	
1.2.5.3	Review the Agreement for Sale and Purchase/ the Development Agreement/the Finance Agreement/the Agreement to Lease. Advise upon any conditions that are at variance with the Client's brief and risk profile. Recommend a strategy and programme for resolving any variances with the Client's Brief and risk profile. Advise on the adequacy of the documentation supplied and on any areas of concern.	
1.2.5.4	Recommend technical and commercial conditions precedent to Funding Drawdowns/Practical Completion/etc.	
1.2.5.5	Review any consultancy agreements including any associated warranties or third party rights schedules. Advise on any conditions that are at variance with the Client's Brief and risk profile. Recommend a strategy and programme for resolving any variances with the Client's Brief and risk profile. Advise on the adequacy of the documentation supplied and on any areas of concern.	
1.2.5.6	Review the Building Contract and/or subcontractor/supplier contracts including any associated warranties and bonds. Advise on any conditions that are at variance with the Client's Brief and risk profile. Recommend a strategy and programme for resolving any variances with the Client's Brief and risk profile. Advise on the adequacy of the documentation supplied and on any areas of concern.	
1.2.5.7	Advise on any technical and commercial requirements and conditions that need to be included in any of the above agreements in order to meet the Client's Brief and its risk profile and/or to enable the Project Monitor to fulfil its scope of service.	
1.2.5.8	Recommend processes and protocols for the administration of the above agreements including, for example, change management, payment and quality management. Advise on appropriate clauses to be included in the above agreements.	
1.2.5.9	Advise on the risks arising out of the information supplied or out of the lack of information available. Recommend a strategy and programme for managing these.	
<i>1.2.6 Advise on development costs and programmes</i>		
1.2.6.1	Review the Client's capital budget/cost plan. Identify any shortfalls and review them with the Client. Note: the Client's budget is likely to include expenditure that is additional to the developer's budget.	
1.2.6.2	Review the developer's capital budget/cost plan. Benchmark costs and programmes against similar projects. Advise on any benchmarks that are at variance with the Client's Brief, risk profile and specification. Advise on the adequacy of the documentation supplied and on any areas of concern.	
1.2.6.3	Review the client's lifecycle budget/cost plan. Identify any shortfalls and review them with the Client. Note: the Client's budget is likely to include expenditure that is additional to the developer's budget.	
1.2.6.4	Review the developer's lifecycle budget/cost plan. Benchmark costs and programmes against similar projects. Advise on any benchmarks that are at variance with the Client's Brief and risk profile. Advise on the adequacy of the documentation supplied and on any areas of concern.	

