

Property Journal

INCORPORATING THE COMMERCIAL PROPERTY JOURNAL,
RESIDENTIAL PROPERTY JOURNAL AND PERSONAL PROPERTY JOURNAL



Home safe

Keeping homes fit for
an ageing population

PG. 36

COMMERCIAL

On the move

How automated vehicles
could change retail

PG. 24

RESIDENTIAL

Around the block

Scheduling fire protection
into regular maintenance

PG. 38

PERSONAL PROPERTY

Artistic licence

Is HMRC eyeing greater
returns on rented art?

PG. 52

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UPFRONT

5 The feel-good factor
Is wellbeing an underused tool for improving productivity, asks Simon Rubinsohn?

6 Update

8 Global outlook
Dom Fearon explores the benefits of training a more internationally minded generation of surveyors

11 Taking your measure
Alexander Aronsohn outlines changes to the *RICS Property Measurement* second edition

12 Pathways to professionalism
Chris Lindsay updates readers on forthcoming changes to RICS pathways and competencies

13 Protect and comply
With the General Data Protection Regulation soon coming into force, Alexandre Euverte and Noirin McFadden advise on how to comply

14 Legal Q&A
Legal experts answer common queries

15 The way forward
Ken Creighton looks at how RICS has set standards for the profession

16 A measured pace
A well-planned approach to adopting technology will enable surveyors to thrive in a digital future, says Michael Wolter

18 Drawing a line
David Powell introduces a new protocol on boundary disputes

19 Smart thinking
Tim Dixon, Jorn van de Wetering and Martin Sexton review the findings of recent RICS research on big and open data in smart cities

20 Taxing times
Robert Walker considers the tax treatment of lease inducements

C

COMMERCIAL

22 There may be trouble ahead
Commercial property rental rates could be at risk when the Minimum Energy Efficiency Standards come into effect. Claire Das Bhaumik looks at the possible consequences

24 Driving force
The retail and logistics real-estate sector needs to be aware of the impact that autonomous vehicles will have, write Ian Craig and Mary Liu

26 One less thing to worry about
Dilapidations insurance should significantly reduce uncertainty about costs for occupiers at lease-end, report Nick Mace and Simon Hartley



28 Surveyors in the City
Andrew Knight explains how RICS is working to strengthen the connections between surveyors and the Square Mile

30 Property value to public value
Property professionals must get involved in the discussions over how land and real-estate value can contribute to local authority funding, maintain Kevin Muldoon-Smith and Paul Greenhalgh

32 Virtuous circle
Facilities managers have a vital role to play in implementing a circular economy in the built environment, suggests Sara Wilkinson



contents



Front cover:
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R

RESIDENTIAL

36

Safe and warm

Mike Parrett looks at the property problems faced by older people in the UK

38

So what are you doing?

Fire protection is essential in a maintenance schedule, says Bradley Parker

40

Seeds of doubt

Increasing concern about invasive, non-native plants has prompted an expansion of European legislation. Max Wade and Mark Fennell look at the implications

43

Mine mapping

Coal Authority data is crucial to safe planning and development. Darren Moody explains how surveyors can use its resources

44

Resilience works

The increasing incidence of flooding creates opportunities for surveyors to promote resilience, writes Ian Gibbs

46

Worker or employee?

Michael Halsey examines the employment status of locums and warns of potential pitfalls

48

Handling the heat

Overheating in new homes continues to be a problem little recognised in regulation. Tom de Saulles considers measures proposed to address this

P

PERSONAL PROPERTY

50

Seek and ye shall find

Andrew Mason sets out the key factors in establishing provenance

52

Artistic licence

Is HMRC looking for better returns on artworks loaned under chattel licences? Charles Cochrane reflects



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Is workforce wellbeing an underused tool for ensuring better productivity, asks **Simon Rubinsohn**?

The feel-good factor

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UK productivity “has long lagged behind that of our competitors. At a time of astonishing technological advance, output per hour worked in the British economy has been weak since the financial crisis ... Unless we improve productivity while holding on to high employment, we cannot raise living standards and quality of life for all our citizens.”

Just to be clear, that rather depressing summary was taken from the government’s Industrial Strategy white paper published in November (<http://bit.ly/2jL9pwb>). It followed the assessment of the Office for Budget Responsibility just a week earlier that had concluded: “once again we have been more surprised by the ... weakness of productivity growth. The persistence of weak productivity growth does not bode well for the UK’s growth potential in the years ahead.”

Remember it was the downgrading of expectations on productivity that more than anything else limited the Chancellor Philip Hammond’s ability to provide both greater largesse for key spending departments while meeting previously set public borrowing targets.

Productivity was also the dominant issue addressed by the OECD in its 2017 analysis of the economy. In its exhaustive report (<http://bit.ly/2d8lfva>), it highlighted both the regional disparities in productivity – the gap between the best- and worst-performing parts of the country being wider than in most of our competitors – and how this is linked to educational attainment.

Productivity policy

Given these concerns, it is not surprising that so much thought is now going into ways in which UK productivity can be improved. The government is, among other things, talking about boosting investment in research and development, establishing a world-leading technical education system, increasing the National Productivity Investment Fund to £31bn, and creating a new Transforming Cities Fund.

The OECD, predictably enough, covered much of the same ground but was, if anything, more emphatic in advocating further decentralisation of decision-making, allowing local authorities to retain more revenues from locally levied property taxes, and focusing on helping those with lower skills with individually targeted programmes to improve lifelong learning opportunities.

Yet doubts linger as to whether the aims of many of these policies will be achieved and, critically, whether the funding will be in place to meet expectations. Significantly, given that such measures would only produce results

over the medium term, reversing the productivity shortfall is likely to require a bipartisan approach to policy-making; it remains to be seen whether this is feasible.

In a recently published annual collection of views on key issues, more than half of a *Financial Times* panel predicted that no improvement in productivity is likely over the next 12 months, with around one-third acknowledging the possibility of just a small improvement. Less than 5% expected anything more significant.

Wellbeing and work

In this context, and recognising the long time lags associated with macro policy changes, it is perhaps a little surprising that no more attention is being paid to the scope for micro incentives to influence corporate behaviour.

Back in 2015, research funded by the then Department for Business, Innovation and Skills into worker wellbeing and workplace performance provided some justification for doing so, concluding that higher levels of individual job satisfaction are consistent with generally stronger corporate performance. Moreover, its report has been accompanied by much other analysis suggesting that happy employees tend to be more productive.

At one extreme, the launch of the new office block Twentytwo in the City of London last year (www.twentytwolondon.com) marked a clear recognition of the perceived value of creating an environment in



which people want to work. The scale of that project is not something accessible to many businesses given the related costs, but it nevertheless shows there can be dividends from focusing on creating better workplace environments. Critically, that focus doesn’t have to be on such a dramatic scale.

While furnishings, lighting, space, relaxation facilities and so on are not by themselves going to transform the country’s productivity, providing incentives for businesses to pay closer attention to their workforces would sit well alongside major policy initiatives on infrastructure, skills, research and development, decentralised decision-making and affordable housing.

Addressing productivity from both the top down and bottom up will ultimately be critical if the UK is to begin to close the gap with competitors such as Italy, where performance is around 10% higher, the USA and France, which are around 25% higher, and Germany, some 30% higher. ●

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UPDATE

Changes made to FFI disputes process

Following a judicial review brought by facilities management company OCS Group (UK) Ltd, the Health and Safety Executive (HSE) has agreed to amend the “fee for intervention” (FFI) dispute process to make it independent. The new process came into effect on 1 September.

FFI was introduced under the Health and Safety (Fees) Regulations 2012, now covered by the Health and Safety and Nuclear (Fees) Regulations 2016. It had been proposed in 2011 by the then coalition government in its paper *Good Health and Safety, Good for Everyone*, which stated: “it is reasonable that businesses that are found to be in serious breach of health and safety law – rather than the taxpayer – should bear the related costs incurred by the regulator in helping them put things right.”

Under the scheme, if a health and safety inspector is of the opinion that a duty-holder is in “material breach” of legislation, they will serve a notification of contravention setting out that breach with reasons for their opinion, and often what remedy is required. This then triggers recovery of the cost of the inspector’s time, currently charged at £129 per hour.

The finding of material breach or the amount invoiced can be

challenged first by raising a query, which is determined by the inspector’s line manager, and then, if the duty-holder is unsatisfied with the decision, by raising a dispute determined by a panel. This panel originally comprised two senior health and safety executive managers and an independent person. From the outset, however, concerns have been raised by stakeholders about the independence of the dispute process – hence the HSE’s action.

Under the revised process, the disputes panel will be chaired by an independent lawyer from the Attorney General’s civil panel and two independent people with experience of health and safety management. The panel can also at its discretion convene a meeting with the duty-holder and the HSE to determine the dispute in appropriate circumstances. The new process is detailed in the HSE publication *Fee for intervention – query and dispute process* (<http://bit.ly/2iWxO1c>). ●

Mike Appleby is a solicitor at Fisher Scoggins Waters LLP, who acted for the claimant OCS in the judicial review cited above appleby@fsw-law.com



Lifecycle certification launched

The RICS Real Estate Lifecycle Certification provides a thorough training and assessment programme to improve understanding of all the market’s functions and the role that we, our standards and professionals perform.

The certification is aimed at established organisations in the real-estate market who provide financial and legal, HR and marketing, or public-sector services, and who complement, support or depend on land, property or construction professionals.

Many such service providers are heavily involved in the built environment, working in the sector itself, providing related legal advice or investing or lending, or they are clients, suppliers, business associates or colleagues of RICS professionals. Their role throughout the real-estate lifecycle is integral, and as such there is demand from them to develop a better understanding of real estate.

By recognising these individuals as well as their contribution to the market, we can create greater confidence in real estate and encourage wider adoption of RICS standards and professionalism.

● www.rics.org/relc

Designated body requirements updated



RICS has made a number of changes to the rules for its designated professional body scheme, which enables it to regulate firms for general insurance distribution activities, on behalf of the UK Financial Conduct Authority. The changes, which came into effect on 23 February, include:

● a new 15-hour continued professional development requirement per year

● an increase in professional indemnity insurance cover to €1.25m for single cases and €1.85m for the annual aggregate

● new requirements for insurance product information documents

● the need to provide details on remuneration received.

● For more information, please email regulatorycompliance@rics.org

Westminster considers renovation options

MPs and Lords have suggested they would be willing to relocate from the Palace of Westminster to nearby premises while it is renovated, after a survey of the building undertaken by Deloitte resulted in three proposals being made for refurbishment.

The palace was constructed between 1840 and 1870, and has not been renovated since. As one would expect, it is now suffering from eroding stonework and leaking cast-iron roofs, although the existing structure is still sound.

However, another problem is the vast network of pipes, cables and machinery for heating, power, water and other services, some of which date back to the 1940s. Other hazards include asbestos, high-voltage power lines running next to Victorian steam pipes and gas mains, and 130-year old sewage ejector pumps at the end of their useful life.

While the time is right for refurbishment of the palace, the logistics are not easy. Deloitte therefore carried out a detailed survey of the palace, and proposed the following three options:

- work undertaken while MPs and Lords still use the palace on a day-to-day basis, which it estimates would take 32 years to complete at a cost of £5.7bn
- work undertaken following a partial decant, with Commons and Lords moving in turn into temporary accommodation, which would take an estimated 11 years at a cost of £4.4bn
- a full decant for six years while works are carried out, at a cost of £3.5bn.

A joint committee of MPs and Lords favoured the third option and relocating within the Westminster area, because there was resistance to moving Parliament further away.

The aim is to set up an independent Olympic-style delivery authority to examine the various costings and to report before a final decision is made in a vote around mid-2019. ●

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STANDARDS

Forthcoming

Strategic facilities management 1st edition guidance note

Valuation of assets in the commercial renewables sector guidance note

Code for leasing business premises professional statement

Surveyors and lawyers involved in tenancy renewals under PACT, 2nd edition guidance note

● www.rics.org/standards

Recently published

Real estate risk management under the Alternative Investment Fund Managers Directive (AIFMD), 1st edition guidance note

● www.rics.org/realstateriskmanagement

Whole life carbon assessment for the built environment, 1st edition professional statement

● www.rics.org/wholelifecarbonassessment

Risk, liability and insurance in valuation work, 2nd edition guidance note

● www.rics.org/rivaluation2nded

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

● www.rics.org/iconsult



Best practice set out for property guardians

A white paper issued by a group of seven UK property guardian companies sets out the legal and safety obligations on guardians and property owners. Its goal is to improve standards and to inform and safeguard the interests of both parties.

The Law on Property Guardianship details the current legal status for guardians, as well as the compliance requirements and health and safety obligations that guardianship scheme providers must meet. Written by an independent legal team, the white paper is intended to ensure better practice across the industry through a minimum, common standard.

“The group has been meeting to set up a property guardian providers’ association,” explains Graham Sievers, group spokesman. “The providers wanted to benchmark the current legal status of a guardian, and the obligations for the owners or management companies for premises being used to house guardians. This document, we hope, will help inform all stakeholders and support our aim to promote best practice, advocating that all legal and safety standards and regulations are adhered to, or exceeded, by property guardian providers.”

Key points emerging from the paper are as follows:

- health and safety requirements apply to all buildings where property guardians live, whether commercial, residential or other premises
 - fire safety, gas safety and any potential on-site hazards for guardians fall under the same regulations as those for tenants, and are enforceable by the same authorities
 - property guardians sign up as licensees rather than tenants, with two of the key differences being non-exclusive occupation of the premises and shorter notice periods; in return, however, guardians’ cost for accommodation is low.
- <http://bit.ly/2AFdauj>

Global outlook

Dom Fearon explores the benefits of training a more internationally minded generation of surveyors

In recent years, the terms “internationalisation” and “global” appear to have become increasingly common in the language we use as property professionals and chartered surveyors. As you are no doubt aware, RICS members are currently or will soon be using the following standards (see also *Property Journal* October/November 2017, p.11):

- International Valuation Standards (IVS) 2017
- Global Red Book to coincide with IVS 2017
- International Property Measurement Standards (IPMS)
- International Construction Measurement Standards (ICMS)
- International Land Measurement Standards (ILMS).

These standards are set to provide global consistency in the way we classify, define, measure and present land and property information in simple reports and for projects at local, national and international levels. For more recent entrants to the profession, we also have to consider revisions to the APC by RICS’ Global Education and Qualifications Standards committee as well.

Looking further ahead, the RICS Futures insight paper *Our changing world: let’s be ready* explores the implications of key changes up to 2030 (www.rics.org/futures). The document identifies six areas where action is required by the profession over the next few years. One of particular relevance to myself as a member employed at an academic institution is “Winning the war for talent”. How do we attract the next generation of professionals, retain that talent, promote diversity and ensure that the right education is available to meet our sector’s needs?

The chartered status offered by RICS is recognised in most countries, and can provide you with the opportunity to work across much of the world. With a global population rapidly growing and ever urbanising, the demand for homes, offices, retail, infrastructure and

transportation has never been so great in so many places. In a constantly changing world, most of us would agree that as property professionals we need to adapt and change our mindset and our work processes continuously to keep up with the changes.

If you are employed in an international company or working with international clients then this global context is of the utmost importance. However, its relevance might not be as apparent to small businesses and employers, individuals and surveying graduates – or at least, not yet.

Going global

How should you go about becoming more international? Let us not address this question by entering into a debate on Brexit, although clearly that will be relevant as time passes. Instead, we should ask what we mean by internationalisation for our own purposes.

There are various definitions of the term available, and much academic literature has been written on the subject. As with the term “sustainable development”, we think we understand the principle of internationalisation, albeit somewhat vaguely; but in reality it means different things to different people. My own simple definition might be “the desire and ability to adapt your way of thinking, living or working to those of a country outside your own”. Internationalisation can affect some or any of the following areas of your work and life, although not in any particular order of significance:

- academic and career aspirations
- business performance and employability
- personal and professional development
- transferrable skills
- social and cultural change.

Different lenses

The nature of your international ambitions will obviously differ depending on whether you are a small business, larger employer or an individual wanting to make a temporary or permanent career change. By way of brief examples, a small business may wish to review its five-year business plan and include some international intentions, even if this is just to acquire one new international client in this time frame. Larger employers can

meanwhile review their staff recruitment and retention strategies to foster interest at all staffing levels, through measures such as extra training, secondments and exchanges with international businesses. Surveying students and graduates in turn can more easily map their ambitions with early planning, choosing courses that include international elements and targeting the global surveying companies that offer overseas opportunities for graduate positions.

Education

Universities, and perhaps some secondary schools, are where progress can be made to enable individuals who want to work internationally to succeed. We are fortunate that internationalisation is already high on the agenda at many UK universities, including Northumbria University where I am based.

It is included in various university-wide policy documents, and also embedded in the international strategies of universities and the Higher Education Academy, which works with governments, ministries and universities both in the UK and around the world.

Internationalisation already occurs in many contexts in universities, including:

- culturally mixed student cohorts on many programmes
- student exchange and mobility opportunities, such as Erasmus+, with partner overseas institutions
- the opportunity to study a foreign language
- distance learning courses that are available to students outside the UK
- a positive attitude towards international students and accreditation by international student bodies
- opportunities for international sabbaticals and transnational teaching for academic staff.

Gauging interest

The benefits of such measures are clearly significant, often leading to ongoing research and enterprise opportunities and positive self-marketing for all those

“
Participants were highly responsive to the suggestion that we further internationalise the curriculum

Figure 1

Northumbria BSc (Hons) surveying students' responses to question "How important is it to you that your syllabus includes an element of internationalisation (for example study visits, case studies, assessment)?" Part sample, 2016-17

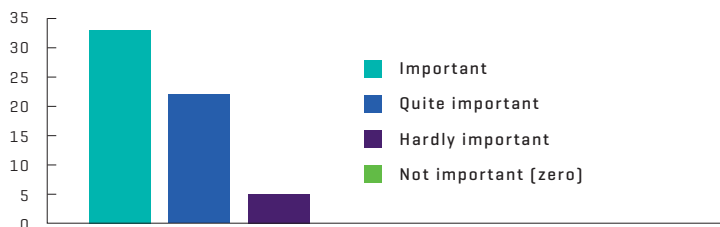
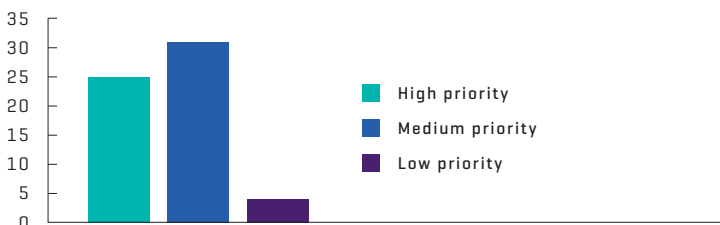


Figure 2

Northumbria BSc (Hons) surveying students' responses to question "Overall, do you think internationalising the curriculum for the future surveying profession should be a priority?" Part sample, 2016-17



involved, including students, employers and participating organisations.

In this context, an initial research project was recently undertaken at Northumbria with the aim of enhancing the student experience and improving the global employability of our surveying graduates.

This exercise was primarily designed to assess whether there is sufficient demand or interest to pursue further internationalisation of our built environment surveying degrees. Views were sought from the key stakeholders, being the students themselves, in their first and final years, and the human resources departments of large

international surveying companies with head offices in London, along with input from RICS as our accrediting body.

A small sample of the results to a questionnaire are set out in Figures 1 and 2, with interview responses below.

Employers' responses

UK-based employers may look for certain attributes from those employees seeking to work in their other international offices. In this regard, a sample of interview responses from employers' HR departments includes the following.

- "International vacancies are available for new and experienced staff generally

Getting an international outlook

Businesses and employers can:

- review their business plan and incorporate international steps
- research countries and clients
- update their LinkedIn profiles to reflect an interest in internationalising their business
- contact the local university or business school
- look into business network or Chamber of Commerce support
- use RICS events and contacts
- attend or arrange conferences
- obtain professional advice on tax, professional indemnity insurance and other financial issues.

Property professionals, graduates and students can meanwhile:

- visit relevant Facebook pages or international surveying websites
- research countries and employment opportunities there
- update their profiles and their interests on LinkedIn
- contact university built environment staff
- read blogs, including those on travel
- attend RICS Matrics meetings and events
- visit their careers advisory services and employment agencies
- take language classes.



Internationalisation is already high on the agenda at many UK universities

up to Associate level: one month or one year overseas."

