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Real Estate Quarterly

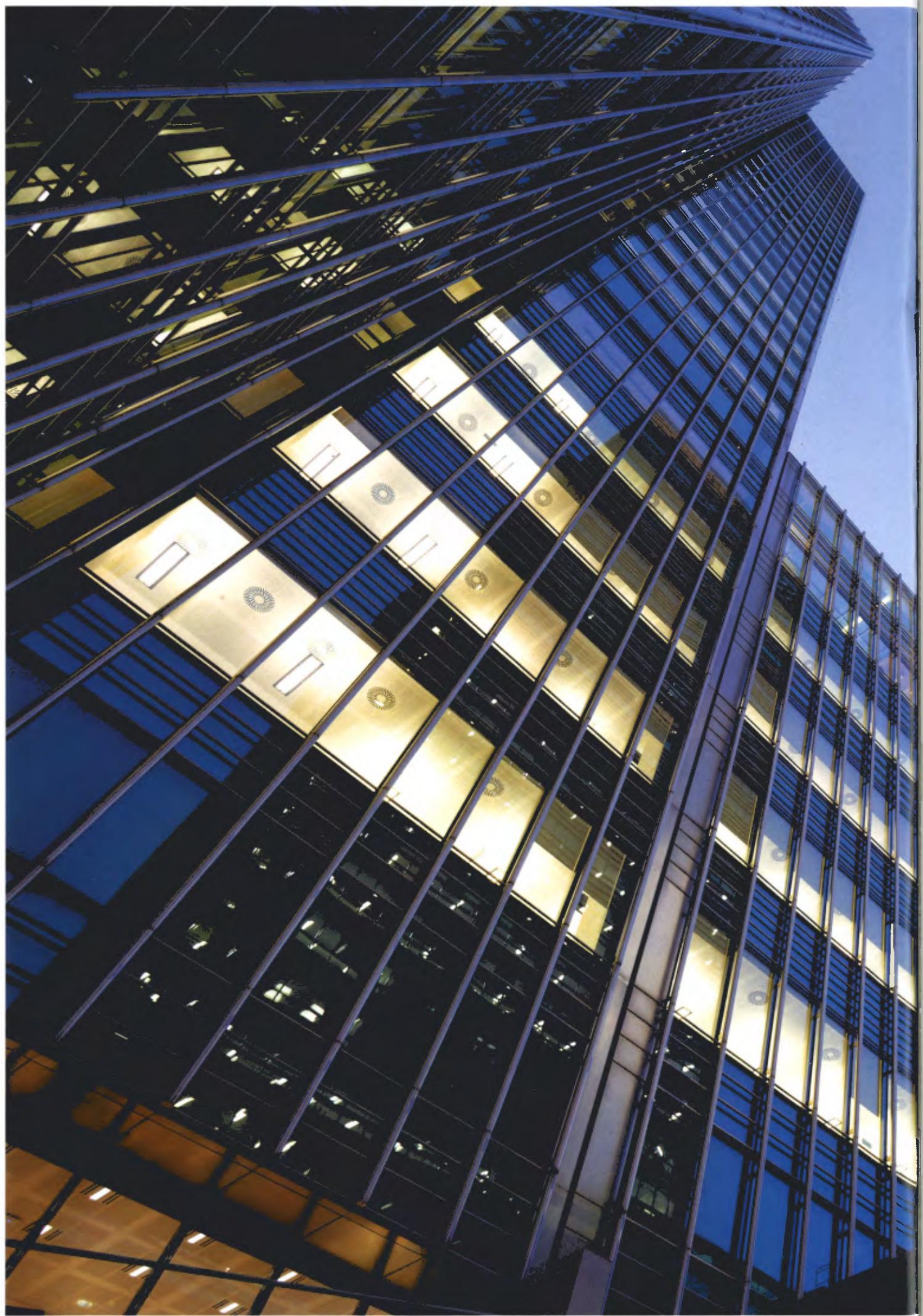
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Staying smart to be smart

UK Head of Real Estate, Daniel Norris, has never been afraid of a challenge. In this PropTech focused edition of the Real Estate Quarterly, Daniel explains why he sees PropTech as the next big challenge for the real estate sector

PropTech is one of those terms that gets used all the time but no-one is quite sure if it just means improving things you do with property by employing tech, or whether it is going to be a whole new industry aligned with the one we know. For me, it's a bit of both, the introduction of technology is quickly changing the property world as we know it, and eventually the traditional industry will look quite different. The Internet of Things, with a network of devices all linked up, already means I can use my phone to turn on my heating while I'm in the office; have paperless tickets on the train (and something wakes me up at my station); have motion sensors to keep the lights on and save energy. In other words, we are using electronic devices to connect and exchange data to improve the physical environment.