1.2.6.5	Identify any additional capital and/or lifecycle contingency requirements likely to be required by the Client. Agree an appropriate allowance and authorisation procedure with the Client.	
1.2.5.6	Prepare capital and/or lifecycle cash flow forecasts. Consider, and review alternative cash flow profiles arising from alternative programmes and procurement routes with the Client.	
1.2.6.7	Review the development programme and identify key milestone dates. Advise on the adequacy of the documentation supplied and on any areas of concern.	
1.2.6.8	Advise on the risks arising out of the information supplied or out of the lack of information available. Recommend a strategy and programme for managing these risks.	
<i>1.2.7 Advise on design and construction quality</i>		
1.2.7.1	Develop the Client's Brief which summarises the Client's interest in the Project and its risk profile. Prepare, and agree with the Client, a technical/performance/output specification. This specification should cover the Client's sustainability requirements.	
1.2.7.2	Review the Professional Team's drawings and specifications. Advise on their compliance with the Client's Brief, risk profile and specification.	
1.2.7.3	Identify, and confirm to the Client, any works required by the Client that fall outside the Building Contract. Recommend a strategy and programme for managing the implementation of these works through the development process.	
1.2.7.4	Clarify the Client's and developer's requirements in an agreed set of drawings and specifications	
1.2.7.5	Recommend a process for managing design development, including, for example, change management, payment and quality management, to ensure compliance with the Client's Brief, risk profile and specification.	
1.2.7.6	Recommend a process for managing site quality and progress inspections to ensure compliance with the Client's Brief, risk profile and specification. Note: inspections will normally be carried out by the Project Monitor at monthly intervals unless stated otherwise.	
1.2.7.7	Advise on the risks arising out of the information supplied or out of the lack of information available. Recommend a strategy and programme for managing these risks.	
<b>1.3 Progress Reports – Pre-construction and Construction (RIBA Outline Plan of Work 2007)</b>		
Note: Progress reports will normally be carried out at monthly intervals unless stated otherwise.		
<i>1.3.1 Advise on land and property acquisition matters</i>		
1.3.1.1	Advise on matters outstanding following completion of the Initial Audit Report. Recommend a strategy and programme for managing these risks..	
1.3.1.2	Monitor and report on progress measured against the strategy and programme. Advise on any areas of concern.	
<i>1.3.2 Advise on statutory compliance</i>		
1.3.2.1	Advise on matters outstanding following completion of the Initial Audit Report. Recommend a strategy and programme for managing these risks.	
1.3.2.2	Monitor and report on progress measured against the strategy and programme. Advise on any areas of concern.	
1.3.2.3	Obtain a report from the developer, the Professional Team and the Contractor on statutory compliance. Advise on any areas of concern.	
<i>1.3.3 Advise on the competency of the Developer, Professional Team, the Contractor and any proposed project management systems</i>		
1.3.3.1	Advise on matters outstanding following completion of the Initial Audit Report. Recommend a strategy and programme for managing these risks.	
1.3.3.2	Monitor and report on progress measured against the strategy and programme. Advise on any areas of concern.	
1.3.3.3	Obtain a report from the developer, the Professional Team and the Contractor on completion of consultancy agreements, the Building Contract and associated warranties/third party rights schedules (i.e. to cover all third-party issues). Advise on any areas of concern.	
1.3.3.4	Advise on insurance cover taken out by the developer, the Professional Team and the Contractor. Advise on any unusual exclusions and/or excessive excess levels. Advise on any areas of concern.	
1.3.3.5	Advise on the resources supplied by the developer, the Professional Team and the Contractor Advise on any areas of concern.	

1.3.3.6	Review the project management systems proposed by the developer, the Professional Team and the Contractor. Advise on the adequacy of the proposals and on any areas of concern.	
<i>1.3.4 Advise on financial appraisals</i>		
1.3.4.1	Advise on matters outstanding following completion of the Initial Audit Report. Recommend a strategy and programme for managing these risks.	
1.3.4.2	Monitor and report on progress measured against the strategy and programme. Advise on any areas of concern.	
<i>1.3.5 Advise on development, finance, consultancy and construction agreements</i>		
1.3.5.1	Advise on matters outstanding following completion of the Initial Audit Report. Recommend a strategy and programme for managing these risks.	
1.3.5.2	Monitor and report on progress measured against the strategy and programme. Advise on any areas of concern.	
1.3.5.3	Administer, and or comply with, the terms of the development/finance agreement. Recommend and implement processes and protocols for the administration of the development/finance agreements including, for example, change management, payment and quality management.	
1.3.5.4	Report on the discharge of any conditions precedent associated with the development/finance agreement.	
1.3.5.5	Monitor the administration of consultancy and construction agreements insofar as they may affect the Client's Brief and risk profile.	
<i>1.3.6 Advise on development costs and programmes</i>		
1.3.6.1	Advise on matters outstanding following completion of the Initial Audit Report. Recommend a strategy and programme for managing these risks.	
1.3.6.2	Monitor and report on progress measured against the strategy and programme. Advise on any areas of concern.	
1.3.6.3	Prepare a monthly cost and progress report. Where appropriate the report should include copies of progress photographs, certificates and other documentary evidence. The report should summarise expenditure and progress to date and confirm an anticipated final cost and completion date.	
1.3.6.4	Provide a monthly cash flow forecast showing the actual expenditure to date and forecast expenditure to completion. Review the current forecast against the original forecast and advise on any areas of concern.	
1.3.6.5	Advise on the adequacy of remaining contingency allowances.	
1.3.6.6	Prepare a Client variation account itemising all Client variations instructed to date together with their actual, or forecast, cost and programme effects.	
1.3.6.7	Prepare an analysis of the developer's monthly financial report. Ascertain reasons for variances and advise on any areas of concern.	
1.3.6.8	Prepare an analysis of the developer's monthly progress report. Ascertain reasons for variances and their implications on any Client key milestone dates and advise on any areas of concern.	
<b>1.4 Completion Report – Use (RIBA Outline Plan of Work 2007)</b>		
1.4.1	Prior to Practical Completion, Partial Possession, Sectional Completion, or other similar handover arrangements the Project Monitor shall prepare a status report on the development that covers the following: – land and property acquisition matters; – statutory compliance; – competency of the developer, the Professional Team and the Contractor and any proposed project management systems; – financial appraisals; – development, finance, consultancy and construction agreements; – development costs and programmes; and – design and construction quality.	
1.4.2	This report shall advise on any areas of concern that may affect the Client's ability to enjoy 'beneficial occupation' and/or any matters outstanding from the Agreement for Sale and Purchase/the Development Agreement/the Finance Agreement/the Agreement to Lease. The Project Monitor shall recommend a strategy for their resolution prior to Practical Completion.	
1.4.3	Obtain from the Professional Team and the Contractor all test certificates and statutory and non-statutory approvals.	
1.4.4	Prepare and maintain a defects administration plan, or similar management tool, to identify the roles and responsibilities of the Client, the Professional Team and the Contractor. Establish review, approval, variation and reporting procedures. Prepare recommendations for the Client's approval.	