- "We select the highest performer based on the performance review from line managers."
- "We look for, enthusiasm and drive, adaptability, good local property knowledge in their chosen city/location, client care and how [they] present themselves."

The responses provide a snapshot so are not fully representative of students' and employers' views, but they nonetheless offer a useful indicator of attitudes. With the exception of a few students, all project stakeholders and participants were highly responsive to the suggestion that we further internationalise the curriculum for surveying students.

The next step for us as a university would be to design a module that specifically fits with the needs of international employers of our graduates and convene a staff-student focus group to determine how it would fit into our existing programme.

The way forward?

Obviously, to internationalise you must be willing to start the process for yourselves. Ask yourself why you want to pursue some form of internationalisation – what do you hope to achieve?

Networking is key, and from my own experience there are plenty of people willing to share their knowledge. It can often be pleasing to realise we already have the skills required but that we are not confident about how to use them, meaning we need to develop self-efficacy. By way of a start, perhaps the tips in the box (left) will help. ●



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Taking your measure

Some significant changes have been made to the *RICS Property Measurement* second edition professional statement in response to consultation, as **Alexander Aronsohn** outlines



Further to extensive consultation, we have made several significant changes to the second edition professional statement on *RICS Property Measurement*, to ensure that it meets the needs of the market and is more user-friendly.

The statement has, for instance, been revised to incorporate International Property Measurement Standards (IPMS) Residential, along with IPMS Office Buildings and the recently published IPMS Industrial Buildings, and is available at www.rics.org/propertymeasurement.

The first major change relates to the structure of the statement, which has been revised to incorporate two elements:

1. Professional statement: Property measurement, which applies to all properties and includes IPMS measurements for office and residential buildings only
2. RICS IPMS Data Standard (see *Property Journal* October/November 2017, p.12).

The professional statement reflects the first two standards, IPMS: Office Buildings and IPMS: Residential Buildings, and will be updated over time to comply with others in the suite as they are published.

As a result of the inclusion of IPMS: Residential Buildings and a continual review process, new definitions have also been added to the glossary, for the terms Clearance Height, Covered Area, Patio, Residential Building and Veranda.

Professional statement

The first part of *RICS Property Measurement*, comprising the professional statement on property measurement, is divided into the following four subsections:

1. application of this professional statement
2. technical definitions
3. IPMS: Office Buildings, as applied under the professional statement

4. IPMS: Residential Buildings as applied under the professional statement.

The main changes relate to the first of these, which rather than just concentrating on IPMS, as in the first edition, now focuses on professionalising measurement across all specialisms, whether IPMS are adopted or not.

In addition, the section on the use of IPMS has been revised to say: "RICS members are expected to advise their client or employer on the benefits of using IPMS. However, it is understood that IPMS [are] not suitable in all circumstances and in these circumstances RICS members must state the reason for departure". It also requires that: "RICS members must use IPMS terms (i.e. IPMS 1, IPMS 2, IPMS 3 etc.) when calculating or reporting the area of office and residential floor space on an IPMS basis".

The Component Areas in the technical definitions have also been revised so that their sum now equals IPMS 1, and, subtracting the new Component Area B1 (External Walls), equals IPMS 2 Residential Buildings.

In addition to the revised Component Area B, which contains subsections on internal structural and non-structural elements as well as external walls, there is also a new Component Area G called Living Space, defined as "the area available for use by residential occupiers". Some of the Component Areas A–G in this table can be further used for IPMS 3 if required.

Another major change to part 1 of the professional statement is the addition of subsection 4 on IPMS: Residential Buildings as applied in the professional statement, which contains the following three measurement standards.

- **IPMS 1** can be used by parties for planning purposes or the summary costing of development proposals, and is defined as "the sum of the areas of each floor level of a building measured to the outer perimeter of external construction features, which may be reported on a component basis for each floor of a building".
- **IPMS 2 Residential Buildings** can

help the property sector make efficient use of space and benchmarking data, and is defined as: "the sum of the areas of each floor level of a residential building measured to the internal dominant face, which may be reported on a component-by-component basis for each floor of a building".

- **IPMS 3 Residential Buildings** itself includes three different measurement bases, which the IPMS Standard Setting Committee felt were required to meet global market needs: IPMS 3A, IPMS 3B and IPMS 3C. Some markets require only one of these, but others may use two or more for different purposes.

- **IPMS 3A** is an external measurement of the area in exclusive occupation and equates somewhat to Gross External Area (from Code of Measuring Practice, 6th edition)
- **IPMS 3B** is an internal measurement including internal walls and so on in the area in exclusive occupation, and equates somewhat to Gross Internal Area.
- **IPMS 3C** is an internal measurement, excluding internal walls and so on, in the area in exclusive occupation, and equates somewhat to Effective Floor Area.

The final main change in the second edition is the inclusion of part 2 on the data standard. ●



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Related competencies include
Measurement of land and property

Pathways to professionalism

Chris Lindsay updates readers on forthcoming changes to RICS pathways and competencies



The main message from the first round of consultation on the RICS pathways and competencies review (see *Property Journal* October/November

2017, p.10) was the desire to have the proposed changes made to the individual pathway guides, that is, the detailed documents that set out the requirements for particular areas of practice.

Working groups were formed for each area, comprising representatives from RICS professional groups and employers, to draft the new guides, which were then presented as part of a two-month second-stage consultation last autumn. The consultation included:

- 21 individual pathway guides; these were working documents for the consultation and not reflective of the final branded versions
- draft of the new mandatory competencies, with expanded descriptors and examples
- summary of the proposed changes
- matrix of proposed competencies by pathway
- updated FAQs.

The consultation asked for views on four key statements.

- “The competencies for your selected pathway(s) reflect practice in your country”: 93% of respondents either agreed or strongly agreed.
- “The competencies for your selected pathway(s) reflect the competencies required at the point of qualification”: 92% either agreed or strongly agreed.
- “Non-technical skills and competencies are appropriately set out in the mandatory requirements”: 97% either agreed or strongly agreed.
- “The pathways and competencies requirements provide an effective basis for assessing the competencies needed to be a chartered surveyor. The competency descriptors are clear and



There is more flexibility for candidates

unambiguous”: 90% either agreed or strongly agreed.

Property cluster

After extensive industry review, we are adding a new pathway to the Property cluster, entitled Corporate Real Estate, which is currently a specialist area under Commercial Property. The Corporate real estate management competency has been replaced with four that sit in the new pathway:

- Business alignment
- Business case
- Performance management
- Workspace management.

There have also been substantial changes to the competency structure for the Facilities Management, Management Consultancy and Residential pathways (see www.rics.org/pathways).

There is more flexibility for candidates as well, with 90% of pathways in the new framework – including all in the Property cluster – letting candidates choose at least one competency from the entire list, up from 55% in the current model.

New property technology competencies have also been developed: Big data, Open data and Smart cities and intelligent buildings are included. Existing technology competencies such as Data management and Construction technology and environmental services have also been reviewed and updated.

Mandatory competencies

The mandatory competencies are the professional practice, interpersonal, business and management skills that are considered common to, and necessary for, all RICS professionals.

Proposed changes here were overwhelmingly supported and will be introduced as part of the new framework. These include a new competency, Inclusive environments, that will be mandatory to Level 1 for all candidates. This is about the principles and processes that enable accessible and inclusive environments, recognising the diversity of users’ needs and the requirement to put people of all ages and abilities at the heart of the process.

There will also be greater emphasis on diversity and inclusion topics, new detailed descriptors for each mandatory competency in the requirements and competencies guide, and removal of duplications and overlaps with the technical competencies.

Timeline

The new framework will be implemented this year; the precise date is to be confirmed at the time of writing, but transitional arrangements will be in place for candidates to come forward for assessment under the current version.

The latest information, including a full overview of the changes and transitional guidance will be available online from 19 February (www.rics.org/pathways).

Assessment Resource Centre

Any changes to the framework need to be reflected in the Assessment Resource Centre (ARC), the tool that streamlines the process by allowing candidates to manage all their training, CPD and selected competency records online. User guides and instructional videos for the ARC are available on the RICS website.

The ARC is also where counsellors can support candidates through each stage of the final assessment and, when required, sign off competencies and the candidates’ summaries of experience. All new enrolments in English from 31 January 2017 and all final assessments taken in English since 31 July 2017 have had to use the ARC.

If you have any questions or comments about the review, please do contact us. ●

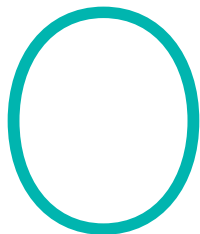
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Related competencies include
Conduct rules, ethics and
professional practice

Protect and comply

With the General Data Protection Regulation shortly to come into force, **Alexandre Euverte** and **Noirin McFadden** advise businesses on how to ensure compliance



On 25 May, the General Data Protection Regulation (GDPR) will enter into force and replace the Data Protection Directive 96/46/EC

as the personal data protection regime in Europe. With the dramatic increase in the maximum penalties for non-compliance – which is now the greater of €20m or 4% of worldwide turnover – early planning is essential to ensure that businesses comply in time.

Accountability

The greatest challenge created by the GDPR is the principle of accountability, requiring organisations to demonstrate their continuing compliance. They must be fully aware of their data-processing activities, including knowing what personal data is processed, where it originates or is sent, and the legal basis for dealing with it.

Organisations will need to be able to show the data protection regulator and individuals whose data they hold how they comply, on an ongoing basis, by providing evidence of policies and processes and effective internal and external controls, among other measures.

Accountability means organisations must exercise extra care when creating products or services that entail processing of personal data by ensuring that these are designed with data protection compliance in mind, that is, privacy by design. Similarly, organisations must ensure that they always process personal data in accordance with the

data protection requirements, that is, privacy by default.

To demonstrate that they do so, organisations may have to carry out privacy impact assessments before processing data using new technologies, to review not only the risks to individuals generated by such processing but also their remediation procedures.

Steps to compliance

Businesses can take the following steps now to ensure they are compliant when the GDPR comes into effect.

Conduct an audit

The GDPR requires organisations to keep detailed records of the personal data they collect and process. Most will need to carry out an organisation-wide audit of their data-processing to ascertain what personal data they hold, where this originates, what the organisation does with it, with whom they share it and for what purposes, as well as how the rights of the individuals are enforced. This information should be documented in a record of processing.

Review procedures, systems and training

Internal policies and procedures should be checked to ensure that they meet the requirements of the GDPR. For instance, staff handbooks should be kept up to date in terms of personal data collected from employees, and a written and comprehensive information security programme should be in place to protect the confidentiality and integrity of personal data held.

The organisation's contracts with suppliers and customers ought to be checked as well to ensure that appropriate provision is made to protect personal data, allocate the risks of liability, and enable cooperation between parties to demonstrate compliance.

Appoint a DPO

Organisations that regularly and systematically monitor data subjects as part of their core activity or that process sensitive personal data on a large scale will need to appoint a data protection officer (DPO). The organisation should also consider whether the DPO should be internal or external, and ensure that the role is at a sufficiently senior position in the management structure.

Review privacy notices

It is likely that organisations will need to amend their existing privacy policies and notices to cover the higher standard set by the GDPR, and, in particular, to inform

people about their privacy rights and any data retention periods, among other information relevant to the way their data is processed.

Different policies are likely to be required to cover the processing of personal data on clients, employees, suppliers and marketing contacts. In each case, the policy needs to be accessible at every relevant collection point, such as websites and application forms.

Implement breach response procedure

A new requirement introduced by the GDPR is that organisations must notify the data protection regulator of certain personal data breaches without undue delay and, where feasible, within 72 hours. Organisations should ensure that they have in place appropriate data breach response plans, which may require internal reporting structure changes as well as staff training.

It is also advisable to ensure that contracts with the suppliers and partners who have access to the organisation's personal data contain obligations to report any data breaches promptly, as well as access to the relevant information to make an effective notification to the regulator.

Rights and responsibilities

As RICS members or stakeholders of your own organisation, you will be affected by the GDPR – whether as individuals benefiting from new or strengthened rights, or as data controllers with responsibilities for implementing measures to ensure your organisation complies with the new rules. ●



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Please note the information in this article does not constitute legal advice.



Related competencies include
Data management,
Property records/information systems

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Legal

Q&A

Chattels or fixtures and fittings?

Q I am the landlord of an office property. The tenant vacated prior to a condition precedent break, but he left in situ large quantities of partitioning, carpets and discarded office furniture, all of which he brought on to the premises during the lease. Was he obliged to remove them, and does this mean he hasn't given vacant possession?

> **Christopher Sullivan and Nick Dowding QC**

A You should read the lease carefully to see what the tenant is entitled to install during the lease along with any obligations on him for removal. In general, the key question is whether the element is a chattel or a fixture. Giving vacant possession will be an implied term in most leases; this will ordinarily require the removal of chattels where their presence substantially interferes with the enjoyment of a substantial part of the property, but not necessarily anything else.

The question of a tenant break conditional on providing vacant possession is not dissimilar, but the stakes are often much higher, and we discuss this further below.

Chattels and fixtures

A chattel is any item that has not been physically attached to the premises so as to become part of them in law. There are a number of obvious examples of chattels, such as furniture or debris, but it is not always as simple as that. A fixture is an item that has been attached to the premises in a way that results in it losing its character as a chattel, and that has thus become part of the property.

There is plenty of case law that considers this, although not all of it is consistent. In such cases, there are two essential questions. The first relates to the degree of annexation, and considers the extent of attachment: in general terms the greater the attachment, the more likely the item will be a fixture. The second question concerns the purpose of annexation, and whether the element was installed only for its temporary enjoyment as a chattel.

Fixtures are further subdivided into landlord's fixtures and tenant's fixtures. A tenant can remove their fixtures, although they must have attached the items for the purposes of their trade, and it must be possible to remove these without excessive damage either to the items or the property. A landlord's fixture is any fixture that is not a tenant's.

Obligation to remove

Chattels must ordinarily be removed at lease-end, but the position is less straightforward with fixtures. The general rule is that a tenant is not obliged to remove fixtures, even their own, although this situation is subject to the terms of the lease. Particular clauses to consider include any covenant against alterations; any obligations to remove or reinstate, including in any licences to alter; and any obligations relating to the return of the premises at lease expiry.

Partitioning

It is necessary to look at how the partitioning has been constructed and fixed, and how easy it is to remove, as some forms of partitioning may be classed as chattels. So, in

[Riverside Park v NHS Property Services](#) [2016] EWHC

1313, demountable metal partitions, fixed to the raised floor and the suspended ceiling grid by screw fixings, were held to remain chattels.

But partitions that are more permanently fixed to the structural slabs and soffits, or whose construction is such that they cannot be removed without effectively destroying them, may be fixtures.

By way of further illustration, a metal-framed stud wall with plasterboard and a painted plastered finish will in all likelihood have lost its chattel nature.

In contrast, a composite-framed partition wall with a pre-finished panel, which is clearly designed to be put up and taken down without destroying it or the building fabric, may retain its chattel nature.

Carpets

Carpets that are not attached to the floor or are attached only by tacks are likely to remain chattels. But carpet tiles that are glued to the floor screed or the raised floor tiles may be held to be fixtures, as they were in [South Essex Partnership University NHS Foundation Trust v Laindon Holdings](#) [2016] EWCA Civ 377. However, carpets that are lightly fixed with a tackifier are unlikely to have lost their chattel nature.

Discarded office furniture

Freestanding items of furniture will be chattels, and the same may be true of items such as shelving that are attached only by screws. But items with a more substantial degree of attachment to the premises, such as a built-in reception desk or a trade counter, may have become fixtures. ●



RICS Director of Professional Standards **Ken Creighton** talks to *Property Journal* about what has been achieved in the past year to establish standards for the profession, and the work that lies ahead

The way forward

Q What is your overall assessment of the past financial year in terms of standards?

A Standards cover both professional behaviour as well as the technical aspects of chartered surveying. We are working on standards across this spectrum; in the past year we have accomplished a lot.

For example, we produced major professional statements on conflicts of interest, which came into effect this January. We also carried out in-depth research on professionalism to get the market insight that would guide our standard-setting. Thus we have projects focused on key issues such as money laundering, ethics and data security.

On the technical side, we made advances in property measurement standards, including residential and industrial; we also published the updated valuation Red Book. The International Construction Measurement Standards (ICMS) were launched in Vancouver, Canada, in July. This is a major suite of international standards supporting the benchmarking, measuring and reporting of comparable construction costs across the world. Moreover, land measurement standards and business valuations are other big technical areas where we have made great advances in the past year.

For instance, in business valuation we have launched the credential Certified in Entity and Intangible Valuations (CEIV). This is for professionals who perform fair-value measurements for businesses and intangible assets. The project originally came about after the US Securities and Exchange Commission expressed concerns about professionalism in valuation. Working with other key stakeholders and professional bodies such as the American Institute of Certified Public Accountants and the American Society of Appraisers, we jointly launched CEIV.

Q What has been the biggest challenge you have faced?

A Our biggest challenge relates to how we actually deliver these standards as a profession. Creating standards is just the first step. The challenge is to have those standards adopted and used in the marketplace so that they benefit the market in the public interest. Each standard starts as simply words on a page; they need the professionals to do the work for the benefit to be realised.

We need the conferences where they will be discussed and explained, the training and all the related support to ensure professionals and the market realise the benefits of adopting and using these standards. The challenge is not just to create the standards, but have them make a positive impact. This is the role of RICS, and where we need to succeed.

Q Where are the opportunities for adoption of standards and growth of the profession?

A There are a few specific areas with great opportunities. I mentioned ICMS: we have already had amazing take-up, with major firms and governments around the world using them to compare costs on their projects. For example, the province of Ontario in Canada, the Irish government and the UK government have all been looking at ICMS to examine and compare their spend on infrastructure projects. This is a real opportunity for RICS, as we add value by speaking to the world about how ICMS can benefit such a substantial part of the market.

Another example is the International Property Measurement Standards (IPMS). Along with the IPMS for Office Buildings, we are soon publishing an updated professional statement to cover

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The challenge is to have standards adopted and used so they benefit the market in the public interest

residential and industrial buildings. Now entities with warehouses, residential and office space can compare space consistently across their portfolio.

We can develop the skills in the profession and the numbers employed by getting companies, governments and individuals to adopt our standards and hire the professionals to use them. That in turn makes people want to become professionals, maintain their professional status and take advantage of the training and products we offer. It's an opportunity to connect those standards through adoption to growth of the profession. There is a lot of good work ahead. ●

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Certified in Entity and Intangible Valuations
www.rics.org/ceiv
Red Book Update
www.rics.org/redbookupdate
www.rics.org/internationalstandards



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

A well-planned approach to adopting technology will enable surveyors to thrive in a digital future, says **Michael Wolter**

A measured pace

One would be hard-pressed to find a profession today that isn't talking about artificial intelligence (AI). It's a phrase that seems to be on the entire world's lips as devotees laud its potential to benefit any type of business. Machine learning in turn promises to advance business models at lightning speed.

The property surveying profession is no exception to these trends, and despite being historically averse to technology it forges ahead in its discussion of AI. Although for many people surveying

conjures images of printed floorplans and clipboards, the future of the profession will be very different. Digital 3D models and mobile devices will be the tools of the future surveyor, augmented by an array of complementary software and hardware.