Why is this important for real estate? Because it means we can use technology to capture data to improve the use and occupation of buildings. The landlord will be able to identify how space is occupied and used. From this, we will be able to build smarter buildings with energy efficient environments, service charges will fall and our carbon footprints will be smaller.

However PropTech covers a range of other property related interfaces with technology. For example, site inspections by drones; driverless deliveries; and within the legal world, using artificial intelligence for drafting lease reports and due diligence; smart contracts rather than negotiating leases; due diligence delivered by blockchain key rather than a dataroom. Currently the Law Commission is consulting on using electronic signatures for legal documents whilst the Land Registry is investigating blockchain as a means of electronic title transfer.

Where could this all lead? Could we see a world dominated by e-leases with rents paid in crypto currencies and reserving landing rights for drone deliveries? Will a building's connectivity be a deal-

breaker rather than its physical location? And will I finally achieve my goal of a paperless desk?

The surge in technology has taken us a long way from the paper land certificates that used to prove property ownership. But with innovation there comes risk. In the last ten years HM Land Registry has paid approximately £58 million in indemnity payments specifically in relation to fraud and this doesn't include the cost for fraud that is identified before a transaction is registered.

My hot topic is the rise in cybersecurity risks. Like any other industry, commercial real estate is not immune to cybersecurity threats. Owners and tenants need data to operate building management systems but these systems are increasingly sophisticated and the systems they control have become increasingly connected. These cyber "bridges" which link systems can be at risk of data breach if hacked. If a heating or cooling system is hacked or held to ransom, then physical damage to the building could follow – or non-physical damage (such as locked doors), which your insurance policy may well not cover.

PropTech is exciting and the future. We, as a firm, recognise its potential to change the way we work and the way our clients work. My personal challenge is to keep our real estate practice at the forefront of the technological advance and keep on moving before the lights go out.



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Electric vehicles: charging ahead

What does the UK Government's electric car strategy mean for real estate?

John Condliffe, Alex Harrison and Kathryn Hampton explain

With the ban on new petrol and diesel cars and vans from 2040, it is estimated that two thirds of vehicles on UK roads will be electric by 2050. On 9 July 2018 the government published its Road to Zero strategy on electric vehicles. The strategy sets out how the government plans to "lead the world" in zero vehicle emissions and a big part of this is ensuring that the UK has the necessary infrastructure to power the vehicles.

The strategy sets out plans for a colossal expansion of green infrastructure across the UK and includes a number of initiatives that will have a significant impact on the real estate industry. They largely relate to the provision of the charging points that will be needed for all cars on UK roads to be electric.

There are currently 14,000 public chargepoints across the UK, but the government wants many, many more. It wants the UK to have one of the best charging networks in the world and is willing to make a significant investment into this area. It expects the transition to electric to be led by the industry and consumers, but a review of the uptake of electric vehicles is scheduled for 2025. If the uptake is too slow, the government will then decide what interventions are needed.

In the meantime, a requirement for chargepoint infrastructure for new homes is expected, with a consultation on this due "as soon as possible". There is also likely to be a requirement for non-residential development, as proposals to change Building Regulations to require new charging facilities are also mentioned.

The revised EU Directive on the Energy Performance of Buildings means that we will see similar charging requirements throughout the member states. The Directive requires member states to enact regulations so that a certain number of parking spaces are equipped with the appropriate pre-wiring for a charging point. Whatever the final deal on Brexit, the UK will also have to comply with the Directive post-Brexit, although depending on whether a transitional period is agreed as part of the deal, this could be for a limited time only.

Charging at the workplace is a particular focus in the UK too. The government is increasing its investment in this area by making funding available for workplace charging schemes, so we can expect to see charging requirements for new office and retail developments in the near future.

Highway works could also get more expensive as the plan is for all new street lighting columns to have charging points in appropriate areas.

There has been discussion in the market about how the wayleave process needs to be reformed to make the delivery of charging infrastructure happen. Sadly, this was not included in the Road to Zero strategy, but it has been picked up by Sir Oliver Letwin as part of his review into housing delivery. In his draft analysis, he said that the utilities process "urgently requires further attention across government".

As well as meeting occupier/end user demand, there are a number of opportunities that this potential £7.6 trillion market presents to landlords, developers and investors. Installing public charging areas within new and existing schemes is one example.

Considering a site's energy strategy early can give rise to other innovative solutions. One example is the use of electricity from kinetic pavements (generated as people walk over grids) being used to charge electric vehicles.