<b>1.5 Post Completion Services</b>	
1.5.1 Obtain agreement to the final account from the parties to the Agreement for Sale and Purchase/the Development Agreement/the Finance Agreement/the Agreement to Lease. For the purposes of this clause the Final Account excludes the assessment of Loss and Expense claims.	
1.5.2 The Project Monitor and the Client are to complete any post-completion services below. It would be typical for the Project Monitor to be instructed to monitor all outstanding matters eg. discharge of remaining planning conditions or other statutory issues, defects remediation, remaining payments, incomplete documents and attend the End of Defects inspection, etc.	
<b>2. ADDITIONAL SERVICES</b>	
<b>2.1 General</b>	
2.1.1 Provide employer's agent services. (Append RICS Employer's Agent Schedule of Services)	
2.1.2 Provide planning supervisor services (Append RICS Planning Supervisor Schedule of Services)	
2.1.3 Provide quantity surveyor services (Append RICS Quantity Surveyor Schedule of Services)	
2.1.4 Provide project manager services (Append RICS Project Manager Schedule of Services)	
2.1.5 Provide services in respect of the Client's/Third Party's organisational move to new premises.	
2.1.6 Provide services in respect of the Client's/Third Party's fitting out or direct works contracts.	
2.1.7 Facilitate, set up and manage value engineering exercises.	
2.1.8 Facilitate, set-up and manage Target Cost and/or Guaranteed Maximum Price contracts.	
2.1.9 Facilitate, set up and manage Partnering and/or Collaborative Working contracts	
2.1.10 Facilitate, set up and manage 'Lessons Learnt' or other workshops.	
2.1.11 Act as the Client's partnering advisor	
<b>2.2 Financial</b>	
2.2.1 Advise on the implications of developing different sites.	
2.2.2 Advise on the preparation of development appraisals.	
2.2.3 Advise on the implications of alternative development programmes.	
2.2.4 Advise on Project sustainability.	
2.2.5 Obtain life cycle cost studies and estimates of annual running costs.	
2.2.6 Carry out off-site inspections of sub-contractors' and suppliers premises.	
<b>2.3 Contractual</b>	
2.3.1 Advise on specialist contractual matters.	
2.3.2 Advise on the Contractor's entitlement to extensions of time. Analyse and report on the Contractor's application(s) for extensions of time. Prepare recommendations for the Client's approval. Negotiate a settlement with the Contractor.	
2.3.3 Advise on the cost and contractual consequences arising from an acceleration instruction.	
2.3.4 Advise on the Contractor's entitlement to direct Loss and Expense. Analyse and report on the Contractor's loss and expense claim(s). Prepare recommendations for the Client's approval. Negotiate a settlement with the Contractor.	
2.3.5 Prepare documentation and or provide advice to support adjudication proceedings. Attend adjudication proceedings.	
2.3.6 Prepare documentation and or provide advice to support mediation proceedings. Attend mediation proceedings.	
2.3.7 Prepare documentation and or provide advice to support arbitration proceedings and/or litigation. Attend arbitration and/or litigation proceedings.	
2.3.8 Act as Expert Witness.	
<b>2.4 Project Specific Services</b>	
2.4.1 Enter here Project specific services agreed with the Client	