Although these advances are already here, we won't start seeing them in widespread use any time soon. State-of-the-art software offers big value yet comes with a price tag that is too high

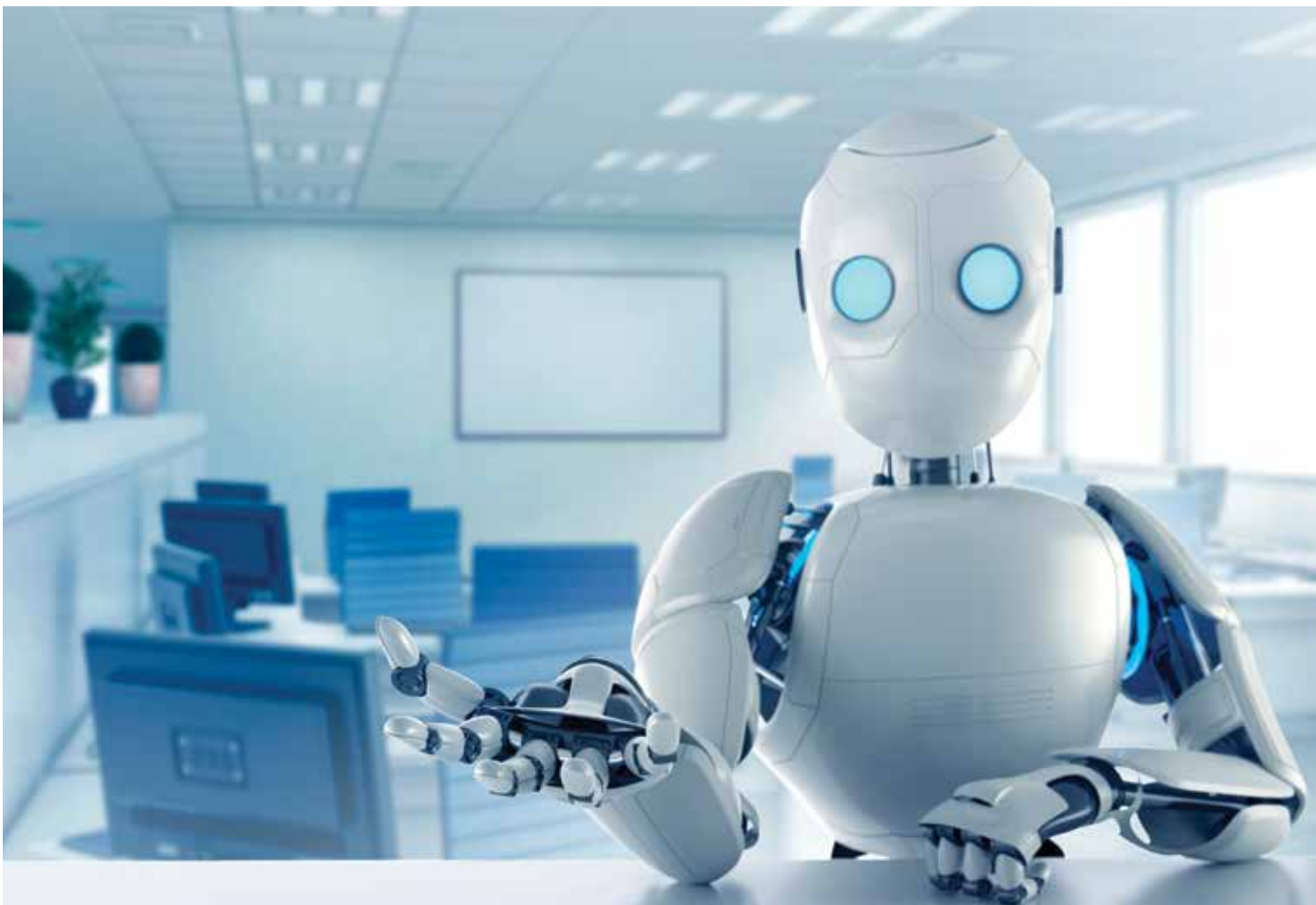
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AI can be prohibitively expensive

for most surveying practices, and while they have recourse to other forms of technology, we should be wary of an all-out tech takeover and complete automation.

AI is transforming property surveying by mapping existing structures, enabling real-time data collection, and plans for ultra-efficient buildings of the future. If it does so carefully, it can both enhance property surveying and futureproof the roles of many surveyors.

Applying AI

The major hindrance to widespread use of AI in existing structures is financing: as with most cutting-edge technology, AI can be prohibitively expensive. A recent RICS insight paper, *Artificial intelligence: What it means for the built environment*, shows that the use of certain technologies such as building information modelling (BIM) is not financially feasible in structures that are already built. Without sufficient funding, therefore, the AI currently available is simply not viable, and the report warns that “the costs of creating a digital model might not be recouped for many years” (www.rics.org/aiinsightpaper).



Building management systems (BMSs), on the other hand, hold more promise for both existing and prospective structures. The RICS report *The Impact of Emerging Technologies on the Surveying Profession* defines BMSs as being “computer-based systems that manage, control and monitor building technical services (HVAC, lighting etc.) and the energy consumption of devices used by the building” (www.rics.org/emergingtech). Integration of BMSs into existing structures is easier than integrating BIM, since the former have started to become mainstream with the arrival of smart-home devices and are compatible with systems that are already in place. BMSs can apply data gathered from smart-home devices for a twofold benefit: systems can apply real-time data from building monitors to enhance comfort and productivity for occupants; and, once enough historical data has been gathered, analytics can optimise the building’s energy efficiency and alert users to potential hazards.

Real-time data

When it is managed by BMSs, the value of having data in real time is obvious: changes are made instantly, ensuring built environments function at optimal efficiency and comply with safety standards. In the wider property technology, or proptech, sphere, exchanging data as it is collected eliminates any delays, and represents a considerable gain for a practice; the recipient is able to process the data as soon as it is received with no need to convert it into digital format, ensuring further efficiency for the process. Real-time data is what transforms a building from a lifeless structure into living, breathing organism, one that responds to changes immediately and thrives in its environment.

Real-time proptech is also an affordable way to adopt technology without stretching a company’s budget. Software that offers the ability to submit data in real-time is currently available at a range of prices, so it offers a possible solution for a company of any size. While large companies may invest in bespoke systems, small and medium-sized businesses can take advantage of proptech that is better suited to their scale. Jax Kneppers, founder of app developer Imfuna (www.imfuna.com), writes in the paper *Workflow Improvements and Project Success Driven by Mobile Technology*: “Projects that do not have the benefit

of budgets that allow for expensive modelling software can look to platforms that support common tools that respond to the challenges faced in a competitive environment without breaking the bank.”

Kneppers’ firm offers Imfuna Surveyor software for both residential and commercial fields, which is scaleable for different practices. Users can perform a survey, collect site data and then submit this through the cloud to an online platform where it is automatically collated for report composition. The data is sent in real time with the use of a mobile app and then disseminated appropriately, enhancing overall efficiency and leaving the surveyor with a more flexible schedule.

Technology priority

Software such as Imfuna Surveyor allows many companies to get on the grid (see also *Property Journal* December 2017/January 2018 pp.16–17). Taking up AI, machine learning and other digital technology is not necessary for most surveying practices, and is not necessarily practical or even possible. Yet it is incumbent on surveyors at all levels to enable their practices to speak the language of technology, thus ensuring a smooth transition from paper notes and spirit levels to digitally formatted surveys.

Building the bridge to the practice of the future can be done slowly and in stages, but the goal must be for surveyors to become active members of a digital future. The rest of the world will not wait for them to begin adopting technology, and with many roles currently at risk from automation, the more actively surveyors can participate the more they futureproof their careers.

Natalie Cohen says in “Meet the surveyor of the future” that, “As the latest innovations change the way we work, it will become increasingly important to allow technology to do the heavy lifting, in turn freeing us up to provide professional judgement, risk identification and solutions. Embracing change is paramount” (www.rics.org/futuresurveyor). As she suggests, surveyors will remain a vital part of the surveying process; the amount of participation is up to them, but the time to act is now.

The building of the future

New buildings are already beginning to use some of the AI tools available to them, for example by adjusting services

“The goal must be for surveyors to become active members of a digital future

without human intervention. The Dubai Electricity and Water Authority (DEWA), for instance, has revealed plans for its new headquarters building Al-Sheraa, which it claims will be the world’s “tallest, largest, and smartest” net-zero energy building. Al-Sheraa will make use of AI to achieve this aim: according to DEWA (<http://bit.ly/2Ah5ZKx>), “It will feature a control centre which will allow essential systems to operate and shut down non-essential systems, including air conditioning and lighting”. This is in addition to a mobile app that helps employees track their energy use, book parking spaces and meeting rooms, and advises when to leave homes to ensure they arrive at work on time, based on current traffic reports.

Al-Sheraa represents the direction in which modern buildings are headed. It is of course a well-funded project and thus enjoys every conceivable state-of-the-art facility. But as machine learning becomes more widely available the price will inevitably drop, and enhancements that offer the same benefits will be adopted at a pace across the sector.

Save surveying

AI offers significant benefits to the property surveying profession, but its adoption must be done with a view to the future. Shun technology entirely and it threatens to automate nearly all parts of the surveying process; take it up too early and its benefits may not be financially viable enough to sustain its use.

However, if surveyors begin to adopt proptech now in some way, not only will processes be immediately improved by real-time information and the digitisation of built environment data, but full adoption will move at a measured pace, ensuring surveyors can stay a relevant and necessary part of the built environment professions. ●

Michael Wolter writes on behalf of Imfuna
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David Powell introduces a new protocol intended to help surveyors and lawyers handle the thorny area of boundary disputes

Drawing a line

Boundary disputes continue to cause friction between neighbours, generating disproportionate costs for those involved. For example, a dispute over a tiny strip of land in a suburban garden – perhaps just 50mm wide and 10m long – can often result in costs of £30,000 or more. That works out at a staggering rate of £120m per hectare.

In an attempt to reduce the likelihood of boundary disputes becoming so expensive, or even developing into full-blown disputes in the first place, a group of like-minded lawyers and a surveyor – the author of this article – got together in 2016 to see whether a standard approach could be devised for those involved in boundary disputes; the result is the Boundary Dispute Protocol.

Improving understanding

The aim of the protocol is to provide a helpful guide for lawyers and surveyors. It may also help the parties themselves to gain a better understanding of what professional advisors can and cannot do for them.

For lawyers, the protocol contains advice on the documentation required and the timetables involved if the matter proceeds to litigation. For surveyors, there is supplementary guidance intended to take them through the process step by step: it describes the form in which instructions are likely to be received, and how the surveyor should make an initial reading of the supplied papers to understand the nature of the dispute.

Site visit

Importantly, the guidance lays out the procedure for the site visit, including the initial interview with the property owner and the guided tour of the area in dispute.

It includes tips on the sort of questions to ask and the method of measurement most commonly used, such as a total station instrument

It also emphasises the importance of taking a set of clear photographs, which may prove invaluable when describing the details of a dispute to a court. Most boundary disputes are complex in that there are often several features in close proximity, so a clear photograph can help those who have not visited the site.

Detailed advice is also given on the office-based analysis needed after the survey has been processed, including the difference between paper title and the extent of registered title, as well as the use of available aerial photographs.

Meeting

Most boundary disputes that become litigious reach a stage where the expert surveyors are instructed to meet and produce a schedule of agreed and disagreed points, together with reasons for any disagreement. This enables a court, and the parties themselves, to identify the remaining areas of potential argument, therefore saving much time and money.

The guidance elaborates the form in which this meeting takes place, and explains that it can even be carried out by email, thus making it easier to cope with congested diaries and avoiding costly long-distance travel.

There is also a section on the approach to take when a surveyor has been appointed as single joint expert with a typical site programme.

Short reports

Again with the aim of keeping costs to a minimum, the guidance suggests that there are cases where a short report, rather than one that complies fully with the Civil Procedure Rules (CPR), might be appropriate. Such reports can easily be upgraded to fulfil the CPR criteria if

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Most boundary disputes are complex

the matter proceeds to court but, in most cases, they will enable the parties and their lawyers to understand where the probable boundary lies without having to pay any more than is necessary. Short reports are frequently requested by insurance companies where a property owner has applied for financial cover, for instance, because they allow the likely risk to be assessed.

Here to help

It is appreciated that many surveyors already have their own way of approaching boundary disputes, and may be concerned that the guidance is too restrictive. However, that is not the intention of the protocol or the guidance; the aim is to help those who may be new to the field and provide a simple manual for those who are more experienced.

The protocol is sure to be updated in the future, with feedback from surveyors being key to its evolution. The most important aspect is that it lays out how professionals can work together to ensure that property owners and insurers can resolve their disputes in an efficient, structured and cost-effective way. ●



David Powell is a chartered land surveyor and one of the founders of the RICS Boundaries and Party Walls Panel
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<http://bit.ly/2D4Aaxx>



Related competencies include
**Cadastre and land management,
Measurement of land and property**

Smart thinking

Recent RICS research looked at how cities still have some way to go in dealing with big and open data before they can legitimately be called “smart”. **Tim Dixon**, **Jorn van de Wetering** and **Martin Sexton** review the findings

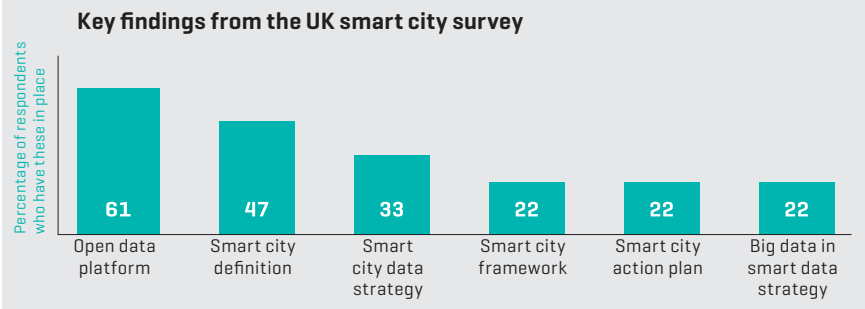
The interconnected agendas of smart cities, big data and open data provide, on the face of it, bold and exciting opportunities for the built environment professions, including RICS members. But what will those opportunities be, and what are the challenges? Research conducted in 2015–16 for the RICS Research Trust sought to explore those questions by focusing on cities.

The aim was to examine the scope to develop city-level data platforms in the UK and internationally, and to determine how RICS, its members and other built environment professions, including architects, planners and engineers, can benefit. It looked at big data and open data – respectively, large, complex and rapidly-changing data sets, and data that can be freely shared and used by anyone, anywhere for any purpose – on the built environment. In particular, it examined:

- the motives and barriers for big data platforms at city level, both in the UK and internationally
- key trends in the development and opening up of big data in cities
- the opportunities for advising clients and the potential for RICS members to use big data creatively and innovatively to add value to their work.

The project comprised an online scoping survey of UK smart cities, case studies of Bristol, Milton Keynes, Amsterdam and Taipei, and a UK expert workshop.

Figure 1



Headline findings

The research found that in the UK, there is an apparent lack of strategic thinking on smart cities, with the current focus appearing to be on open rather than big data. Only 47% of cities in the survey had an established definition for a smart city, with most using the BSI's (<http://bit.ly/2jyoHn5>). Moreover, planning at city level is not common; only 22% of respondents had a smart city action plan and the same proportion a smart city framework (see Figure 1).

Although there is some evidence of big data projects such as DIMMER in Manchester (<http://bit.ly/2GtZT5>) and REPLICATE in Bristol (<http://bit.ly/2DYUda3>) now under way in the built environment, the main focus in the smart city case studies is open data. Currently, there is little or no evidence of real estate or construction engaging directly with the smart city agenda in a coherent and effective way, either. Other key issues included differences in the interpretation of the term “big data”, a lack of business engagement from the property and construction sectors, and the proliferation of data standards.

Next steps

There is some evidence to suggest that the real-estate and construction sectors do already hold big data, and are using it internally for client services and other activities. A key challenge, however, is to ascertain whether, and how, this data could be used in the context of smart cities, as well as in other potentially collaborative ways.

These sectors need to develop clear strategies for smart cities and data that ensure greater certainty for all stakeholders. There need to be better incentives for companies to provide open and big data, with the development of viable commercial business models.

Professional bodies in the built environment sector including RICS and the Royal Institute of British Architects need to determine what role they and

“ Strategic thinking on smart cities seems to be lacking

their members should have in relation to data on smart cities. Having champions for change in the professional bodies to promote the agenda and enabling collaboration across the built environment professions are both critical issues.

Data and smart city skills, such as data analytics and management, are cross-cutting, and need to be embedded in, for example, RICS competencies. Built environment professionals generally also need a much better understanding of their clients' data requirements, as well as the potential impacts of big and open data on professional advice in this area.

It will also be important for the professional bodies to be more closely aligned with technology companies, city authorities and other stakeholders to enable all stakeholders to work together to improve services for citizens. ●

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Smart Cities, Big Data and the Built Environment: What's Required?
www.rics.org/smartcities



Related competencies include
Planning

TAXING TIMES

Robert Walker considers the tax treatment of lease inducements for landlords and tenants



A lease inducement is, in general, a payment or other benefit paid or provided by a landlord to a prospective tenant as an incentive to enter into the lease. Such an inducement may include:

- a reverse premium
- a contribution to the costs of fitting-out
- an interest-free loan
- a contribution to any other costs or discharging any other liability falling on the tenant.

Incentives may also be given under the terms of the lease themselves, and could include a rent reduction or the allowing of a rent-free period.

Reverse premiums

Certain inducements are considered to be “reverse premiums” and treated as taxable income in the hands of the tenant. Broadly speaking, these will be inducements that require the landlord to lay out money.

The most obvious form of reverse premium is a cash payment made by a landlord to a tenant. Less obvious forms are certain fit-out contributions and sums paid to third parties to meet some of the tenant’s obligations.

A reverse premium will be taxed in the hands of the tenant as profits of the

trading business, if the tenant is a trader, or as profits of the property business, if a property investor, in accordance with the accounts. Under UK generally accepted accounting principles, the benefit of the contribution was generally spread up to the first rent review, while under the International Financial Reporting Standards (IFRS), it is generally spread over the whole lease term.

Notwithstanding the fact that the tenant is taxable on receipt, a landlord who holds the property as an investment cannot make an immediate tax deduction for the payment. They may, however, be able to claim a deduction for the reverse premium as “base cost” for tax purposes on the ultimate disposal of the property. This is subject to the lease still being in place at the time of disposal.

The position is better for a landlord who is temporarily holding the property as stock in a property trading business: the reverse premium will be deductible when computing the landlord’s trading profit, as it is likely to be incurred wholly and exclusively for the purposes of the trade.

Fit-out costs

Where the landlord meets fit-out costs normally borne by the tenant directly by paying for the tenant’s fit-out supply and installation or indirectly by reimbursing them, the amount the landlord spends will represent a taxable reverse premium for the tenant.

The exception to this is where the landlord’s

contribution has reduced the expenditure qualifying for capital allowances in the tenant’s hands. It is not then taxed as a reverse premium on the tenant, but the entitlement to capital allowances passes to the investing landlord.

For a landlord who is a property trader, the contribution is deductible as a trading expense.

Rent reduction

Inducements may also be made under the lease terms.

A rent-free period may be more tax-efficient than the payment of a reverse premium, which is not a contribution to qualifying capital allowances expenditure. For the tenant, a rent-free period means there is no payment on which it will be taxed, and the landlord is not taxable on the rent forgone.

If the landlord had paid a reverse premium to achieve the same economic effect, then the tenant may have been taxed on the receipt. The landlord in turn would have been taxable on the higher rents, and potentially there would be no corresponding deduction for the reverse premium paid.

SDLT

A reverse premium used as an inducement to enter into a lease is not subject to Stamp Duty Land Tax (SDLT).

VAT

Where an inducement payment is made to a prospective tenant, this is in most cases not done in

respect of a supply for VAT purposes, and is therefore outside the scope of VAT. However, there are exceptions to this that would result in a standard-rated supply by the tenant where, for example, they agree to act as anchor tenant in return for payment.

CIS

Inducement payments made by landlords to tenants to enter into a new lease are unlikely to fall under the Construction Industry Scheme, or CIS (<http://bit.ly/1FHHlge>). Where the payment is made for the tenant to undertake building work that would otherwise have been carried out by the landlord, it may have a CIS implication but is unlikely to be considered an inducement.