Now is the time to think about how this will work in practice and how the real estate sector can tap into this new and exciting field. Dubbed as the biggest technological advancement of the motor industry since the invention of the motor car in the 1880s, this is clearly an area of rapid growth and it could be very lucrative for landlords.

Electric vehicles: charging ahead

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Blockchain and HM Land Registry

Finally a property chain to be welcomed?

HM Land Registry is currently looking into the potential use of blockchain technology as part of its Digital Street project. This supports HM Land Registry's aim to "become the world's leading land registry for speed, simplicity and an open approach to data". Sarah Brown and Charles Jemmett consider how this would work in practice and the issues which will need to be resolved to make this a reality

What is Blockchain?

Blockchain is a type of distributed ledger, comprised of digitally recorded data in packages called blocks which are linked together in chronological order in a manner that makes the data highly resistant to alteration once recorded. Typically each node (ie, each operational participant) on the network contains a complete copy of the entire ledger, from the first block created—the genesis block—to the most recent one.

Although the term "blockchain" is used generally to mean "distributed ledger" in most discussions, as well as in the media, a blockchain is only one of many types of data structures that provide secure and valid achievement of distributed consensus.

There is a distinction to be made between permissionless ledgers (public) and permissioned ledgers (private). Permissionless ledgers allow anyone to contribute data to the ledger with all participants possessing an identical copy of it. Permissioned ledgers, on the other hand, allow for distributed identical copies of a ledger, but only to a limited number of trusted participants who are pre-selected or subject to gated entry upon meeting certain requirements.

What advantages could blockchain technology bring to land registration?

Blockchain presents clear advantages over the existing land registration system, specifically:

- **Security:** blockchain is considered secure and could significantly reduce property fraud. Records are cryptographically protected, with each property being given a unique code and linked to a smart key held by the owner. The database is distributed across a network of computers, making it hard to hack.
- **Speed:** changes in property ownership will be recognised almost instantly, speeding up the time taken to complete transactions. Smart contracts could take this a step further and allow a transaction to be completed automatically once the specified contract pre-conditions (eg payment of funds) are satisfied.

- **Cost savings:** completing transactions more quickly and securely will inevitably lead to cost savings for land registries and the parties concerned. Further, having real-time property information available will facilitate better decision making and more efficient property management.

Will it make the conveyancing process redundant?

No. Whilst any change in ownership can be recorded instantly, parties will still want to carry out prior due diligence and agree the terms on which the transaction is to be completed. It is usually this part of the process which takes the time and blockchain doesn't eliminate the need for this. Blockchain may make it easier to access due diligence and title information about a particular property if such information is also recorded on the blockchain.

How will it protect confidentiality?

This is one of the biggest challenges. One of the advantages of blockchain is its transparency, as it requires all members of the network to view and approve changes. In practice, this would be a largely automated process, with nodes checking that each transaction submitted to the ledger is valid and that the chain has not been corrupted.

However it raises questions regarding how access to data would be controlled. Currently, most property ownership information is publicly available and it is unlikely we would see a situation where blockchain would make this more restricted. Most likely, there would need to be a public site (like the current HM Land Registry website) where the public could access title information held on the blockchain. However steps would need to be taken to ensure that confidential transaction information (eg personal side agreements etc) are not made publicly available - whether by keeping this information off the blockchain in the first place or restricting access to such information to specified members of the network.

Does it completely eliminate the risk of fraud?

No. It has been argued it would be harder to hack information contained on a blockchain given there are multiple copies of the database, however hacking is not impossible and for determined hackers the stakes will be temptingly high. There have been numerous high-profile examples of blockchain based crypto-currencies being successfully hacked, including several in 2018.

If there is a public facing site through which the public can access property information (such as the current HM Land Registry website) then this becomes an obvious target for hackers looking to perpetrate property fraud.

Is there a continuing role for HM Land Registry if blockchain technology is adopted?

Yes, probably. In theory, blockchain removes the need for a “gatekeeper” as transactions can be processed automatically. However it is likely that we would continue to see a role for HM Land Registry to verify transactions and provide public information on ownership. The current system of title guarantee (where registered title is guaranteed by HM Land Registry) would also be something participants in property transactions would be reluctant to lose.

Are there any other hurdles to overcome?

Yes. Legislative change would be needed to support blockchain transactions in a real estate context as currently, for example, certain transactions can only be effected by deed. There will also be time and cost implications to HM Land Registry in implementing blockchain technology.

The Future

The UK is not unique in considering the use of blockchain to modernise its system of land registration. Internationally various other countries (including the Ukraine, Georgia, Sweden and Dubai) have all announced plans involving blockchain. The case for modernisation is arguably more compelling in countries which do not have an established and well-respected centralised system for land registration as we have in the UK. However there are still clear benefits to using blockchain technology which HM Land Registry is right to explore. As the technology continues to evolve, it is vital that our conveyancing process continues to keep pace.