## Appendix B: Sample appointment letter

A sample appointment letter is given below:

**Strictly Private and Confidential**

[Insert Name and address of Client]

[Insert Name and address of Project Monitor]

[Insert Date]

For the attention of:

Dear Sirs,

RE: Insert Development Name (*'the Project'*)

This letter and its attached schedules (*'the Appointment'*) shall constitute your formal appointment with [Insert Name] (*'the Client'*) to act as the Client's independent Monitoring Surveyor in respect of the Project to provide Project Monitoring services as set out in Schedule 1 attached hereto (*'the Services'*) and in accordance with the conditions set out herein. By signing and returning one copy of this letter you signify your acceptance of this Appointment.

The basis of this appointment is as set out below:

- The Services to be provided are as stated in Schedule 1 attached.
- The fee and stage payment are as stated in Schedule 2 attached.
- The terms of the appointment are as stated in Schedule 3 attached.

It is a condition of this appointment that you shall take out and maintain professional indemnity insurance for a sum of not less than £[insert sum] for each and every claim arising under this appointment for a period of [insert number of years] years from the date of issue of the certificate of practical completion of the Project (as defined in the building contract entered into or to be entered into to procure the Project) provided that such insurance remains available on the market at reasonable commercial terms and in the event that such insurance ceases to be so available you shall take out and maintain such lesser insurance as is available. You shall upon request, but not more frequently than once per year, provide documentary evidence to the Client that such insurance is being maintained.

Please forward details of your current insurance policy confirming the extent of cover and any policy excesses.

If it is reasonably foreseeable that a conflict of interest might arise in the course of your appointment, or if for any reason you are unable to accept this Appointment please advise the Client immediately.

You must not accept any instructions from any other third party concerning the Project.

If you have currently have any instructions, or subsequently become aware of any instructions, from any third party associated with the Project you shall advise the Client prior to agreeing to act.

This Appointment and all information contained herein are confidential and must not be disclosed in whole or in part to any other party without the Client's prior written consent.

**Signature**

**Enclosures**

**Schedule 1 – Scope of Services**

**Schedule 2 – Fee and Payment Schedule**

**Schedule 3 – Appointment Terms**

# Appendix C: Initial Audit Report

The Initial Audit Report should focus on identifying and clarifying the client's risk profile.

## Status Report

	Status
<b>DEVELOPMENT /CONSTRUCTION BUDGET</b>	
Development Appraisal	
Development/Construction Cash Flow	
Construction Cost Plan	
Tender report	
Schedule of costs incurred to date / back up information	
Contract sum analysis	
<b>PROGRAMME</b>	
Design Programme	
Procurement programme	
Construction programme	
Handover programme	
<b>DRAWINGS AND SPECIFICATIONS</b>	
Contract drawings	
Contract Specifications	
Area schedule	
<b>STATUTORY AND OTHER CONSENTS</b>	
Planning consent	
Listed Building and Conservation Consents	
Tree Preservation Orders	
Section 106/278 or other similar agreements	
Building Regulation/ Control application	
Party Wall Awards	
Oversailing rights	
Rights to lights agreements	
Archaeological Investigations	
Statutory undertaker agreements	
Health & safety notices	
Other third party agreements – easements, covenants and rights of way, etc.	
<b>SURVEYS AND SITE INVESTIGATIONS</b>	
Asbestos Survey	
Access Statements	
Geotechnical site investigation	
Structural / condition survey	
M&E survey	
Environmental survey / Nature survey	
Acoustic survey	
Environmental Impact Analysis and Sustainability Assessment	
Traffic Impact Study	
Acoustic survey	
<b>PROCUREMENT</b>	
Outline description of procurement strategy	