Conclusion

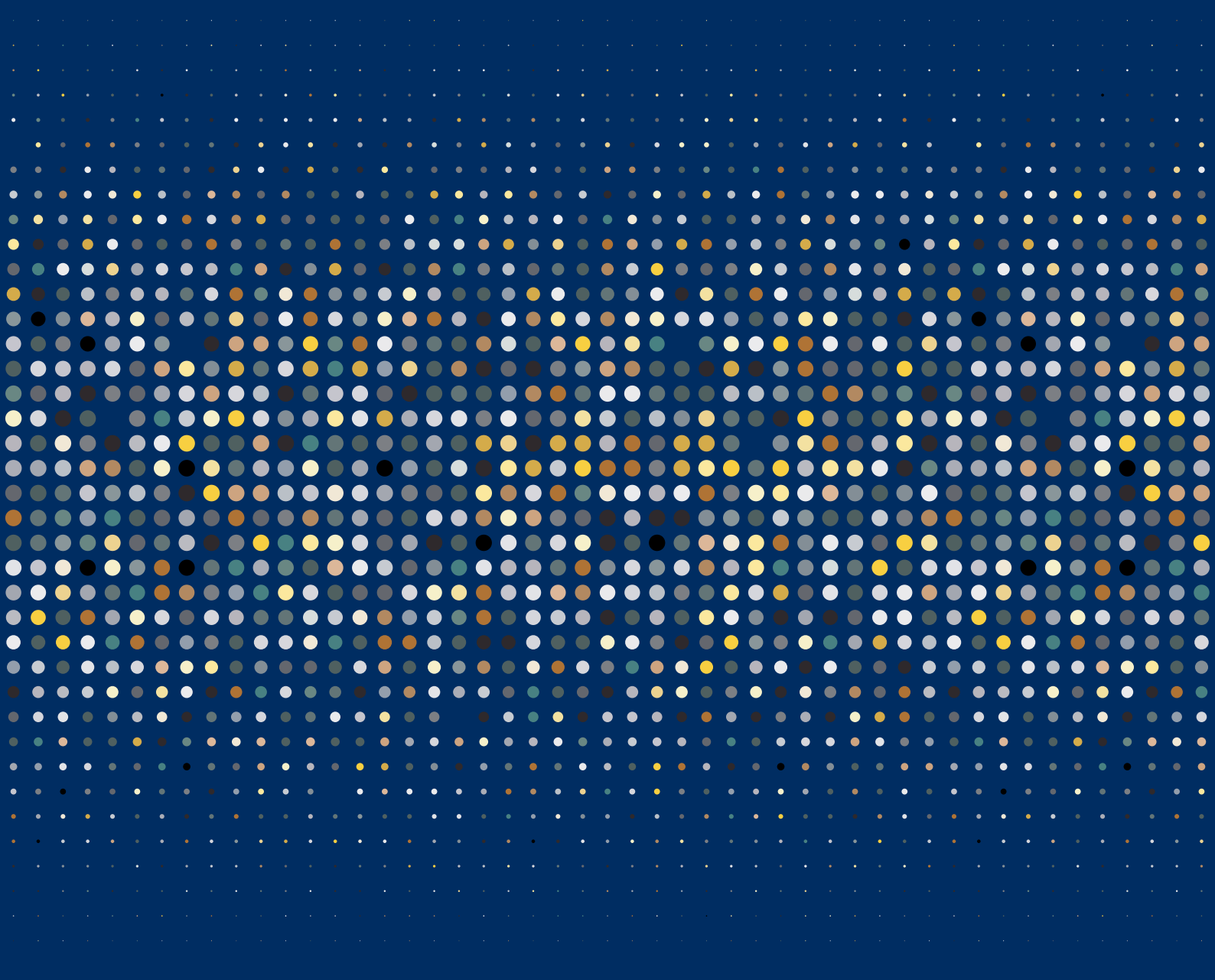
Care needs to be taken by both landlords and tenants when negotiating over new leases. What may appear to be similar commercial alternatives can potentially result in very different situations in regard to tax. ●

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commercial



Commercial property rental rates could be at risk when the Minimum Energy Efficiency Standards come into effect in April. **Claire Das Bhaumik** summarises a recent white paper on the possible effects

There may be trouble ahead

As of 1 April, landlords will be prohibited from letting substandard properties, which are defined as those with an energy performance certificate (EPC) rating of F or G under the Minimum Energy Efficiency Standards (MEES).

The Energy Efficiency (Private Rented Property) (England and Wales)

Regulations 2015 (<http://bit.ly/2FnQT68>) place a requirement on landlords to ensure their properties comply, and these apply to new lettings, including sublettings, as well as lease renewals and extensions where the property has an EPC. From 1 April 2023, MEES will apply to all non-domestic property where there is an EPC, unless they are exempt.

Building energy simulation company arbnco has recently produced a white paper, *MEES: The implications for rent reviews, lease renewals and valuation*,

quantifying the risk for commercial property and the knock-on effects on valuations, and including a case study. The current expectation is that the incoming regulations may suppress rental levels at rent review and lease renewal. If rental growth is suppressed, then – with all other things being equal – growth in capital values will likewise be suppressed.

Furthermore, if evidence emerges that MEES affect rental values and the property in question is thought to be at risk in a future rent review or lease renewal, then the yield could be adjusted for an investment sale. This could also potentially suppress capital values further. Anticipated rental suppression could manifest itself through both the complexities and nuances of rent review and lease renewal negotiations, or through transactional evidence that shows MEES-compliant buildings achieving higher rents or sale prices than those that do not comply.

Summary of findings

The white paper concludes that MEES-related risks are real. Valuers will mount polarised arguments during rent negotiations depending on whether they are appointed by the landlord or tenant.

The effect of MEES on value is likely to range from a sum slightly more than the cost of relevant energy efficiency improvements to one considerably in excess of this, potentially leading to a reduction of more than 10% in the building's capital value.

The UK government's Green Construction Board reported in 2014 that 19% of all commercial property in England and Wales is in danger of failing to comply with MEES. As the size of the UK property market is estimated to be £883bn (<http://bit.ly/2hlw0hA>), this means that as much as £16.77bn could be wiped off the value of the UK's commercial property portfolio.

It is unlikely that leases covered by the Landlord and Tenant Act 1954 will

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Tenant fit-out can play an important part in complying with the regulations

escape MEES' impact on value. However, the main impacts will tend to follow statutory lease renewals, and leases might only be affected at rent reviews if transactional evidence proves there is a rental discount. Central to the debate on value impacts are typical lease covenants relating to hypothetical lets, and the provisions of section 34 of the 1954 act relating to rent under new tenancy.

Effects on rents

Rent reviews are typically undertaken using the assumption of a hypothetical letting and include a number of factors that affect valuation. Among these are the length of the lease to be valued, whether a rent-free period needs to be accounted for, and whether a tenant's improvements should be disregarded.

It is impossible for a property to get a good EPC rating without having energy-efficient building services. However, it is in many cases currently possible to get an E rating or better with efficient building services but relatively poor building fabric. Tenant fit-out can therefore play an important part in complying with the regulations, and the way in which a fit-out is treated in the context of the lease can thus affect property valuation.

Where the tenant is responsible for fitting-out, there is a risk that disregarding their improvements will mean this hypothetical property cannot be let. In such cases, the cost of the relevant energy efficiency improvements could be amortised over a period of time to arrive at what is effectively a reduced net rent, but doing so is generally only possible where it has had the landlord's formal consent.

Whether or not such disregards become generally accepted could depend on existing case law, and the extent to which any precedents can be extended to include MEES. The assumption that premises are fit and available for immediate occupation and use is a typical provision in most leases. As such, this raises the issue of whether this would also include the possession of the required EPC rating.

For statutory lease renewal pursuant to the 1954 act, there is no assumption of compliance with covenants or that the premises are fit and available for immediate use.

Valuation considerations

Clearly, the effect of MEES on valuation is not yet known, and will ultimately be determined by market forces, case law and legislation. However, while it may not be

“ Valuers will mount polarised arguments during rent negotiations

possible to provide a precise assessment of the impact, the potential effects of MEES on rent and capital values can be considered by examining the impact of the various arguments that might be raised at rent reviews or lease renewals.

The following arguments assume that tenants have made improvements that increase the EPC rating from G to E with the landlord's consent; greater detail and a costed example are included in the white paper itself.

Potential arguments from tenants

- At rent review, tenants' advisors may argue that the improvements should be disregarded. This would mean that the letting could not go ahead at the review date because the EPC rating without the improvements was below E.
- Given this, the tenants could argue that to comply with the MEES the landlord would have to undertake the required works at their own cost. This would mean disruption for the tenant and, as such, they would require a rent-free period to cover the time in which the works were carried out.
- The tenants could also attempt to negotiate a rental reduction to reflect the fact they would not be able to occupy the offices from the start of the lease. They would have to make alternative arrangements and thus lose business or incur costs, which would require compensation by way of a rent reduction.
- Since the works were paid for by the tenants and the rent review clause in each lease disregards any increase in rental value attributable to tenants' improvements, the tenants would also argue that the cost of the improvements should be amortised over the period of the remaining lease term.

Potential arguments from landlords

- At rent review, landlords may argue that for the premises to be assumed fit and available for immediate occupation, they must have a minimum EPC rating of E. As such, they would argue that this requires the parties to assume that it has that rating, meaning that the tenant will not be rewarded with a discounted rent for making improvements.

- The landlord may be prepared to agree a rental reduction to reflect the amortised cost of the works. However, the benefit to the landlord would be longer than the remaining lease term, and therefore, the period over which the costs should be amortised would be longer.
- If the landlord's consent had not been given for improvements, they could argue that the tenant has not complied with their lease conditions so the works should not be disregarded and the offices should be valued at the full rate.
- At lease renewal, the rent will be reviewed in accordance with section 34 of the 1954 act. The landlord could argue that, even though this contains no provision enabling them to assume an E rating, it would in fact achieve an E as the works have been completed.

The potential effects of the above arguments on values could range from negligible to profound. This introduces uncertainty into the valuation process, increasing property risk. It therefore remains to be seen how the market is affected.

It is important to note that the regulations place a great deal of importance on the EPC rating. As such, holding an inaccurate EPC could have serious and expensive consequences for the landlord. **C**



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MEES: The implications for rent reviews, lease renewals and valuation <http://bit.ly/2iTKitS>



Related competencies include Sustainability, Valuation

The retail and logistics real-estate sector needs to be aware of the impact that the autonomous vehicles revolution will have, write **Ian Craig** and **Mary Liu**

Driving force

A tap on your phone and a driverless car appears, drops you off on the high street and then parks itself nearby. When you're finished, another tap and your car comes back to pick you up. Or perhaps it drives itself to the supermarket to be loaded with the shopping you did online in the morning.

A glimpse of the future? Many believe we will soon be entering the age of driverless cars and that this is what the average shopping experience could look like. Even Parliament, that most old-fashioned of institutions, is embracing the prospect.

With the increasing hype around driverless cars, money is being poured into the technology. Recently, Delphi paid \$400m for Nutonomy, a company that is developing autonomous vehicles (<http://tcrn.ch/2yFrVyP>) and last year, the UK government also allocated £20m to research (<http://bit.ly/1PsYh0Q>). The Automated and Electric Vehicles Bill is currently progressing through Parliament, clarifying that driverless cars remain within the motor insurance framework rather than under product liability; it aims for "consumers in the UK to be amongst the first in the world to reap the rewards that improved transport technology will bring" (<http://bit.ly/2COdsiK>).

Indeed, some automation is already available. For example, the Active Park Assist feature available on Ford Focus models steers the car into parking spaces; however, this still requires human monitoring and intervention.

While the definition of driverless cars depends on who you ask, the ambition is broadly for a fully autonomous car that can navigate itself and sense its

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Driverless trucks could travel through our cities overnight

environment without human input. The intention is to get to a point where people can travel without needing to tackle traffic, park or even stay awake.

The general consensus is that it is now a question of when, rather than if, this technology becomes mainstream. There is even a map that allows you to see the preparations and trials taking place across the globe (<http://bloombg.org/2BgTPCj>).

Changing direction

The development of real estate has always been heavily influenced by changes in the way we travel. Many built-up areas are around ports, from the time when ships were a significant mode of transport. As car ownership moved from a luxury to the norm, it placed strain on pedestrian-based city designs. Real-estate developers and planners have had to adapt, often by shoehorning an access road or parking space in wherever it will fit.

Anticipating and reacting to major changes such as these has been key to successful real-estate development and town planning. With driverless cars pegged as the next revolution in the way we travel, now is the time to start placing your bets on how cities will be affected. In this article, we will look at just a few of the potential changes for the retail sector.

A new landscape

One of the most widely anticipated changes is the effect that driverless technology could have on the landscape of cities. With this technology comes the ability for your car to drop you off and then drive away, either home or to a car park further away. Cities could then be redesigned as space is freed up by the reduced need for street-side parking.

Architects and developers are now working to ensure new buildings are constructed in a way that ensures they can easily be adapted, if and when driverless cars render parking spaces redundant. The real-estate investment trust AvalonBay is using level floors rather than inclines in its garages to make future conversion as straightforward as possible (<http://lat.ms/2p8B0eS>).



While this may seem like a great opportunity to increase net lettable space in buildings, there are negative implications for investors to consider. Parking revenue is of course a lucrative income stream to lose – something already becoming apparent due to the rise of services such as Uber. But in turn, reduced demand for parking will present opportunities for those quick to find innovative ways to repurpose this newly available space (<http://bit.ly/2xC6Zlj>).

Return of the high street

The limited space available in many urban locations has resulted in a visit to the high street becoming associated with the difficulty of finding an elusive parking space. With driverless cars set to eradicate this problem, there could be resurgence in footfall on high streets: not only will drivers be coaxed back to high-street browsing, those that cannot drive themselves, such as the elderly or



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Many believe we
will soon be
entering the age of
driverless cars

online or in store is that, without the need for a human driver, such journeys could be made through the night and timed to appear whenever convenient for the consumer. This takes away some of the frustration from online shopping.

Warehouses are already using autonomous vehicles to sort and move parcels, within controlled environments, and the vehicles – while able to move and perform these functions – struggle to sense and avoid obstacles. Advances in autonomous vehicle technology could streamline the process, as well as deliveries from warehouse to home.

The rise in online shopping has already affected retail and real estate. One of the big current issues is finding land to build not only huge warehouses but also local depots in residential areas, and allow still quicker delivery times. If it is not possible to combine these as some are trying to do, driverless vehicles along with a scaled version of Amazon’s lockers could be the answer. Driverless trucks could travel through our cities overnight, not restricted by the need for sociable hours or sleep, dropping off deliveries at pick-up points that would appear throughout the city to accommodate demand.

Looking forward

While the vision of being able to take a nap in your car and wake up at your destination is further away than some companies might hope – there are still some significant teething problems with the technology – driverless cars and their effects are inevitable, if not immediate. The real-estate sector needs to accept that change is on the way and adapt to it, as it has many times before. ©



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disabled, could be transported there with ease in an autonomous vehicle.

Any resurgence of high streets could spell trouble for out-of-town retail parks and shopping centres. These have done well in recent years, in part due to their vast car parking capacity and the idea of a one-stop experience. If high streets become more convenient, retail developers may need to invest more in leisure to keep such parks attractive. Food courts and cinemas are a good start, but more may be required to entice people to point their driverless cars further from home.

Despite the success of online businesses such as Amazon and Asos, physical stores are not expected to die out completely, and numerous studies have concluded that people still prefer the experience of shopping this way (<http://bit.ly/2A5oaEd>). Although multi-channel retailing is clearly here to stay, if the industry adapts then driverless

cars could present new opportunities for physical stores.

Driverless cars are also likely to revolutionise logistics to the benefit of brick and mortar shops. Physical stores could thus become more like showrooms, where customers can come in to see the physical goods – which is a key attraction of such outlets (<http://bit.ly/2CMOn7M>). They could then place an order which is picked up by a driverless car from a different location and delivered to their home within hours. This would reduce the space taken up by stock in physical stores, providing the space for a wider variety of goods or for alternative uses. It also brings some of the convenience of online shopping – removing the need to lug around bags of shopping, for example – to the physical shopping experience.

Will it deliver?

One of the evident benefits of driverless cars for delivering goods purchased

Dilapidations insurance should significantly reduce uncertainty about costs for occupiers at lease-end, report **Nick Mace** and **Simon Hartley**

One less thing to worry about

Uncertainty is the bane of most businesses: it deters investment, obstructs forward planning and plays havoc with the balance sheet.

Consequently, a number of insurance products in recent years have been designed to make matters more certain. One of these more recent products concerns dilapidations.

Dilapidations are a particular bugbear for businesses. The issue often arises after a company has decided to move, but is left with an ongoing headache over whether repairs and reinstatement of alterations have been completed in accordance with the commercial lease. If no cash settlement is agreed, the parties may find themselves in a lengthy legal wrangle, with the costs often exceeding the sums at stake.

Critical costs

Traditionally, this prolonged period of uncertainty favours the party that has the deepest pockets. Landlords usually have more experience of dealing with such claims, while tenants tend to shy away from having a potential liability hanging over them for years – whatever their surveyors may say about the case. The tenant's only advantage may be that it holds the funds, although that will not be the case if the landlord retains a substantial rent deposit.

Top tips for tenants

1. Take advice from surveyors at the beginning of a lease and again at least two years before expiry.
2. Understand the legal basis of your liability under the lease.
3. Consider insurance to cap your future liability.
4. If no agreement is reached with the landlord, suggest early mediation.

Contributing to this concern is **PGF II SA v OMFS Company 1 Ltd** [2013] EWCA Civ. 1288, where a landlord claimed £1.9m for breach of repairing covenants. Further lower offers were subsequently made that the tenant rejected, together with two offers of mediation. The day before the trial, the landlord accepted the tenant's formal settlement offer of £700,000, but the trial judge decided that the tenant should face a costs sanction for unreasonable failure to mediate, depriving it of its costs for the relevant period. On appeal, the decision was upheld on the grounds that the mediation had a reasonable prospect of success when offered and the tenant's silence was itself unreasonable conduct.

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Parties may find themselves in a lengthy legal wrangle

Another factor that has ratcheted up levels of uncertainty in recent years is the length of the lease – the old, standard 25-year lease has now shrunk to 10 years, often with an option to terminate after five, so lease-end issues are now more frequent. Tenants should consider their dilapidations position about two years before their lease ends, whether they are planning to leave or not, and a surveyor should be brought in to help assess its options.

A few businesses – often those with multiple leases around the country – may set aside a reserve for dilapidations from day one of a lease. In some cases, substantial capital provisions may even be made for a claim that never materialises, which is not the best use of a business's resources.

Insurance has a good record of providing certainty against litigation exposure. The initial model for the

dilapidations policy was rights of light insurance, now used in the majority of significant developments where infringements are a concern, and is widely recommended by surveyors.

Backstop

Essentially, dilapidations insurance caps the tenant's liability by the payment of a one-off premium with an agreed deductible, which is underwritten on a case-by-case basis. The pricing is based on the quality of the surveyor's report, the lease agreement itself and the communication that has been had with the landlord. In the case of a lease coming up to expiry, premiums usually range from 1% to 5% of the indemnity limit. A policy can also respond to an active situation where negotiations are going nowhere.

The policy is written on an “agreed conduct” basis, so the surveyor retains complete control of negotiations with the landlord until a claim is formally notified to the insurer. This should take place if the landlord has issued a claim, or an offer is made, for more than the deductible; following this the insurer should see correspondence from, and agree correspondence to, the landlord, and be involved in discussing any financial decisions. This offers extra peace of mind because, if the deductible is exceeded, the insurer meets the additional costs, including professional fees, up to the limit of indemnity.

The policy is designed to allow the tenant to walk away from the premises without further unspecified financial commitment, leaving the insurer as a backstop. By remedying these liabilities, the company renders its balance sheet more attractive to potential investors or buyers, while insurance is also likely to increase the confidence of tenants in taking on their landlords as well as making them more receptive to their surveyor's advice. **C**

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Surveyors in the City

Andrew Knight explains how RICS is working to strengthen connections between surveyors and the Square Mile

Since the financial crisis some 10 years ago and, subsequently, the low-interest environment that seems to be the new normal, there is an increasing diversity of lenders and investors in commercial real estate and infrastructure. Many are either new to real estate or have increased their allocations to these classes in pursuit of higher returns than are currently available from other assets such as government bonds.

While the UK clearing banks have long provided finance for commercial real estate and there is increasing lending and direct investment from the large insurance companies, those active in the UK market now include asset managers, private equity, US and other international banks, real-estate investment trusts, pension funds, sovereign wealth funds, hedge funds, family offices and other individuals of ultra-high net worth.

As well as retaining legal and accounting advisors, these investors are making considerable use of RICS members' services, working to our international standards and guidance. An engagement programme was therefore launched in 2015 to promote the recognition and influence of our standards across the financial sector, centring on the City of London.

Promoting our worth

In addition to engaging and supporting RICS members who are already working in the sector, the programme seeks to promote the value of using chartered surveyors, whether in house or in our member firms, across the UK and internationally. By working to the highest ethical and technical standards, RICS members can help to maximise returns and minimise risk in real estate.

The sector already clearly recognises the impact that International Valuation Standards (IVS) and RICS-registered valuers working to the Red Book bring to the market, both in the UK and beyond. In one of the first meetings I had, a participant commented that the Red Book was one of the significant factors in "making the UK the most transparent and liquid real-estate market in the world".

With the emergence of alternative real-estate types such as purpose-built student accommodation, institutional build-to-rent property for the private rental sector, logistics and senior living, as well as the new models of services offices and co-working, the sector is keen that the valuation profession continues to embrace these and provide valuations, as the range of commercial real estate extends beyond the traditional categories of offices, retail and industrial.

RICS' work in the USA on the valuation of businesses and intangible assets for financial reporting, establishing the credential Certified in Entity and Intangible Valuation, has also



been well received by the major UK and European business valuation firms, and cemented our important role in the broader valuation profession.

International standards

The International Property Measurement Standards (IPMS), International Construction Measurement Standards (ICMS), International Land Measurement Standards (ILMS) and International Ethical Standards (IES) have all been well received, too; many investors work on an international basis, and thus value the cross-border consistency these new standards bring.




Investors are making considerable use of RICS members' services

There have been very positive responses to RICS' recent work on conflicts of interest and dual agency as well, since the sector clearly sees professional conduct as another key area where we and our members will be vital to provide the highest level of service.

Understanding real estate

The finance and investment sector recognises that the characteristics of real estate and infrastructure set these apart from other assets such as equities, bonds or commodities, so it is critical that lenders and investors employ staff and professional advisors who have a good understanding of both real estate and finance itself.

To support this, RICS has developed training to help the financial sector understand the full real-estate lifecycle as well as major valuation considerations. So RICS members can deepen their understanding of the language and approach of finance and investment, we have also developed training to help them provide better advice to their clients in the finance sector.

With such large volumes of foreign capital being invested and lent in the UK real-estate market, it remains critical for RICS to continue to promote our standards and our members' services to this sector in the UK and globally. 



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From property value to public value

Kevin Muldoon-Smith
and **Paul Greenhalgh**

urge property professionals to get involved in the discussion over how land and real-estate value can contribute to local authority funding

The value of land and property is becoming increasingly significant to local government finance – but the valuation of both, and methods of taxation, should be urgently reformed to help fund local services and support economic growth.

Until recently, local government funding was generally efficient, relatively equally distributed and controlled by central government; however, emphasis is now being placed on local autonomy, austerity and efficiency. Typically, it will be the responsibility of administrators from central government, who devise policy, and from local government, who implement it, to work out how welfare requirements are to be reconciled with what the Local Government Association (LGA) reports will be a 77% reduction in finance by 2020.

To a large degree, the property sector has not played a part in this new context for public-sector finance. This is a missed opportunity, however, given the growing

interest in the value of land and property and its potential taxation as a panacea for devolved welfare, infrastructure and development requirements that are largely unfunded.

Property tax, land value capture, infrastructure premiums, local asset-backed vehicles, bond mechanisms, direct property investment and more efficient exploitation of council assets and local anchor institutions have all received fresh attention in recent years. However, the debate around these methods has largely been confined to public administration and economic geography. Consequently, although the government clearly wishes to exploit the inherent value in land and property, there is no clear rationale for doing so, and initial efforts have been beset by difficulty.

Shaky foundations

This situation is illustrated by one of the government's flagship devolution policies, the Business Rate Retention Strategy (BRRS), introduced in 2013. Currently, BRRS allows councils to retain 50% of business rates. The intention is for local authorities to retain 75% of new business rates by 2020 and 100% BRRS after 2020; the latter is currently being piloted in several locations in England.

The BRRS only rewards business rate growth generated by new property

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There is a clear opportunity for the real-estate sector to bring its expertise to bear

development, with any growth from existing property stripped out. Empty property taxation is also rewarded more than thriving business centres, because the former is levied on the maximum business rate multiplier rather than the lower, small business rate. Moreover, buildings occupied by larger employers and businesses generate most tax while small businesses largely exist outside the business rate mechanism due to relief, the rateable value threshold for which now stands at £15,000.

The BRRS implicitly assumes that new property development can act as a proxy for economic development; however, this is not borne out in reality. Locations with buoyant rental levels that can attract new commercial development have an advantage over those where demand is low and viability is a challenge. Furthermore, certain locations with buoyant job prospects – for example the A19 corridor in Sunderland dominated by Nissan, or the so-called “Golden Triangle” for logistics in the Midlands – are not accommodated by the BRRS. This is because industrial property, although space-hungry, does not translate into significant business rate income due to its lower rental value per unit area.

Constructing a better system

Current efforts to improve the BRRS mostly involve complex alterations to the underlying administrative system, such as redesigning the reset mechanism or modifying the proportion of local retention. However, changes to the technical fabric of public administration will not alter the underlying flaws in the BRRS. In order to improve the situation, a comprehensive debate is needed that covers property, finance and tax policies.

It was alarming that none of the major political parties mentioned BRRS in





their manifestos for last year's general election. Furthermore, the proposed legislation that would have underpinned 100% BRRS, the protracted Local Government Finance Bill, fell once the election had been called, and was not included in the government's subsequent legislative programme outlined in the Queen's Speech.

The recent silence in relation to the BRRS has certainly contributed to the uncertainty about how local areas will develop after 2020 when the 100% BRRS was due to come into force. However, this hiatus gives the commercial property sector some time to reflect on, and influence, ways that the BRRS could be improved, the better to support local welfare requirements and prompt clear local economic development and industrial growth.

An obvious area for attention is the singular focus on new development at the expense of new value in the existing built environment – a limited perspective that ignores the potential reward held in property stock. In response, the commercial property sector should seek to advise as to how a more comprehensive approach, combining the societal, environmental and economic value of all commercial real-estate stock, could be developed.

A significant change would be for the commercial property sector to lobby the government to reduce the rate of empty property taxation below the small business rate multiplier, which would give local authorities and landlords an incentive to promote small business growth rather than rewarding dormant potential. It remains the case that local authorities can potentially make more income from empty rates than business rates, and this became more pronounced when the government significantly

“ Empty property taxation is also rewarded more than thriving business centres

increased the threshold for small business rate relief in 2016.

Another problematic but rewarding change would be to consider how the potential growth in value of existing commercial property may be better captured. Currently, any new property value created through strategic economic development initiatives such as improved design, individual placemaking, infrastructure or transport is lost. Meanwhile the added worth derived from improvements in building performance – which might be intended to deal with, for instance, issues including climate change, economic productivity and new ways of working – cannot be easily captured.

Growing over the gap


Business rate retention accounts for only 30% of local authority funding. However, it is unlikely that this policy and its wider stated aim of achieving incentive-based financing will disappear given the recent announcements from the LGA that local authorities would see a 77% reduction in central funding by 2020 and a potential £5.8bn funding gap. Councils' reliance on local property tax will only increase as a proportion of total spend as they fight tooth and nail to remain solvent and provide a sustainable level of welfare services.

Chancellor Philip Hammond announced in the autumn budget that the City of London, the 32 boroughs and the London Mayor will be able to keep all their business rate growth from this year, even though the legislation for 100% business rate retention has been kicked into the long grass. The Chancellor also announced that the five-yearly rating revaluation would be reduced to three years after the next revaluation in 2022. The following week, the government published its long-heralded national Industrial Strategy. All three initiatives have been mooted for some time; however, it is clear neither how the announcements will work in practice, nor what the final consequences will be.

Exploiting value

The central challenge for those who are interested in new forms of local governance and finance based on land and property value is understanding how relatively rigid administrative systems can be adapted the better to exploit the value of land and property. This is why we began a new research project late last year at Northumbria University seeking to understand how proceeds from land and property and the expertise of the real-estate sector can better inform the funding of future local welfare needs in the UK.

Alongside an international comparison of land- and property-led public-sector finance initiatives, we will as part of the project be canvassing the views of real-estate professionals on how the public and private sector can work together the better to exploit the value of land and property. The intention is to move beyond the negative view that prevails in the international press and academic community of the real-estate sector as an extractor of local value, towards a positive narrative of public-sector and real-estate market partnership.

There is a certain inevitability about the increased exploitation of real estate, in terms of land value and taxation, for the purposes of public welfare. How this unfolds, however, is still amenable to influence. There is a clear opportunity for the real-estate sector to bring its expertise to bear to have a positive influence on society, the wider economy and the environment – and thus counteracting the traditional criticism that it protects vested interests. 



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Related competencies include
Capital taxation

Virtuous circle

Facilities managers have a vital role to play in implementing a circular economy in the built environment, suggests **Sara Wilkinson**

The circular economy has the potential to change the way we design, build and manage our built environment. Compared to the existing, extractive industrial model, the circular economy is restorative and regenerative.

Relying on system-wide innovation, it aims to redefine products and services to design waste out while minimising negative impacts. Underpinned by a transition to renewable energy sources, the circular model builds economic, natural and social capital. The question is, how might this approach manifest itself in facilities management?

The circular economy

The 2013 report *Towards the Circular Economy: Economic and business rationale for an accelerated transition*, from the Ellen MacArthur Foundation and McKinsey (<http://bit.ly/2AkgzAn>), sets out six principles for a regenerative and waste-free economy:

1. all materials are recycled infinitely in technical or biological cycles
2. all energy is derived from renewable or sustainable sources
3. human activities should support ecosystems and rebuilding natural capital
4. human activities should support a healthy and cohesive society and culture

5. human activities should support human health and happiness

6. resources are used to generate financial and other forms of value.

Applying the principles

Facilities managers coordinate space, infrastructure, people and administration. Their role is to control the physical resources that flow through a location and the services for the people who work there. By overseeing the system, facilities managers have considerable influence.

Current approaches estimate the average lifecycle of commercial property to be 50 years, with refurbishment every 10 years and a major refurbishment between years 20 and 30.

As an example of typical use of resources, the Dutch office market totals 50m square metres, energy in use is 61.2bn MJ a year, 60% of which is used in heating, and a total of 88m litres of water is consumed for kitchen and cleaning uses and toilet flushing, sourced from municipal drinking water.

Figure 1 compares construction and operational figures for heat, emissions, electricity, and materials and waste in Dutch commercial property; operational use exceeds construction use in all cases.

Leverage points

Facilities managers need to reduce costs and create value in core business areas, and increasing the circularity of resource

flows during operation enables both.

Three key leverage points are:

- working in a broader way with stakeholders in the design phase
- making interventions during the operational phase
- encouraging behavioural change and usage patterns in the operational phase.

Working with stakeholders

Facilities managers should work with architects during the design phase to ensure the building can be adapted and upgraded, and that it is easy to access internal infrastructure such as wiring and ventilation. UK businesses spend £2bn a year moving people within buildings, so collaboration between facilities managers and architects can reduce this cost and increase competitiveness and profitability.

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Compared to the existing, extractive industrial model, the circular economy is restorative and regenerative

Where possible, demand for heating and lighting should be limited by maximising the potential to use solar energy through building orientation, window size and heat recovery ventilation systems; this can reduce energy demand by 90%.

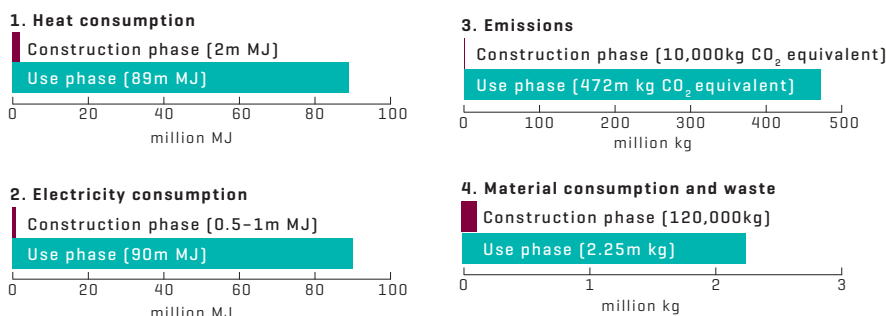
Digital technologies such as building information modelling (BIM) can be used for planning, designing, constructing and managing property. Through more direct collaboration with stakeholders, facilities managers can use BIM to identify performance and use patterns and the costs of maintenance and retrofits.

The technology is evolving, and parametric modelling – with spreadsheet-like databases for integrating and interconnecting buildings – allows facilities managers to make real-time changes for multiple users. Different models can be discussed with the design team.

Design can also be optimised for the total cost of ownership. Typically, the cost of repair is between five and 15 times the cost of avoiding a defect. Better planning, forecasting, and speed and quality of maintenance when hardware has been designed to be easy to upgrade, together with long-term collaborations between

Figure 1

Resource use in construction and operational phase in Dutch commercial property



Source: AA-FM 2014

stakeholders, can reduce total cost by between 10% and 20%.

Operational phase interventions

The aim is to make resource flows circular and generate new kinds of value. This can be done by energy and waste reduction programmes, monitoring and continuous improvement of resource and energy use, and closing systemic loops.

Energy reduction programmes can include the following:

- offering building occupiers incentives to use public and green transport
- allowing adjustment of heating and lighting on a decentralised basis
- incorporating sensors and user interfaces to collect feedback; smart building monitoring with user feedback can reduce energy by 15–30%
- involving employees, because they can share their experience of actual working conditions.

The following waste reduction programmes are important:

- source separation of waste to derive maximum value
- infrastructure for waste reduction and education of occupants
- use of local digestors and clean technologies for organic waste streams, including black and grey water
- collecting and re-using rainwater locally
- making buildings biodiversity-friendly.

Monitoring and continuous improvement can entail:

- smart meters and smart buildings, to ensure data is transparent and easily accessible and enable users to assess performance; this reduces energy consumption by 15–30%
- BIM to monitor building health throughout its lifecycle.

Closing the following loops on site, where possible, will also help:

- organic waste typically comprises 20–30% of total waste, and can be dealt with by biodigestion, heat recovery, mineral extraction, using compost as input for on-site food production or general soil amendment; on-site food production improves user engagement and education
- greywater can be recycled for toilets or landscaping
- heat recovery through geothermal heat pumps and extracting heat from waste and cooking, as well as building insulation and orientation
- sorting and pre-processing waste on the site to maximise recycling and educate users



The cost of repair is between five and 15 times the cost of avoiding a defect

- landscaping for biodiversity and species protection reduces need to use commercial fertilisers
- using renewables where possible, such as combined photovoltaics and solar hot water, small-scale biodigestion and battery storage of electricity for emergency back-up, reduces the need to use other fuels, which are typically fossil fuel-based
- 3D printing for on-site manufacturing or re-manufacturing will be possible in the future, cutting down on transport costs and emissions.

Behavioural changes

Wellbeing at work is vital for productivity and staff retention. Current trends include changes in space use such as activity-based work (ABW) stations and decreasing the space per person, which reduces the amount of physical resources required per staff member, thereby reducing environmental footprint. However, ABW layouts can at the same time reduce opportunities for social interaction and collegiality, thereby reducing social sustainability.

Commercial space providers should also consider access to childcare and other user amenities; further measures may include the following.

- Decentralised access to heating and lighting controls increases productivity as users manage their own environments.
- Natural ventilation and access to green space is related to good indoor air quality and wellbeing, improving productivity by more than 11%.
- Natural daylight and views result in productivity increases of 23%, and having windows that can be opened, 18%.
- A warm greeting for new staff increases productivity by 15% in the first nine months.
- Collective goals and incentives to achieve performance targets result in greater levels of teamwork and outputs.
- Designing for function by focusing lights on working areas is more economic than ambient lighting.
- Behavioural incentives can be offered, such as shower facilities for cyclists.

Facility Management in a Circular Economy provides more information on these (<http://bit.ly/2COYPvz>).


Beyond the building

At a district scale, waste management can be integrated into the circular economy; for example, waste collection companies can specialise in processing waste such as textiles, plastics, paper and organic materials, and van Ganswinkel in Rotterdam operates a circularity centre collecting waste for re-use and recycling. Combined heat and power plants can also distribute hot water for heat energy to several buildings.

Blockchain could also play its part in the circular economy by stamping materials at the point of extraction, and on through production, distribution, use and disposal. For example, plastics used for soft drinks could be tracked from production through filling and vending and then disposal. In the circular economy, these plastics would then be recycled into office furniture, trays, pallets and other products, which can be traced until their final disposal.

Blockchain would thus allow facilities managers to measure and record waste streams in a property, and the data can inform reporting of corporate social responsibility. Other technological innovation that could help promote the circular economy is buildings' or components' ability to self-diagnose some maintenance requirements by using sensor technology integrated into BIM.

To wrap up

The benefits of circularity are economic savings, lower greenhouse gas emissions and less waste. To create a circular economy, we need to learn new ways of designing, constructing, retrofitting, maintaining and operating buildings. Facilities management has a key role to play in educating other stakeholders, and blueprints are emerging that will enable facilities managers to operate on a sharing paradigm. It's time for facilities managers to consider the benefits of going round in circles. 



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Related competencies include
Facilities management



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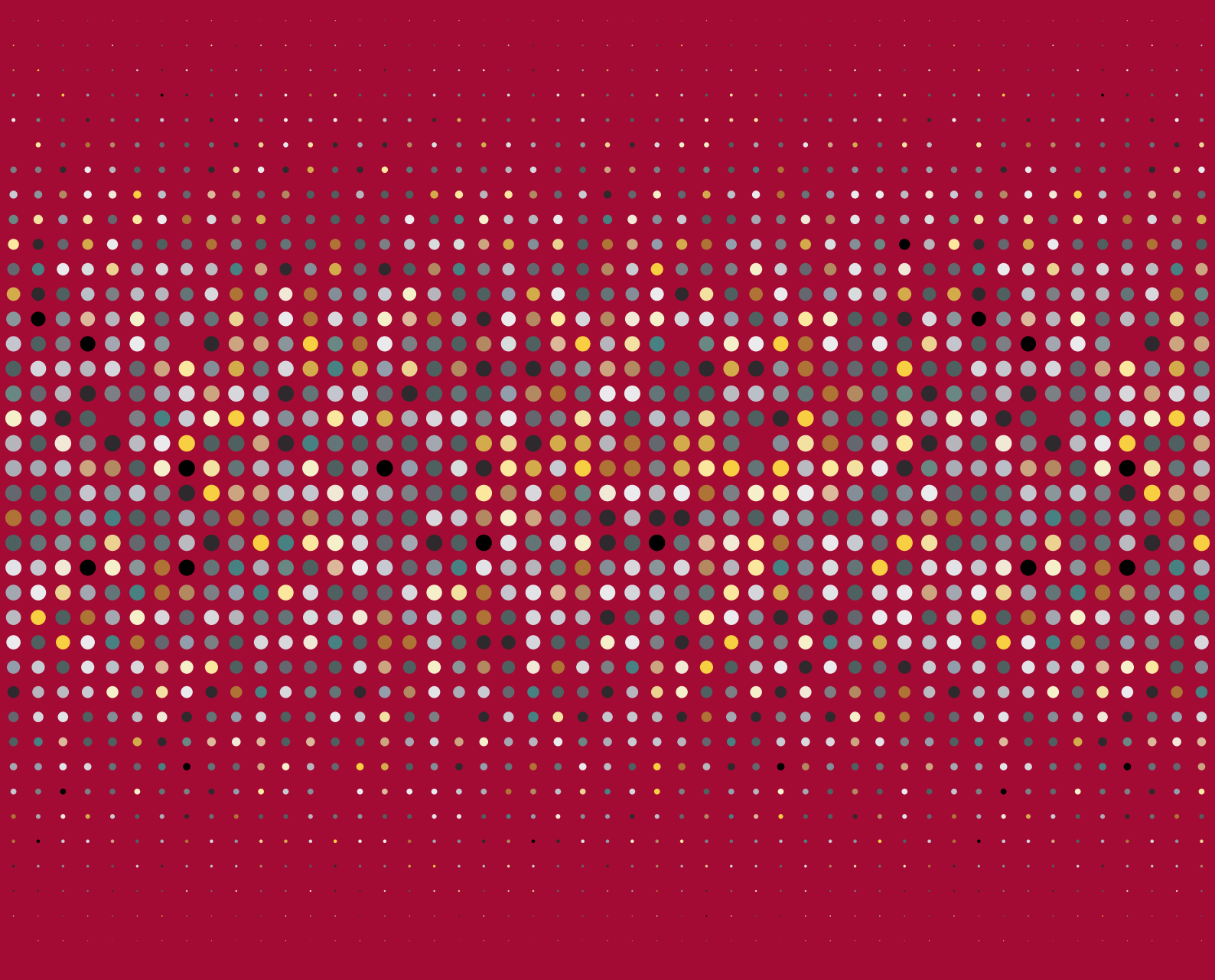
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residential



Mike Parrett looks at the property problems faced by older people in the UK

Safe and warm

The UK's elderly population is growing. Housing and homelessness charity Shelter reported that in 2005 there were almost 9.4m people over retirement age (<http://bit.ly/2zn6ROH>), with this figure likely to increase to 10.6m by 2021. The Office for National Statistics has also projected that people older than 65 will represent almost a quarter of the population by 2046 (<http://bit.ly/2uuMcka>), and the House of Lords Committee on Public Service and Demographic Change said England will see a 51% rise in those aged 65-plus, with a 101% increase in those aged 85-plus, between 2010 and 2030 (<http://bit.ly/KkmHfa>).