Building contract	
Contract amendments	
Collateral warranties and third-party rights	
Performance bonds / Parent Company guarantees	
Employer's requirement / Contractor's proposals	
Letter of Intent	
Experience and competency of the Contractor	
<b>CONSULTANTS APPOINTMENTS</b>	
Proposed team	
Appointments/Scope of Service	
Collateral Warranties	
Fee Proposals	
Professional indemnity insurance	
<b>PROJECT INSURANCES</b>	
Compliance with contract insurance requirements	
Confirmation of Employer's insurance cover in compliance with Construction contract	
<b>AGREEMENT FOR SALE AND PURCHASE, DEVELOPMENT AGREEMENT, FINANCE AGREEMENT AND/OR AGREEMENT FOR LEASE</b>	
Key considerations	
Client risk profile and risk register	
Payment	
Contract administration	
Key milestones	
Conditions precedent	

## Report Checklist

It is recommended that the Initial Audit Report include the following:

### 1.0 INTRODUCTION

- name of the Client any other project stakeholders;
- schedule of duties;
- brief project description;
- summary of the client's interest in the development and resulting risk profile;
- construction/development costs summary;
- schedule of areas;
- key programme dates;
- list of parties involved.

### 2.0 EXECUTIVE SUMMARY

- loan facility;
- procurement route;
- planning consent status;
- experience of the Developer;
- experience of Contractor;
- construction cost and benchmark statement;
- development budget, adequacy of budget, interest, professional fees, etc.;
- statement on cash flow;

- adequacy of programme;
- client risk profile;
- recommendations for managing client risk profile;
- information outstanding.

### **3.0 PROJECT DESCRIPTION**

- brief description of the project;
- general description on the proposed quality of the design and construction.

### **4.0 DEVELOPMENT COST**

- breakdown of the development costs;
- benchmark of the construction costs;
- commentary on adequacy of the professional fees, other fees, etc.;
- commentary on adequacy of contingency levels;
- commentary on any risks identified and any budgets allocated to the risks;
- schedule list of professional fees, consultants and discipline;
- benchmark adequacy of the preliminaries;
- recommendations for managing Client risk profile.

### **5.0 PROGRAMME**

- start and completion date;
- schedule of key dates;
- commentary/benchmark;
- construction programme, identify any issues;
- commentary/benchmark the design/planning programme;
- commentary on the critical path analysis;
- recommendations for managing Client risk profile.

### **6.0 DRAWINGS AND SPECIFICATIONS**

- confirmation of receipt of drawings – including a list;
- list consultants who have provided drawings;
- confirmation of receipt of specifications – including a list;
- list of consultants who have provided specifications;
- statement on the standard/adequacy of the drawings and there status, i.e. planning, tendering, construction;
- recommendations for managing Client risk profile.

### **7.0 STATUTORY CONSENTS**

- commentary on planning permission, when granted, reference, outstanding conditions-their status, ease of discharge, section 106s, etc.;
- statement on building regulations/control approval, date issued;
- statement on rights of light/oversailing licences/party wall awards;

- statement on listed building consent, conservation area, historic monuments, etc.;
- statement on notifying the health and safety executive, issue of the F10;
- statement on archaeological investigations;
- statement on any environmental issues;
- recommendations for managing Client risk profile.

## **8.0 SITE INVESTIGATIONS AND SURVEYS**

- list and dates of site investigations and surveys received, geo-technical, asbestos, date of report, etc.;
- confirmation that all site investigations and surveys have been included for and incorporated within the design and specifications;
- recommendations for managing Client risk profile.

## **9.0 PROCUREMENT AND BUILDING CONTRACT**

- statement on the procurement route, its adequacy for delivering the project;
- description of the contractual arrangement, form of building contract, design obligations and any risks associated with them;
- any requirements for the provision of performance bonds/parent company guarantee;
- statement on any letters of intent, associated risks, levels, etc.;
- statement on the adequacy of novation agreements;
- statement of the experience of the Contractor;
- statement on the experience of the design team;
- collateral warranties and third-party issues, conformance to the conditions of the loan agreement and any first charges to the Client;
- recommendations for managing Client risk profile.

## **10.0 CONSULTANT APPOINTMENTS**

- list consultants and their discipline;
- statement on the adequacy of the scope of service and level of fees;
- schedule out consultants and their respective professional indemnity insurance levels and its conformity to the loan agreement;
- adequacy of the team;
- experience of the team;
- collateral warranties, conformance to the conditions of the loan agreement and any first charges to the Client;
- statement on the execution of collateral warranties;
- recommendations for managing Client risk profile.