This growth not only puts severe pressure on the nation's health services and finances, but also on the properties in which the elderly live.

The impact of ageing

As people get older, their deteriorating health affects how they use their properties, and they may become trapped in a home that no longer suits their needs. For example, arthritis means some may find it hard to use twist taps, and many will have difficulty climbing the stairs – which, given the toilet and bathroom are often found on the first floor of traditional properties, will pose significant problems.

Poor mobility also means that many old people sleep in downstairs rooms. However, the Gas Safety (Installation and Use) Regulations 1998, as amended, state that fires, space or water heaters with a gross output of more than 14kW must be room-sealed if they are located in an area used for sleeping – that is, they must obtain air from, and vent combustion products to, the outside air – so they cannot have an open flue.

If they did, potentially dangerous products of combustion such as carbon monoxide may accumulate. These rooms must also contain a device that will shut down an appliance if it detects

deleterious emissions approaching dangerous levels.

A well-known related problem is when an old person lives in a property that is much too big for them and yet they may not be able to move house, or are reluctant to do so. As well as affecting the housing supply, they often don't see the need to heat or ventilate such a house when they only occupy a small part of it. In cold weather, underheating then becomes a critical problem in properties that have poor thermal efficiency, as it can lead to issues such as damp.

Winter risks

I have seen these issues during many property surveys, and they were especially acute in the London Borough of Lewisham during the severe winters of the 1970s and 1980s. In the winter of 1981–2, for instance, many elderly people in high-rise tower blocks and cottage estates suffered from frozen pipes and water storage tanks, and this was usually followed by bursts and flooding. These proved a particular problem in properties with uninsulated pipes and those with hand-tightened rather than welded joints.

Many properties on cottage estates used a mix of natural slate roof tiles and Sterreberg Courtrai and Van Echt interlocking clay tiles from Belgium and France. These were either laid on matchboarding or directly on the timber rafters, affixed to cross battens, and many were laid without any undersarking that would act as a wind barrier. This allowed tremendous wind penetration, making the lofts and the habitable spaces underneath much colder, and putting them at risk of rainwater penetration if a tile became dislodged or broken. Often, an attempt was made to install a wind barrier by stapling reinforced paper between the rafters.

Cottage-estate terraces were also usually built without loft firewalls between properties. As well as creating security problems and fire risks, the absence of firewalls exacerbated the issue of cold loft spaces. If adjoining spaces also lacked undersarking, this meant they often acted like wind tunnels.



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Surveyors may often focus solely on physical problems and not think of the human issues

The lessons learned from these bitter winters led the borough to improve its maintenance plans, replacing loft storage tanks with direct water mains feeds, for instance. Although this review was more than 30 years ago, we have found that the same issues are still prevalent today.

While they could have affected any property, most problems in the winter of 1981–2 occurred in the homes of the elderly as they were underheating their properties, with a consequent impact on their health.

Some actions taken by the borough as a result of these findings were:

- educating staff to look for signs of hypothermia in old people
- creating an “adopt a neighbour” scheme where people would look out for the elderly, particularly during cold spells
- arranging joint discussions with welfare and social services staff to identify tenants who couldn't afford to heat their homes but were underclaiming their benefit entitlements
- inventing a thermometer card that showed when a property was too



cold, and producing a hygrometer that highlighted when humidity was too high.

While some of these issues are not strictly related to building pathology, they demonstrate the benefit of looking at a problem holistically. Unfortunately, surveyors may often focus solely on physical problems and not think of the human issues.

Ventilation, mould and damp

Many old houses have draughts caused by features such as through-wall air vents or ill-fitting sash and metal-frame windows, increasing thermal loss and making it more expensive to heat homes. But these gaps are often just sealed up: windows are taped closed and thus never opened, while wall vents are covered using pieces of cardboard. Even with modern uPVC windows, people close trickle vents to reduce draughts, unaware that poor ventilation can cause condensation and mould.

Some older people also choose to heat just a single room, often the one where they spend their days and nights, with portable heaters using liquid-based fuels such as Calor gas. However, for every gallon of liquid fuel burnt, a gallon of water vapour is released into what is essentially a cold box, and this can condense on its surfaces.

My previous articles in *Property Journal* have discussed endemic problems relating to different kinds of buildings, such as missing damp-proof membranes

in solid floors and blocked cavity walls. The combination of old properties, heating costs and generations who are used to frugality all conspire to create issues that affect the home.

We should welcome energy-saving measures to combat some of these, but we need to think carefully when introducing them into older buildings and ensure that all sources of moisture have been eliminated beforehand. This is not always done, so we need to rethink our approach to retrofitting because instead of creating warm, dry homes, we run the risk of creating damp, humid ones (see p.56 of the 2017 Cambridge University Land Society magazine, <http://bit.ly/2m6zWHP>).

One dilemma is that while a lack of loft insulation makes a habitable space colder, it allows heat to escape into the loft, possibly preventing water pipes and tanks from freezing. However, installing loft insulation will reduce heat loss, meaning loft voids become even colder.

Design issues

Designing smaller homes that address the physical and mental needs of elderly people, and which together form an inclusive community to help overcome loneliness, would serve to prevent many illnesses associated with isolation, such as dementia and Alzheimer's. It would also help meet demand from some of the UK's 8m people aged 65 or older who are willing to downsize, according to Age UK's recent *Later*

Life in the United Kingdom factsheet (<http://bit.ly/2jubsDZ>).

Adaptations to existing properties can also be enormously useful, but must be implemented correctly. For example, where wheelchair access is needed, concrete ramps and raised paths may bridge damp-proof courses, leading to dampness in walls. However, there are some simple solutions to common problems for elderly residents. For instance, when someone cannot reach a window above a sink in a kitchen, an extendable window-opening pole would enable them to do so.

Bathrooms can be full of hazards, but low-cost solutions can include:

- installing seamless vinyl non-slip floor coverings and grip rails, with the advice of an occupational therapist
- humidistat-controlled extractor fans, activated by an increased level of water vapour in the air rather than a pull cord
- self-closing taps to avoid leaving water running.

In its 2014 report *New Approaches To Housing For Older People*, the Chartered Institute of Housing outlined some design standards aimed at reforming future bespoke housing for older people (<http://bit.ly/VKhgvP>). These include giving properties a dual aspect to maximise natural ventilation and light, and making them care-ready, energy-efficient and well insulated.

While these standards are useful aims for future buildings the reality is that many elderly people live in old buildings. With an ever-growing elderly population, satisfying their housing needs requires an holistic approach that not only looks at the physical properties themselves but how they are used. R



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Related competencies include
Building pathology, Construction technology and environmental services, Housing maintenance, repair and improvements

Bradley Parker stresses the importance of fire protection in a maintenance schedule

So what are you doing?

The tragic fire at Grenfell Tower in London in summer 2017 has focused property managers' minds on fire protection. Under the

Regulatory Reform (Fire Safety) Order 2005, all residential blocks must have an up-to-date fire risk assessment (FRA).

However, this document only assesses the possible hazards in the common parts of a block of flats and recommends remedial actions. Simply having an FRA on file does not protect residents: if any recommended actions are not taken, property managers and right-to-manage freehold company directors could also be in breach of the regulations and face prosecution, fines or both in the event of a fire. Anyone with responsibility for managing a residential block must show diligence in servicing and maintaining the fire protection systems and life safety.

There is an argument that says your block's FRA should cover all areas of concern, but gaining access to each flat is an issue. As a result, full coverage will not necessarily be possible, and even FRA consultants state they are not experts.

FRA consultancies should be up to date with BSI specifications, but can only make recommendations based on their findings. This is where highly specialised contractors, such as fire alarm engineers or lift maintenance companies, help, giving an impartial view of the recommendations and any suggested remedial work.

This is not an unusual course of action, and property managers should ensure they are aware of their fire protection obligations to residents – and therefore only employ qualified and competent fire risk assessors.

Taking responsibility

Two basic areas of fire protection are often not reported in FRAs: fire doors and fire-stopping. Property managers should take responsibility for ensuring that these are regularly inspected by an expert. There should also be an emphasis on passive protection, as this is frequently

neglected in inspections, and even in service and maintenance reporting.

Before calling in the fire protection experts, there is a lot that property managers can do themselves. As with any life-saving product, a fire door should be checked regularly to ensure it functions correctly and is ready to use. It should be tested in the same way as emergency lighting, a smoke or fire alarm, or a fire extinguisher would be. Any slight alteration to the door or its surroundings can affect its performance. Checks should be carried out at least every six months, or more regularly depending on the traffic through the door and behaviour problems in the block; although, following consultation, RICS now advises members to inspect fire doors every three months.

Property managers who are too busy to undertake these checks should employ a fire protection specialist to do so. A maintenance checklist should be used to ensure you inspect all the items correctly, in conjunction with your asset records, and should include the following.

- Check that the gaps around the top and sides of the closed door are consistently less than 4mm. You can use a £1 coin to give a feel for scale, as this is about 3mm thick.
- Are there any intumescent seals around the door or frame, and if so are they intact with no sign of damage? These seals are usually vital to the fire door's performance, expanding if they become hot. Are there smoke seals fitted and intact to limit the spread of smoke beyond the door? In existing buildings, the fire doors are often not fitted with these seals, and they should be upgraded.
- Are the hinges fire-resistant and firmly fixed? There should be three or more of them, with no missing or broken screws.
- Check the door closes properly: open it about halfway, then let go and allow it to close by itself. Does it close firmly on the latch, without sticking on the floor or the frame? Fire doors should be fitted with a working self-closer, otherwise they could seriously compromise the fire strategy of compartmentation. However, not all fire doors need self-closers, for example riser

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Anyone with responsibility for managing a residential block must show diligence in servicing and maintaining the fire protection systems

cupboard doors and locked fire doors on plant rooms, whereby a tradesperson entering the area needs to close and lock it on departing. Entrance doors to individual flats are often not fitted with self-closers, and the opportunity should be taken to upgrade these if they open on to a staircase or escape corridor.

Preventing the spread of fire

This can be restricted by subdividing buildings into discrete compartments. These are separated by walls and floors of a fire-resistant construction that hinders the spread of fire from one compartment to another. Normally, all fire compartments will have a fire door and can be readily recognised by property managers with the application of a “Fire door: keep shut” sign.

Examples of fire compartments – apart from individual flats in the block – are plant rooms, electrical or water risers,



and escape routes such as corridors or stairwells. Property managers or an appointed expert should assess the fire compartments in their blocks and then have these areas regularly inspected. This should be carried out in conjunction with another service and maintenance discipline such as fire door inspection, as you would have to open the fire door to inspect inside the compartment, or fire alarm and emergency lighting servicing. Evacuation or stay-put policies depend on compartmentation: this reliance is currently being challenged, however, so now is the time to review the fire evacuation strategy as well.

Fire-stopping is more specialised, requiring an expert eye to understand breaches properly. Again, property managers can do a lot to identify potential problems, and regular inspection is vital. For example, managers can visually inspect the following:

- any new holes produced by building works, such as installation of an electrical cable or pipe, that are not sealed
- existing holes that are reopened by removal of a service and not sealed
- damage to cladding or boarding.

Inspection after building works have been completed is recommended, to ensure the fire-stopping is not breached. If this reveals incorrect cladding, boarding and other external systems – or even the lack of an external system – these should be checked by a specialist.

A fire-stop is defined in Approved Document B, Fire Safety, as “a seal provided to close an imperfection of fit or design tolerance between elements or components, to restrict the passage of fire and smoke”. Joints between fire-separating elements such as walls or floors should be fire-stopped to maintain the continuity of resistance. Openings for

timber beams, joists, purlins and rafters, and pipes, ducts, conduits or cables that pass through any part of a fire-separating element should be minimised and kept as small as possible. They should also be fire-stopped using:

- cement mortar – although bear in mind that this can crack and fall out
- gypsum-based plaster
- cement- or gypsum-based vermiculite-perlite mixes
- glass fibre, crushed rock, blast furnace slag or ceramic-based products, with or without resin binders
- intumescent mastics
- proprietary fire-stopping and sealing systems.

With pipes or ducts, fire-stopping should allow thermal movement; experience shows that only proprietary – and expensive – fire-stop seals that fit fully around the cables or pipes are effective.

A client advised me that they have no control policy or terms and conditions stipulated in their orders to contractors to cover fire-stopping works. In such a case, property managers should act quickly to review and advise accordingly, as the contractor breaching the compartments should be responsible for their fire-stopping. If the contractor cannot carry out certified fire-stopping where compartments have been breached, they should discuss this with the client and commission a specialist to complete the works. Building owners and managers will want to know this work has been completed quickly, in the event of a fire soon after any building works.

Remember, a legal liability will attach to responsible persons, including block managers and the freeholders, so regular inspection and documenting are vital. [®]



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Related competencies include
**Fire safety, Health and safety,
Housing management and policy**

For most RICS members, talk of invasive weeds is likely to centre on Japanese knotweed. However, while this species dominates news coverage, there are many other invasive, non-native species of which surveyors should be aware, reporting them and advising clients or taking action as appropriate.

New and emerging species

Highlighting increasing concern about invasive, non-native weeds across the UK and beyond, the European Commission last summer added nine more plant species to the 14 already covered by the invasive species regulation (<http://bit.ly/151Jrdc>). These “invasive alien species of Union concern” have been selected following extensive risk assessment of their potential to cause negative impacts at a continental scale. As always, prevention, surveillance and rapid response are the best ways to prevent such impacts.

The additions are:

- alligator weed
(*Alternanthera philoxeroides*)
- milkweed (*Asclepias syriaca*)
- Nuttall's waterweed (*Elodea nuttallii*)
- giant or Chilean rhubarb
(*Gunnera tinctoria*)
- giant hogweed
(*Heracleum mantegazzianum*)
- Himalayan or Indian balsam
(*Impatiens glandulifera*)
- Japanese stiltgrass
(*Microstegium vimineum*)
- broadleaf watermilfoil
(*Myriophyllum heterophyllum*)
- crimson fountaingrass
(*Pennisetum setaceum*).

Descriptions of some of these and certain other plants already on the list are provided in the panel, overleaf on p.42.

The legislation that will place obligations on individuals, in the form of controls and penalties, is now in development. As such, landowners, their agents and chartered surveyors should be aware of the growing list of invasive species, and ensure they are prepared to act accordingly should an issue arise.

Present and future threat

The plants listed in the EU regulations can be usefully divided into two groups. The first comprises those present in the UK and Ireland that are recognised as weeds, and the second comprises those that could become a threat in the future.

The new additions to the first group are Nuttall's waterweed, giant rhubarb, giant hogweed and Himalayan or Indian balsam. Species that are either not yet present in the wild or very rare in the UK or Ireland, and thus in the second group, are alligator weed, milkweed, Japanese stiltgrass, broadleaf or variable-leaf watermilfoil, and crimson fountaingrass.

There are different reasons for adding the various species to the list. Giant hogweed, for example, produces sap that is extremely toxic to the skin in sunlight, making it a danger to public health. Himalayan balsam and giant hogweed were added because they can take hold in areas such as along rivers

and drainage ditches, impeding water flow during periods of high rainfall. Such growth in turn exacerbates flooding and can lead to erosion when the species die back in the winter.

Surveyors should be paying attention to all these plants, though for different reasons in each case. Giant hogweed, for example, should be removed from a property – ideally, before sale – because it is a health hazard, and prospective buyers ought at least to be made aware of its presence and the danger associated with skin contact. This could be an issue in areas where there is a high incidence of the plant, such as in parts of west London.

Increasing concern about invasive, non-native plants has prompted an expansion of European regulation. **Max Wade** and **Mark Fennell** look at the implications for surveyors

Seeds of doubt

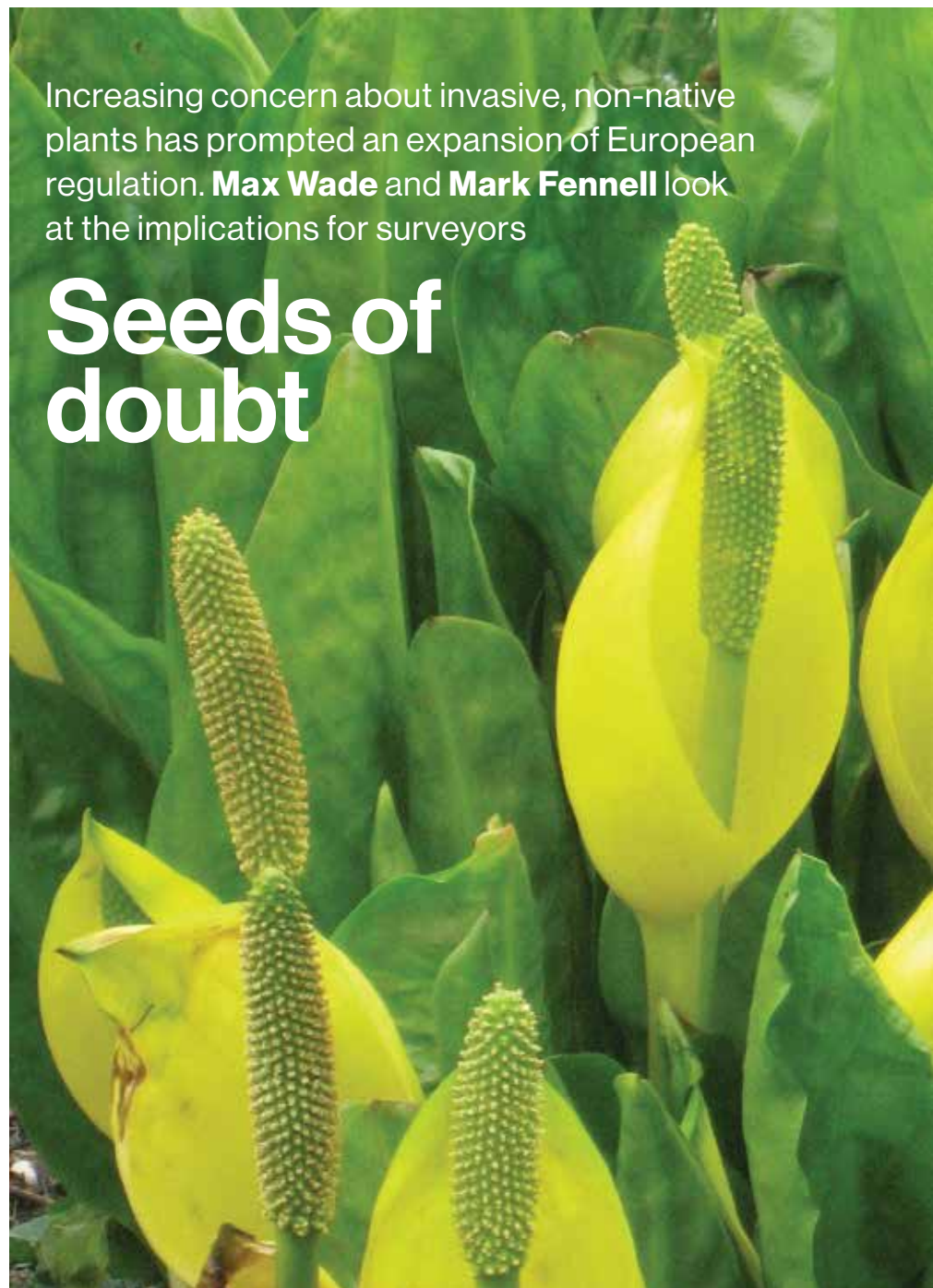


Image © Max Wade

Should a property mark the first occurrence of one of the plants not yet found outside gardens, such as milkweed, then there could be an imperative from the government to eradicate it forthwith. This is likely to be the case on larger properties and land holdings.

Invasive species impacts

While the impacts of invasive plants are wide-ranging because they present risks to the environment, water utilities, transport infrastructure and even public health, it is the effect they have on property sales and mortgages that is the most pressing issue so far as surveyors are concerned.

There are many instances where, if Japanese knotweed is visible within seven metres of a property, it has resulted in both land and property being devalued – even leading to the refusal of mortgages in numerous cases.

There are instances, too, where homeowners have had applications for loans or remortgages refused by lenders without the risk being quantified by a specialist. This goes against information and guidelines in the RICS *Japanese knotweed and residential property* information paper of 2012, and its 2015 addendum, to help surveyors and lenders understand the procedures to follow where that plant is found.

Landowner responsibility

Two recent, linked court cases have added a new dimension to the debate, placing responsibility for remediation and control of invasive species on the shoulders of landowners. The rulings in *Robin Waistell v Network Rail Infrastructure Limited* (2017) and *Stephen Williams v Network Rail Infrastructure Limited* (2017) ordered Network Rail to pay compensation for the loss in value caused to homes adjacent to its property, as it had not appropriately managed the Japanese knotweed on its land.

Despite the fact that no physical damage was caused, Network Rail was ordered to pay compensation along with the cost of treating the knotweed. These cases highlight how important it is for landowners to take responsibility for all infestations, particularly near houses and other property, as soon as they come to light. An appeal against the judgment in both cases is due to be heard in June.

These cases could encourage more homeowners to take similar action, with respect not just to Japanese knotweed but also other scheduled species. As a result, surveyors should be aware that their role in promoting and implementing solutions may expand. Resorting to legal action is expensive, and it should not be underestimated how difficult it is to determine the origin of an invasive plant. Therefore, property owners should work together to deal with Japanese knotweed or other invasive weeds, while surveyors and contractors must be alert to the problem, promote vigilance, and advise and implement effective, proportionate solutions.

Reducing the risk

The emphasis of invasive weed control to date has been on controlling plants when they become troublesome. This is akin to closing the stable door after the horse has bolted, and typically involves re-treatment over a number of years. Organisations such as the Property Care Association (PCA) and the GB Non-Native Species Secretariat advocate preventative measures to stop the spread of these plants on to properties.

The key is to identify weeds' pathways on to a property and shut them down. Surveyors should be aware their dirty footwear may be a route, transferring, for example, giant hogweed or Himalayan balsam seeds or fragments of Japanese knotweed, from an infested site to a clean one. The secretariat advises you always check, clean and dry your clothing and equipment (<http://bit.ly/1sPrPvX>).



American
skunk
cabbage

Some species of EU concern

**Himalayan or Indian balsam**

This tall herbaceous annual frequently grows on the banks of lowland waterways, often forming continuous stands. These can obstruct water flow during summer floods and leave banks exposed to erosion in the winter.

The balsam out-competes native vegetation, although it is a good source of nectar for bees.

**Giant or Chilean rhubarb**

This is a huge, clump-forming perennial that is widely naturalised in permanently damp and shaded areas that have rich soil, including woodland and grassland near water. The plant is often self-sown where it is long established. Plants form dense colonies of 0.5ha or more, suppressing native plants as the large rhubarb leaves prevent growth underneath. The species takes over hedges, roadside verges and ditches, and impedes water flow by obstructing streams and rivers when water levels are high.

**Milkweed**

This vigorous, soft, hairy perennial with fleshy roots and upright stems grows scented, greenish and purple-pink or occasionally white flowers in drooping umbel-like clusters during the summer. These are followed by pendant, softly spiny fruit with brown, flat seeds and a tuft of silky white hairs. In some parts of the world, it is an aggressive and persistent weed, containing substances known to be poisonous to sheep, cattle and sometimes horses.

**Parrot's feather**

Parrot's feather is an emergent and submerged perennial with long trailing stems of up to 2m. It is found in small, sheltered, nutrient-rich water bodies, especially ponds and ditches but increasingly in reservoirs, canals and flooded quarries. Dense growth can choke bodies of water and waterways, interfere with recreation and impede flow.

**American skunk cabbage**

A perennial stemless, rhizomatous herb, this has leaves that grow up to 1.5m in length, although are typically less than 1.2m. The species is increasingly found in parks and gardens and naturalised in wet ground, beside ponds and streams or in wet woodland. It persists and spreads and can potentially dominate large areas, out-competing native species. Sap from its leaves and rhizomes may irritate the skin and eyes, while all parts are poisonous and may cause severe discomfort if eaten.

**Crimson fountaingrass**

Crimson fountaingrass is a mound-forming, densely tufted, deciduous perennial grass that often grows in gardens as an annual. From midsummer through to early autumn, the plant bears pink to purplish-pink plumed spikelets.

Although it is not known outside cultivation in the UK and Ireland, it has invaded a range of different habitats in other parts of the world, sometimes forming monocultures.

• Weed control operatives must be able to recognise the expanding list of species, including some not yet seen in the UK outside cultivation. Where a scheduled invasive, non-native plant appears on a property for the first time, landowners need to be able to implement a rapid response to eradicate it before it gains a foothold. Once they are well established, eradication becomes more challenging and costly, and the site and environs are vulnerable to further spread.

Coordinated approach

In 2012, the PCA worked with RICS, supported by the Council of Mortgage Lenders, the Building Societies Association and Japanese knotweed control companies, to set up the Invasive Weed Control Group (IWCG), whose membership has the expertise to control and manage invasive plant species.

We are taking steps to ensure Japanese knotweed and other invasive, non-native species are viewed just as any other type of property problem would be: one to be identified, risk-assessed and treated by recognised experts with minimal impact.

To maintain this professional approach, the PCA has produced a comprehensive code of practice for managing invasive plants, technical guidance notes, and training with associated examination and certification. It also organises an annual conference at which a wide range of property professionals discuss the latest insights on the issues associated with managing invasive, non-native weeds.

This approach to raising standards and encouraging best practice in the profession means that the PCA is well placed to deal with the challenges ahead, and can help surveyors navigate a subject that is growing in economic and environmental significance day by day. **R**

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The PCA annual conference, on identification, assessment and response, will be held on 22 November at the University of Warwick



Related competencies include
Client care, Contaminated land, Inspection

The Coal Authority's comprehensive data is crucial to safe planning and development. **Darren Moody** explains how surveyors can make use of its resources

Mine mapping

Coalmines may no longer be the feature of the UK landscape that they once were, but they can still pose risks for housing development.

Around 7m UK properties are located on former coalfields, and with demand for new housing growing, homeowners and developers should be mindful of such risks.

Managing this legacy is the responsibility of the Coal Authority, a non-departmental public body set up in 1994 and sponsored by the Department for Business, Energy and Industrial Strategy. The authority was established to manage the long-term impacts of coalmining, primarily by providing licensed access to the comprehensive data it holds. It also deals with subsidence claims, ground collapses relating to mine entries, and mine water remediation.

Informing developers

For developers and prospective property owners, the Coal Authority's information provides a crucial resource. Its comprehensive data includes:

- 112,000 coalmine abandonment plans going back to 1872
- 8,000 other mineral mine abandonment plan images.

In 1989, the first computerised mining report system was launched to respond to enquiries from prospective property purchasers or land developers. This coincided with the first Law Society Scheme for Coal Mining Searches (CON29M), which aimed to standardise consultation procedures.

CON29M details major risks when purchasing residential or commercial

“

The Coal Authority's information provides a crucial resource

properties or land and continues to be a key resource, producing around 312,000 reports in 2016–17. A report will cover:

- past, present and future underground and surface mining activity
- mine entries
- coalmining geology
- coalmining subsidence claims
- reported hazards and mine gas emissions
- Cheshire brine information, detailing areas where brine was extracted and there are subsidence risks.

In 2015, the Coal Authority began to let third parties re-use its mining data under licence, to produce CON29M-compliant and other types of mining report.

Added value

Working with other public and private bodies, the Coal Authority uses its wealth of data in products for the conveyancing market, developers and their professional advisors. These include the following.

- **Mine Entry Interpretive reports:** these provide more detailed analysis and advice about mineshafts, as well as audits and an assessment of the potential instability risk on the property, if any.
- **Ground Stability reports:** these offer coalmining and brine subsidence claim search information, together with property-specific details on potential hazards relating to natural subsidence.
- **Enviro All-in-One:** this is a combined coalmining, ground stability, flood and contaminated land risk screening report.

A free, online interactive map viewer also helps owners of land or property identify nearby coalmining features, and should be used to evaluate whether more detailed investigations or reports are needed (<http://bit.ly/1tIGttE>). The data sets are also available as online mapping services that users can stream directly to their geographical information systems.

As a statutory consultee in the planning process, the Coal Authority works to ensure that coalmining's legacy is taken into account and development is safe and stable. Local planning authorities are

supplied with specific coalmining risk plans identifying areas that require full consideration before development.

The Coal Authority provides pre-development advice on land acquisition, permitting and planning and development proposals. Pre-planning application advice focuses on identifying constraints and any further investigation that may be required. Advice on layout and specification of works relating to coalmining constraints is also available. A Coal Authority permit must also be obtained before any activity is undertaken that may disturb coal interests, to ensure that risks relating to water, gas and ground stability are assessed.

Information on mining risks is actively shared with stakeholders, and the Coal Authority continues to notify individual households where records show that mine entries exist within or close to their property boundary. These entries have been inspected and will be re-inspected as part of an ongoing programme.

Remedial obligations

The existence of mine works does not necessarily mean the stability of a property will be affected. However, in the unlikely event that a property is damaged as a result of coalmining, the Coal Mining Subsidence Act 1991, as amended by the Coal Industry Act 1994, places defined duties on the Coal Authority or licensed mine operator to take remedial action at no cost to the owner, mortgage lender or insurance company. In addition, the authority provides a round-the-clock emergency service for hazards that are related to coalmining.

In a climate where accurate valuation of properties is becoming increasingly crucial, the information the Coal Authority provides is vital for surveyors. Written confirmation of their statutory obligations can also be supplied by the authority to any interested parties, including potential lenders, if this assists with valuations, mortgage and insurance decisions. **R**

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Related competencies include
Data management, Ground engineering and subsidence, Mapping, Minerals management, Spatial data capture and presentation [advanced mapping]

Resilience works

The increasing incidence of flooding creates opportunities for surveyors to promote resilience, writes **Ian Gibbs**



The kitchen at BRE's Resilient House



After the flooding in the UK in 2007, civil servant Sir Michael Pitt was commissioned by the government to

provide a comprehensive review of the lessons learned. Although many of the report's recommendations were pursued, these had little impact on building surveyors or their work.

Since then, there have been further studies and research funded by government, into all aspects of flooding and resilience, but these have not had a significant impact on the uptake of resilient measures.

However, the expectation that the government will help prevent flooding by building more defences has started to change, with the focus now on how the UK might better cope with the impacts of flooding by adapting homes and changing behaviour. As surveyors, we will need to design buildings that are more resilient and undertake resilient repairs after a flood.

In September 2016, the Department for Environment, Food & Rural Affairs (DEFRA) published *The Property Flood Resilience Action Plan*, setting out steps that could encourage the wider use of such measures (<http://bit.ly/2cvW17A>).

The plan was the culmination of a year's work by a team of professionals

from the insurance, surveying, charity and construction sectors, led by Dr Peter Bonfield of the Building Research Establishment (BRE), and supported by DEFRA and Environment Agency officials.

Plan provisions

The plan sets out several steps to increase property-level resilience, including the following:

- looking at how Building Regulations can be used to encourage flood-resilient construction and reinstatement
- considering how re-insurance scheme Flood Re can support and offer incentives for flood resilience
- creating rigorous independent standards and certification processes for surveyors, as well as for products and their installation
- setting up an independent online portal to inform householders and small businesses on flood resilience
- establishing a partnership between key stakeholders, including surveyors, to encourage and enable the uptake of resilient measures.

I am currently working with RICS on a number of projects to ensure that surveyors are seen as key professionals in this process. The skills that we can offer include:

- understanding different types of flooding and how they can combine to affect a property

- interpreting the flood risk survey
- good understanding of building pathology and building defects so the effectiveness of resilient repair methods can be assessed
- ability to understand the costs and benefits of the different approaches to resilience
- ability to empathise with a resident during the trauma of a flood, when most resilient works are undertaken
- knowledge of different approaches to resilience and the products available
- capability to ensure that the installation of resilient measures meets the required standards.

Historically, there has been a distinction between "resilience", which means using alternative methods of construction and materials to minimise the extent of damage and reduce drying time, and "resistance", which entails constructing or altering a building to prevent the ingress of flood water.

However, rather than concentrating on this differentiation, "resilience" now entails equipping a property the better to handle the risk of flooding regardless of the methods used, so that residents can recover more quickly after a flood.

Installing resilient measures

There are three stages to the process for the occupier who wants to install resilient measures, as follows:

- 1. flood risk survey:** to understand the risk at the property
- 2. building survey and advice:** to recommend appropriate flood resilience measures
- 3. installation:** resilient measures are fitted to the correct standard.

A trusted professional is needed to coordinate these stages, and unless building surveyors are recognised as having the appropriate skills and expertise to provide this, the gap will be filled by another party.

Following the 2016 storms in Cumbria, for example, many homeowners were persuaded by a resilient product manufacturer to move straight to stage three in the above list without the preceding surveys, resulting in the installation of ineffective measures.

The three stages outlined above require specific skills and knowledge, but we also have to consider how they inter-relate. A standard flood risk survey will identify the types of flooding to which the building is vulnerable, the risk of flooding and the likely depth.

The surveyor will then need to take this information and consider the construction of the building and whether keeping water out is practical or structurally prudent. For example, if the property is in an area at risk of groundwater flooding and it has a suspended timber floor then resistance would not be suitable and resilience would be the approach to take, accepting that water will enter but seeking to minimise its impact.

Database

The development of a property flood resilience database by BRE, working with insurers and interested parties, will also help, because this will require input from a suitably qualified chartered surveyor.

The database will be easily accessible for insurers, so they can identify properties with appropriate resilience measures installed that can demonstrably reduce the effect of a flood. Each property will be given a property flood resilience score to help insurers make decisions on providing cover and the level of premium (<http://bit.ly/2lwQAP2>).

It is important to note, though, that the BRE database is still in development and not yet adopted by the sector. Having a survey conducted by a professional surveyor will not necessarily become a requirement for homeowners to obtain insurance under Flood Re, either.

Building materials

As surveyors, we will understand the construction and possible water entry points. However, we must also understand how resilient the existing building materials are to water. The current practice of stripping properties back to the structure and removing resilient building materials as a recovery measure suggests that more training is needed to understand how such materials can survive a flood.

Understanding the impact of water on materials goes hand in hand with knowing how they can be dried using modern methods. The benefits to be gained by reducing strip-out and using the appropriate drying techniques need to be explained to the occupier, who should be reassured that resilience does work – especially if they have been flooded before and had to experience a complete strip-out.

The key skill we need to bring is thinking holistically about the flood risk type, the construction, what the occupier is trying to achieve, aesthetics and cost before making our recommendations.



The BRE's Resilient House under construction [above] and floor drainage [below]



As surveyors, we will often be providing an holistic service in making the property resilient, so it is important that we ensure that specialist products are fit for purpose and properly installed. However, most resilient measures involve standard construction processes and do not need a specialist installer, so our role will be to specify then inspect and sign off the complete works. This may mean doing some research to understand the resilient properties of different materials, as this information is not normally provided with most building products.

Cost of resilience

Another key question we need to be able to answer is the cost of resilient measures.

Recent DEFRA research has modelled different property types and detailed resilient measures and their costs. This study demonstrated with practical examples that the additional cost of a package of selective resilient measures was between £1,900 and £4,700 greater than the normal insurance reinstatement cost.

This would have to be funded by any future government grants – because currently such grants are made on a one-off basis for each flood event, and may not be repeated. Education about the practical costs and benefits means the professional has the knowledge to provide effective advice to clients.

Projects

A key proposal in the action plan is to ensure the development of standards and clear technical guidance. The Construction Industry Research and Information Association is working on a code of practice and guidance for property flood resilience, and RICS is part of the development team; RICS is also closely involved in designing the training that will qualify surveyors to provide flood resilience advice and services.

BRE has developed a prototype Resilient House to show how practical measures can be taken in a home to prevent the entry of flood water (see images, above and left). Recent research undertaken by the University of the West of England, Bristol for DEFRA, *Supporting the uptake of low cost resilience: Summary of technical findings* (<http://bit.ly/2t9Aufp>), also sets out current information on the resilient measures available and their cost-effectiveness, using case studies that give a practical insight.

The RICS Flooding and Insurance working group is currently drafting a guidance note as well, so that, as surveyors, we are clear on what is expected when providing advice on resilience. Furthermore, a website has been set up by the Centre for Resilience (www.centre4resilience.org) to make it easier for public and professionals alike to access information about flood resilience.

Resilience is developing fast, with opportunities for surveyors to become trusted professionals in this area. [®]

Resilience is developing fast, with opportunities for surveyors to become trusted professionals in this area. [®]



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When hiring a locum – defined as a person temporarily fulfilling the duties of another while still governed

by their respective regulatory body – there are several important commercial considerations, so you should ask yourself the following questions.

- Will the locum be contracted for a fixed term or on a rolling basis subject to notice?
- What services are they being hired to undertake?
- Will the practice or the locum provide insurance cover for the locum's services?
- Will you seek to restrict the locum's activities after the contract has ended?
- Will the locum be an employee, a worker or self-employed?

It is important to establish the locum's status, both in terms of their legal rights and the way that their income is taxed. When hiring a locum, you should be clear on this issue from the start and prepare a written contract that reflects your intentions. Practitioners have come unstuck trying to obtain the financial benefits of hiring locums on a self-employed basis when they also want the locum's personal service, as described below, and a relatively high level of control over them.

The tests for determining employment and tax status are similar but not entirely the same; for example, the HMRC employment online status checker will not differentiate between workers and employees, which might be very important when determining the locum's employment law rights. This article therefore describes what each different status entails.

What is an employee?

Employee status is the gold standard in terms of rights: an employee with more than two years' continuous service has the right not to be unfairly dismissed, and to receive a statutory redundancy payment. The employer must also deduct tax and National Insurance contributions.

The definition of employment status varies depending on the claim an individual may wish to make. In most cases, the description set out in the Employment Rights Act 1996 is the key. This states that an employee is someone who has entered into, or works under, a "contract of service or apprenticeship,

Michael Halsey considers the employment status of locums and warns of potential pitfalls

Worker or employee?

whether express or implied, and (if it is express) whether oral or in writing".

When deciding what constitutes a contract of employment, all relevant factors must be taken into account. The three indicators are:

- personal service
- control
- mutuality of obligation.

Personal service

An integral part of the employment relationship is that the employee provides their own labour in return for payment. If they can send others to carry out their work, this is generally seen as being contrary to the fundamentals of the employment relationship.

Each case needs to be looked at carefully. If an individual is contractually required to provide personal service, this is consistent with a contract of employment. While a contractual right to provide a substitute may be inconsistent with employment status, much depends on the type of right being exercised.

Control

The more control an organisation has, the more likely it is that an individual will count as an employee. This will be the case under the following circumstances, for example:

- there is a contractual right for the organisation to control their activities
- the locum is subject to daily direction and supervision and the policies in any employee handbook
- the practice controls the locum's place, days and hours of work.

Mutuality of obligation

This is generally the obligation for the practice to provide work and the locum to accept such work. If the contract between the parties only gives a framework for what will happen if work is

provided, and the individual does not have to accept such work, that is unlikely to constitute a contract of employment.

What is a worker?

Worker status provides some statutory protection for those who may not satisfy the test for being employees, but who are not genuinely in business for themselves. Like full-blown employees, they are often in an unequal bargaining position with the organisation for which they provide services, in that the organisation will be economically dominant and able to procure services from others in the event of disagreement.

Workers are entitled to be paid the minimum wage and also accrue paid annual leave. An individual will be a worker if they work under a contract of employment or any other contract to perform work personally – see "Personal service" above – as long as there is not a genuine client-style relationship between the parties. This may be the case in situations where, for example, a locum has a wide client base of practices to whom they provide services.

Indicators of such relationships include:

- whether the relationship is at arm's length and the parties are independent, employee and worker status is more commonly characterised by dependence
- if the individual has other clients, this points towards self-employment
- the duration of the arrangement – shorter periods indicate self-employment
- payment method – for example, the need to submit invoices suggests self-employment
- if the individual supplies the equipment used, this points towards self-employment
- if the individual shares the financial risk of a business venture, this indicates self-employment
- where the individual remains outside

the management structure of the wider organisation, then this also points to self-employment.