## **11.0 INSURANCES**

- statement on Contractors insurance levels;

- statement on the adequacy and compliance and conformance to the loan agreement;
- review all other project related insurances;
- recommendations for managing Client risk profile.

#### **APPENDICES**

**A** Enclose copy of planning drawings

**B** Enclose copy of planning permission

**C** Enclose copy of appointment letter

## Appendix D: Drawdown checklist

1 January 2006  
Mr S Smith  
Bank  
15 Tigger Street  
London  
EC1M 3BB

Dear Stan  
John Ltd – (Swindon)  
Drawdown No. 3

We are in receipt of John Ltd's request for Drawdown No.3 dated 29th December 2005, together with supporting invoices and information. A summary of the request is provided below:

	£(Net)	£(Gross)
<b>Total Expenditure</b>	<b>£ 1,000,000.00</b>	<b>£ 1,175,000.00</b>
<b>Tenant Contribution</b>	<b>- £ 250,000.00</b>	<b>- £ 293,750.00</b>
<b>VAT Receipts</b>	<b>-</b>	<b>-</b>
<b>Drawdown Request No.3</b>	<b>£ 750,000.00</b>	<b>£ 881,250.00</b>

\*(We have reviewed the information supporting the request and are both satisfied with its content and accuracy. Accordingly, we confirm that in our view and based on the information provided [list if appropriate] drawdown No. 3 in the sum of £881,250.00 is appropriate.)

\*(We have reviewed the information supporting the request and are not satisfied with its content and accuracy. A schedule of our areas of concern is attached. Accordingly, we are happy to recommend the sum of £[insert lesser sum] (including VAT) be drawn down against the Loan Agreement).

*\*delete as appropriate*

A schedule of expenditure to 29th December 2005 is attached detailing all recorded costs to date on the project.

A full report detailing the progress of the works will follow in due course. However, if you require any further information in the meantime, please do not hesitate to contact A. Monitor.

Yours sincerely

**A MONITOR**

**Director**

**Monitors**

**Enc: Schedule of Expenditure to Date-29th December 2005**

Item	Budget £	Expenditure to Date £	Balance Remaining £
Preliminaries/Overheads	950,000.00	100,000.00	850,000.00
Construction Cost	7,500,000.00	900,000.00	6,600,000.00
Construction Contingency	750,000.00		750,000.00
<u>Design Fees</u>			
Architect	150,000.00		150,000.00
Drainage Engineer	25,000.00		25,000.00
Structural/Services Engineer	100,000.00		100,000.00
Planning Supervisor	25,000.00		25,000.00
Development Costs	9,500,000.00	1,000,000.00	8,475,000.00

**Note:** Monitor LLP have inputted into the table above the information provided by John Ltd for the development drawdown No. 3. The table illustrates the schedule of expenditure required to complete the project.

# Appendix E: Progress report checklist

Reports are prepared on a periodic or pre-agreed basis with the Client.

The report should identify, evaluate and monitor key issues on:

- Time;
- Cost;
- Quality; and
- Risk.

The report format:

## 1.0 INTRODUCTION

- name of the Client;
- project name;
- brief description of the project;
- statement on Project Monitors appointment;
- date of site visit.

## 2.0 EXECUTIVE SUMMARY

- overview, general paragraph on the status of the project;
- development budget, amount expended to date, amount remaining, adequacy to complete the works within the facility;
- programme and progress, general statement on the progress of the project;
- quality, statement on the site quality and workmanship;
- contract, execution of building contract, outstanding warranties;
- statutory compliance, commentary on outstanding issues, discharge of planning conditions, status, building regulations/control, rights of light, party wall awards, oversailing licences, etc.;
- insurances, outstanding insurances;
- drawdowns to date, summary of total of all drawings, balance to complete;
- funds to complete, statement confirming that there are sufficient funds to complete the project;
- identify key risks and make recommendations on how to mitigate them.

## 3.0 RISK MANAGEMENT

- risk register update;
- risk management plan;
- progress report on clearance of conditions precedent;
- report on any areas of concern arising out of the development agreement.

## 4.0 PERFORMANCE MANAGEMENT

- current status;
- special conditions;
- variances/change requests;
- conditions arising from any lease, purchase, funding or other development agreements.

#### **5.0 DEVELOPMENT BUDGET**

- summary of expenditure to date;
- drawdown summary to date;
- list/value of variations to date;
- statement on extension of times/claims/disputes, status and agreement;
- summary of provisional sums expended to date/to complete;
- status of contingency sum;
- status of final account(s) and adequacy of funds to complete;
- statement on cash flow expenditure, i.e. behind or ahead advised.

#### **6.0 PROGRAMME AND PROGRESS**

- summary of progress to date, key item, critical path;
- compare against programme contained within the initial audit report;
- statement on any delays and their causes, their impact on the critical path, and the probability of success of any mitigating procedures to recoup the delay;
- any acceleratory measures required to mitigate the delay.

#### **7.0 DESIGN AND QUALITY**

- statement on site investigations undertaken or required to be undertaken;
- statement on any design changes which may impact on the progress;
- quality statement from the design team that the project is being constructed in accordance with current legislation and contract documentation;
- construction, statement on any construction issues to date, which may affect workmanship;
- requirements for post occupancy review and Client feedback.

#### **8.0 CONTRACTUAL**

- building contracts, statement on status of execution, status of Contractor/subcontractor warranties
- consultants, schedule of team, status of execution of appointments, status of warranties
- procurement
- statement on implementation of insurance strategy

#### **9.0 STATUTORY COMPLIANCE**

- planning consent/statutory compliance, commentary on status on the conditions contained/discharge status and stakeholder consultation;



- building regulations/control, statement on progress and any issues there of;
- party wall/rights of light/licences, statement/schedule of awards and status;
- health and safety, statement on accidents on site.

#### **APPENDICES**

A progress photos with description

B key data sheet, state- project name, project description, development loan, construction programme, schedule of areas, professional team

# Appendix F: Practical completion checklist

<u>Works</u>	Status
Building works	
Handover and commissioning	
Schedule of works/defects to complete	
<b>Documents</b>	
Equipment test certificate	
O&M Manuals – Hard and Electronic Copies (numbers required by Agreement)	
Health & Safety File	
<b>Statutory</b>	
Planning conditions and Planning Gain Agreements	
Building regulations/control	
Fire officer	
Adoption of highways	
Licences	
Section 104, 106 and 278 agreements	
<b>Third party</b>	
Tenant acceptance	
Insurances in place/Zurich/NHBC/Premier	
Oversailing licences	
Party wall awards	
Rights of light agreements	
<b>Contract</b>	
PC Certificate issued with any attached schedule of outstanding works/defects including rectification programme	
Loan/Grant condition warranties completed/status	
Contractors final account statement/extension of time/claims/LAD's status	

# Appendix G: End of defects checklist

<b>Works</b>	<b>Status</b>
Schedule of Works outstanding from practical completion	
Schedule of Defects outstanding from practical completion	
Schedule of defects arising in defects period	
<b>Documents</b>	
O&M Manuals (to include schedule of defects)	
Health & Safety File (to include schedule of defects)	
Copies of any outstanding statutory and non-statutory consents	
<b>Third party</b>	
Lease Agreement/Agreement to lease to include any fit out works/tenant works	
Insurance (occupier)	
<b>Contract</b>	
Outstanding warranties/insurances	
Contractors final account status (include claims/extension of times/LAD's)	

# Project Monitoring

## RICS Guidance Note

Project Monitoring is distinct from both project management and construction monitoring, and can be defined as: ‘protecting the Client’s interests by identifying and advising on the risks associated with acquiring an interest in a development that is not under the Client’s direct control.’

The Project Monitor’s role is one of investigator and advisor to the Client. The Project Monitor is not there as a project manager or director and does not take away any of the responsibilities the Developer, and/or its design and construction team, has under funding or other development agreements. The Project Monitor is there to advise the Client on the risks associated with a development and protect the Client’s interests in the development as it proceeds.

This guidance note considers the typical things that a Project Monitor will advise upon, including:

- land and property acquisition matters
- statutory consents
- competency of the Developer, its team and any proposed project management systems
- financial appraisals
- development, finance, consultancy and construction agreements
- construction costs and programmes and
- design and construction quality