The genuinely self-employed

For a locum to fall into this category, they must not be an employee or worker; if they do have to carry out the work personally, there must be a genuine client-type relationship with the practice.

Although it may be tempting to shoehorn someone into self-employed status and thus save on accrued holiday and the need to deduct PAYE and National Insurance contributions, there are risks involved in having contracts that do not reflect the true situation, as can be seen, for instance, in the case of Citysprint and its couriers (<http://bit.ly/2i8E5DU>) from early in 2017.

Consider your best route

- If you want your locum to provide their work personally and exclusively for you while the contract is ongoing, they will probably be an employee or worker.
- If the contract is to be less than two years, worker status may be the most appealing option.
- If the contract is likely to be for longer

and the locum will be fully integrated into the practice, being subject to a high degree of control on a daily basis, the relationship may well be one of employer and employee. The practice must then decide whether to offer some form of employment contract, or retain the locum as a worker.

- If the written agreement diverges from the practical day-to-day arrangements, this will determine the relationship between the parties in any litigation process.
- If hired on a more open basis, the locum is free to work for other organisations, provide a substitute or refuse the work, so the self-employment model may well be appropriate.

Top tips

- Consider the relationship as a whole before deciding on the individual's status and weigh up competing factors. Every case presents different considerations.
- Make sure that any written contract reflects the true relationship – if a court or employment tribunal suspects that a contract is a sham, it will look behind the written terms.
- Make the parties' intention clear in

any agreement where it is not intended to be a contract of employment.

- Make sure the arrangement is set down in writing.
- If you are building a right of substitution into a contract, think about how that will work in practice and how it should be expressed. For example, does it provide an absolute or conditional right to send a substitute?
- If an individual is to be a worker or self-employed, consider including an indemnity for any losses incurred if they later allege they are an employee. **R**



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Related competencies include
Business planning



Handling the heat

Overheating in new homes continues to be a problem little recognised in regulation. **Tom de Saulles** considers measures proposed to address this

The potential for overheating in new homes is something we are probably all more mindful of now, partly thanks to the work of bodies such as the recently closed Zero Carbon Hub (ZCH).

But although the need to do more to tackle overheating is broadly accepted, current regulatory requirements still centre on the very general Part L1A provision to limit the effects of heat gains in summer. This is assessed in Appendix P of the Standard Assessment Procedure (SAP), the government's methodology for demonstrating Part L compliance for the energy performance of a dwelling. Appendix P provides a basic assessment of internal summertime temperatures, and is currently being reviewed along with the rest of SAP (<http://bit.ly/2gXWKUn>).

Surprisingly, the National Planning Policy Framework and Part F on ventilation say little about overheating. In contrast, the 2016 London Plan includes specific design requirements to tackle the problem, while the European Energy Performance of Buildings Directive talks broadly about the need to reduce air-conditioning demand, limit overheating and use passive cooling techniques.

Ventilation rates

The SAP overheating assessment has previously seen some modest revisions, but remains largely unchanged; however, the 2016 draft does include a significant amendment to the way ventilation rates are assessed during hot weather.

If this is adopted, housing designers and developers will need to take greater account of the local environment in respect of security and noise when dealing with summertime ventilation. Where either is likely to be a problem, it will no longer be acceptable to expect windows to be left open for ventilation.

Instead, the use of trickle vents must be assumed unless the ventilation strategy has been designed to address security or noise issues, perhaps by using products such as ventilation panels. In most cases, the minimal air flow rates



offered by trickle vents are likely to be insufficient to meet the SAP criteria for avoiding excessive overheating, however.

Shortly before the ZCH's demise in 2016, it published a discussion paper – *Next steps in defining overheating* – that brought together its work in this area with the views of construction professionals (<http://bit.ly/2ezp8MZ>). The recommendations it makes are significant, particularly as they may well influence the government's future direction. Central to these is the assessment methodology, which requires detailed thermal modelling of dwellings when an initial appraisal suggests that overheating is likely to occur.

If on the other hand overheating is thought to be unlikely, use of a simpler tool such as the SAP overheating assessment would be adequate. In either case, the initial judgement must be confirmed to be correct and a limit of 26°C should not be exceeded in bedrooms for more than a specified period. A different threshold would apply to other areas in the home.

TM59: Design methodology for the assessment of overheating risk in homes, a Chartered Institute of Building Services Engineers report published last year (<http://bit.ly/2ygyLeq>), complements the ZCH methodology by setting out a

standardised approach for undertaking a detailed thermal assessment, including the specific assumptions and rules to be applied to ensure consistent, accurate results across the housebuilding industry.

Current research

In March last year, the Department for Communities and Local Government (DCLG) commissioned AECOM to research overheating in new homes, and identify which types are at risk, based on the TM59 assessment methodology. As part of the research, AECOM has been working with experts to agree a definition of overheating and using this as the basis for modelling a range of dwelling types with different weather files and locations.

A cost-benefit analysis of mitigation measures to reduce overheating should follow, subject to ministerial clearance, and should also help inform the DCLG as to what further guidance, regulation or other measures may be needed.

Climate challenge

UK temperature records continue to be broken regularly – June 2017 saw the longest period above 30°C since 1976. Taken alongside the overheating already being experienced in many new homes, it seems likely that we will see some regulatory changes in the near future that pick up findings from the ZCH, AECOM and others.

This would be a departure from the Conservative government position in 2015, when it rejected recommendations for new building standards from the Committee on Climate Change, citing a commitment to reduce the level of regulation on homebuilders.

We hope that a middle ground may now be found that would see relatively light-touch revisions seeking to maximise a dwelling's performance through better building form, shading, passive ventilation and thermal mass. We should know more in the coming months. **R**



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Seek and ye shall find

Andrew Mason sets out the key factors in establishing provenance



As with the diligence period in the handover of a building for an investment sale or approaching the end of construction, it is vital to understand where a work of art has come from and its longer-term history – its provenance.

A buyer will expect a comprehensive file on provenance when acquiring a work of art, and will add to this through the course of their ownership. Sometimes, as we know, works are sold on, and sometimes they are retained and passed down as a legacy investment. In all cases, the provenance forms an important part of their life.

The value of provenance cannot be underestimated in today's market. For example, art that has been misappropriated or stolen or that cannot be traced through its complete history may lead to a lien or a third-party claim that stops it being sold. Only a legal owner can sell a work of art, much like any other asset. But suppose the current owner was gifted the artwork by a third party who did not have consent to offer it, or perhaps was not the owner? Such issues could quickly invalidate a person's right to own that work.

Shows and sales

Buyers often want to be assured of the exclusivity of their purchase, as this can often protect the value when buying and selling on; details of where a work of art has been shown can help provide such assurance. Knowing to which galleries it has been lent, or of which shows it has been part, are important in establishing the credentials of a piece.

Information on when and how a work of art was sold should also be made available or researched, along with the amounts that it raised at auction or private sale. Gathering such background information on a painting or sculpture is like carrying out formal diligence when purchasing a building.



Many pieces have entailed particular detective work in the process of authentication

s with the diligence period in the handover of a building for an investment sale or approaching the end of construction, it is vital to understand where a work of art has come from and its longer-term history – its provenance.

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Authentication

Research is often needed to complete gaps in this information, and many pieces have entailed particular detective work in the process of authentication. For example, not every painting is signed: Pablo Picasso, like a number of other artists, did not in some cases sign paintings that he gave to friends, possibly intending them as private gifts. There can therefore be considerable controversy when it comes to the correct attribution of such paintings.

The process of authentication matches the work with the artist, and there are a number of authenticators and foundations who have certified works of art as they appear in the market. Sometimes, a catalogue raisonné will be produced for an artist by a leading authenticator, and this document provides a clear authentication for artworks by them.

An episode of the BBC TV programme *Fake or Fortune?*, for instance, dealt with a painting thought to be by Monet, which it was argued had been excluded from the Monet catalogue raisonné, published by the leading authenticator of his work, the Wildenstein Institute in Paris. Despite considerable evidence, however, the foundation decided not to include the painting in the catalogue, and therefore it remains uncertified.

Experts on a particular artist remain an extremely useful means of authenticating a work where other evidence is patchy, though. Auction houses often refer to the Ceroni catalogue for Modigliani or the Anfam catalogue for Rothko, among other examples.

Provenance can therefore be established in a variety of ways, and we often look for a signed certificate of authenticity from a known authority on the artist. Research may also uncover helpful items such as sales tickets, gallery notes, warehouse



tickets, shipping tags, condition reports from recognised experts, or authoritative writings that refer to the work in order to corroborate its history.

Forgeries

Provenance has been a source of concern as forgery has also been with us for centuries, in many different guises. Old Masters are common targets for forgery, though even authentication documents themselves have been known to be forged.

Han van Meegeren is possibly the best known art forger of all time (<http://bit.ly/2iW6t2m>). It is said his supreme work was *Supper at Emmaus*, created in the style of Vermeer in 1937. One of his forgeries ended up in the collection of Hermann Göring, and even the Dutch government was fooled into believing van Meegeren's works were original masters. Robert Driessen, a Dutch forger of Giacometti, meanwhile made a career selling fake sculptures and thousands of bronzes (<http://artnt.cm/2mWBAdf>).

Given such risks, buyers rely on information to be as accurate as possible. Provenance and authentication protect the integrity of the work of art, thus maintaining its value.

Condition report

In the way that property transactions necessitate a survey, so most works of art will have a condition report, although these are normally only available following the completion of a non-disclosure agreement.


Depending on the process for the transaction, the opportunity to see a condition report helps with the assessment of a work's value. The document is produced by a recognised art

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Information on when and how a work of art was sold should also be made available or researched

expert, and again forms part of the provenance. The report will often comment on a painting, its framing, any damage, the canvas or medium, any imperfections or inflections, colouring and, on occasion, can provide detailed information such as the findings of infrared investigation.

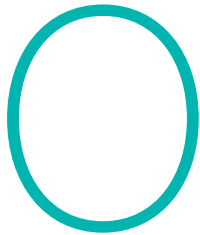
This report is the final word on the state of a work of art. The better and more recent the report, the more useful it will be. This is therefore a vital document in assessing how a work has been kept, what maintenance it may require, where it should be stored and, last but not least, its present value.

As provenance authenticates a painting, gathering all the information on the background of particular works of art serves as a due diligence process in what are often private, significant and high-value transactions. 

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Artistic licence

Is HMRC looking for better returns on artworks let under chattel licences? **Charles Cochrane** reflects



Our practice as agents involves three principle processes: buying, selling and planning with works of art. We are not dealers

– we hold no stock – and we are not tied to auction as a method of sale. We are therefore able to offer independent advice and approach the market in the best way for our client.

This approach informs our planning and collection management work and we work with clients and their advisors to implement tax and succession planning for art. This might include offering a work of art in lieu of inheritance tax, a conditional exemption or a chattel licence.

Loaning art

A chattel licence allows someone other than the owner to use and benefit from the chattels in question. Think of it as a lease, with the user or custodian being the tenant. The terms of the licence will include: a description of the artwork; the duration of the arrangement; insurance; security; maintenance; transport; environment; inspection rights; termination; and so on. It may also involve a rental clause with a review mechanism.

The overwhelming majority of these arrangements are made between private owners of important works of art and museums and galleries, or between museums. These are usually referred to as loans, and can be made on a short-term basis for a specific exhibition, or a long-term one for a significant work that a museum includes as part of its permanent hang.

The next time you are in a museum, have a look at the text accompanying a work to see who the owner is. There will

be an agreement signed by both sides, with the museum providing safe custody and insurance – for instance, in the form of a government indemnity in the UK – but usually nothing more. The owner has the benefit of their art being in a museum, giving it an important cultural endorsement.

There are plenty of loans of art outside the institutional arena as well, such as in: furnished lets; loans to members' clubs and hotels; from commercial galleries to offices and businesses; and within National Trust properties. Quite often, the owner simply has nowhere to store the art or does not want to pay for storage, insurance and care. Again, the basic terms are for the user or custodian to accept these costs and save the owner's storage fees.

Inheritance tax

Our story of private client chattel licences starts in the 1980s. The traditional model was for the parents to give all the chattels in their house to their children. The parents don't want to live in an empty house, however, so the children lease back the chattels with care and custody obligations placed on the parents until death. Provided the donor lives for seven years, the value of the gift falls out of the donor's liability for inheritance tax. The gift itself might trigger capital gains tax, but that is another story.

In 1986 the Gift with Reservation of Benefit (GROB) rules were introduced, which would render invalid the attempt to use the above gift for inheritance tax purposes, unless the parents paid a full consideration in money or money's worth for the use of the gifted chattels. A year later, practice rules were introduced by the Law Society stating that the terms of a chattel licence in these circumstances should be negotiated, within the commercial context by parties independent of the donor and recipient.

A practice subsequently grew up where a valuation using auction estimates would



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There is always the inheritance tax risk to consider

be agreed and a licence would be offered by the owner, asking the user to accept all care and custody obligations. These would be negotiated, and in addition a rent was introduced, often at around 0.1% of aggregate mid-estimate value. The only case that gave guidance is *IRC v Macpherson* [1987] STC 73 in which the court accepted that a peppercorn rent with self-insurance – a money's-worth obligation – and security were commercial terms. This case is still the only guidance we have, although it does not relate to the GROB regime.

Tax risks

One problem with all chattel licences under the GROB regime is that they are only tested in probate when it is too late to change the costs and rent. If HMRC can show that a benefit was reserved because the consideration – in terms of rent, if any, and costs – was too low given the commercial market, the entire value of the chattels is liable for inheritance tax.

Although there are plenty of commercial examples of the terms habitually agreed when inheritance tax is not at stake, there was sufficient

“ Museum loans do not equate to year-round, exclusive access to a work of art

uncertainty and risk that in the 1990s a benchmark position was adopted by practitioners and, eventually, by HMRC. This stated that in the absence of commercial evidence, a composite consideration – costs and rent – of 1% of mid-estimate value would be seen as being commercial. In 2009, this was changed by HMRC when it announced that the general benchmark was 1% rent with costs to be paid in addition.

In summary, we can see a tenfold increase in the rents being paid when there seem to have been no commercial changes to justify it. The gulf between this rate and what might be obtained from anyone other than the donor is based, we believe, on a recognition of an inheritance tax risk, and the fact that the donor, even though independently represented, might be seen to be in a special position.

It is fair to say that museum loans do not equate to year-round, exclusive access to a work of art, which a chattel licence would in contrast allow. On the other hand, chattel licences often include very short notice periods, and museums are thus a comparable the negotiators should consider. Having said that, there are plenty of domestic licences to look at, such as National Trust properties let with contemporary chattels, which carry no extra rent but do incur some extra costs for the tenant.

US models

This brings us up to the October 2016 and 2017 Fiscal Forum meetings, in which HMRC announced that it would no longer recognise the previous 1% benchmark. While the benchmark was arbitrary, it did at least offer certainty. I believe the reason HMRC no longer wishes to abide by the protocol is that it considers much higher returns are possible for certain works of art. The evidence for this is from a New York business that appears to rent art in the same way chattel licences do under the GROB regime in the UK.

The company is called Artemus, and it has two broad offerings. For our purposes only the art leasing is relevant. The art it handles is largely Impressionist, Modern,

Post-War and Contemporary works with a value between \$1m and \$100m.

Leasing tends to involve property developers that can't afford to buy the art they want, but which they can rent for, say, the atrium of one of their developments to help sell that building. Artemus can in turn either buy and rent or lease an artwork to the developer, and often charges 10% per annum for doing so. If the art is lent, the owner must agree to give the tenant an option to purchase to get the 10% return, which is split equally, with the owners and Artemus. The tenant can deduct the rent as an operating cost, and Artemus can register the transaction on the Uniform Commercial Code, which is not available outside New York city. The tenant takes the artwork off the market via the option, and can buy it later. If there is no option to purchase, the rent plummets before being split, assuming a tenant can be found.

Take care

HMRC has given no guidance on how to set suitable considerations, except that there must be a full negotiation assessing all possibilities in the commercial context, and any reliance on the former benchmark will not be regarded favourably. In a sense, we have returned to the 1987 Law Society practice note.

Parties to existing arrangements are therefore advised to check the commercial awareness of their negotiators and ask them to negotiate afresh. Clearly there is an argument from the tenant's point of view that lower rents could be settled, but there is always the inheritance tax risk to consider, given HMRC's new expectations based on the situation in the Big Apple. Parties to chattels licences involving high-value and low-volume 20th-century art should be particularly cautious.

The uncertainty created by HMRC's rejection of the 1% benchmark is unsettling and in the interim all negotiators can do is look to the commercial market, such as that is, and negotiate. This is after all what HMRC has asked for. One way to bring some certainty is via the courts, provided a probate estate is prepared to litigate. **P**



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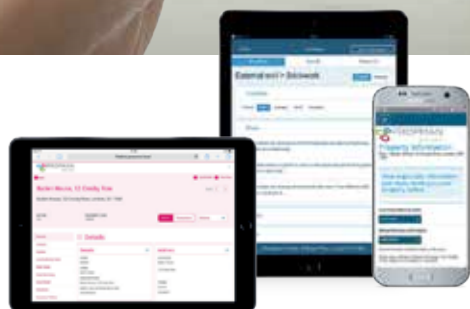
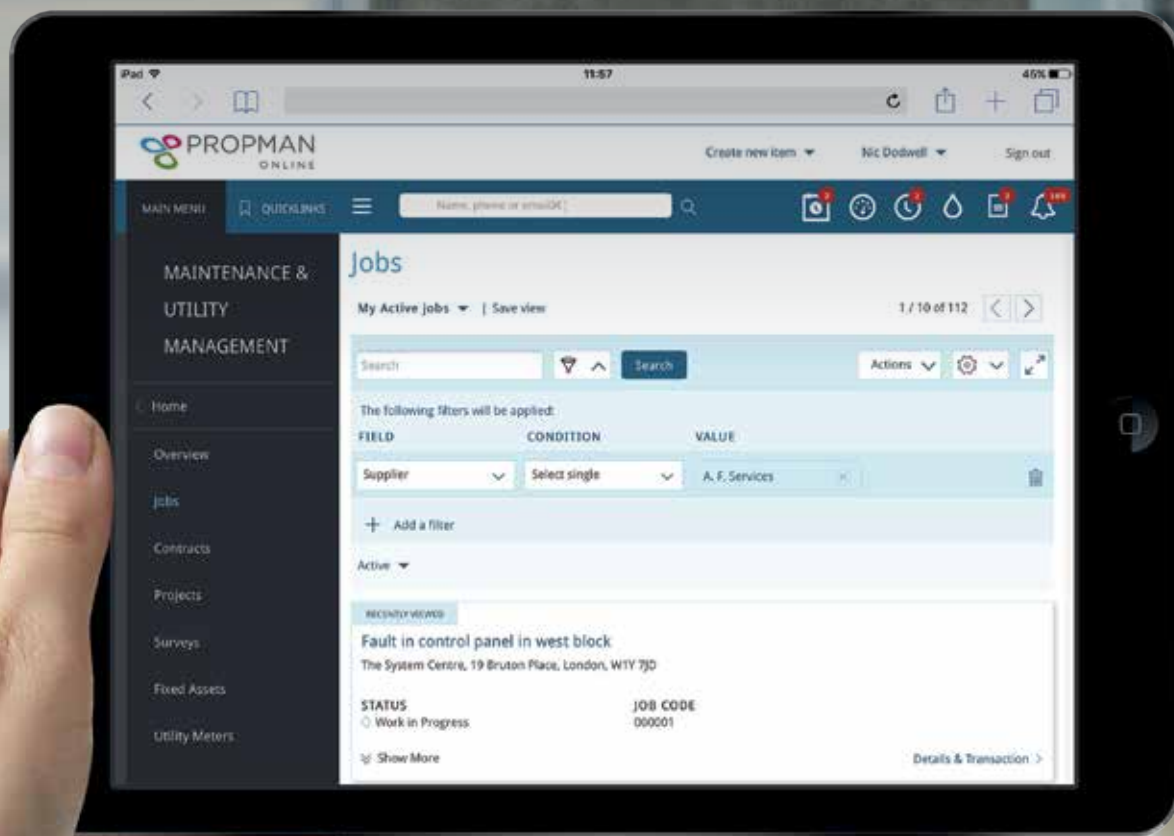
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