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Whose property is it anyway?

The proposed beneficial ownership register for overseas entities

John Condliffe and Laura Oliver look at the government's plans for a beneficial ownership register for overseas entities

"Up to 5 years in prison for criminals who use UK property market for money laundering. Foreign companies owning UK properties will have to reveal their ultimate owners on the world's first public register."

The bold headline of the government's press release on 23 July 2018 explains the political thrust behind the "beneficial ownership register". The government asserts that the UK is "a world leader in corporate transparency"¹ and since June 2016, most UK-registered entities have been required to provide information about their ultimate owners and controllers to Companies House. To date there has not been similar visibility where property is owned by overseas entities and the beneficial ownership register is therefore intended to address "widespread concern expressed about the lack of transparency around who ultimately owns land in the UK".²

The story so far

- At the 2016 International Anti-Corruption Summit, David Cameron committed to establishing a register showing who owns and controls overseas entities that own UK property or participate in UK government procurement.
- In April 2017, the government published a call for evidence on proposals for a beneficial ownership register and in March 2018, the government published its response.
- In July 2018, the government published draft legislation, the Registration of Overseas Entities Bill, which will implement the register. The Bill was open for comment until 17 September 2018 and the government is now considering the feedback they have received.
- The final Bill is likely to be laid before parliament in early 2019 as the government remains committed to the register "going live" in 2021.

The Registration of Overseas Entities Bill

It is unlikely that feedback on the draft legislation will lead to a change in direction or any significant change in how it will be implemented.

The government's preferred option is a register showing the beneficial owners. For these purposes the definition of "beneficial owner" that underpins the PSC (Persons with Significant Control) register will apply (see diagram).

The new regime will affect freehold and leasehold property (where the term is more than seven years) and will apply to all overseas entities except governments and public authorities.

Beneficial ownership will need to be registered with (and verified by) Companies House who will then issue a unique identification number (an overseas entity ID). Without the ID, the overseas entity will not be registered at the Land Registry as the owner of property. The overseas entity will need to comply with an "updating duty" (at least every 12 months) in order to retain its status as a "registered overseas entity" and restrictions will be put on the title registers of its properties that will prevent the registration of certain transactions (transferring the title, granting leases with terms more than seven years or granting charges) unless the overseas entity is registered (or is exempt from registration).

Overseas entities who already own UK property will be given 18 months from implementation of the new law to register and obtain an ID. After that a restriction will be put on their property registers whether or not they have done so.

¹ Ministerial foreword to the April 2017 call for evidence on proposals for a register showing who owns and controls overseas entities that own UK property or participate in UK government procurement.

² Overview Document: Draft Registration of Overseas Entities Bill, July 2018.

The impact on the UK real estate market

Most respondents to the 2017 call for evidence thought that the new register could have a negative impact on the UK real estate market by deterring overseas investors and making it less competitive in the global arena. However, in its impact assessment³ the government found that:

- Overseas entities with an established UK presence and large foreign institutional investors were unlikely to decide against investing in UK property as a result of the new register because:
- the regulatory change would not be significant compared with the incentives of investment; and
- these groups are unlikely to legitimately require anonymity of beneficial owners.
- The new register is unlikely to make any difference to private individuals buying property in the UK as their place of residence.
- Whilst the register might deter individual foreign investors who value their privacy significantly, that group is not large enough to cause any significant changes in overseas property investment overall.

The impact assessment did acknowledge the concentration in Greater London of properties owned by overseas entities (44% of all such properties) and in particular the prime property areas in central London, but

concluded that this still represented a minority of property owners in those areas.

Be prepared

The requirements of the register will create a significant additional compliance burden and there are various stages in the process where transactions involving overseas entities could be stalled, particularly while initial registration with Companies House takes place. It will be necessary for overseas entities to be prepared and get to grips with the requirements quickly.

The register may also signal an intention by the government to start levying SDLT on transfers of shares in companies rich in UK property, since it could provide much of the toolkit for enforcing such a charge.

Both investors and professionals involved in the property industry have understandable reservations about the operation and impact of the register. However, the message from the government has been clear for some time – this register is coming and it is essential in the government's eyes that it is public.

³ RPC Reference No: RPC-4242(1)-BEIS, Date: 11/07/2018.



10 things you need to know about the beneficial ownership register:

1. Why:

To increase transparency and trust in the UK property market and support law enforcement investigations.

2. When:

The government expects the beneficial ownership register to become operational by 2021.

3. What property will be affected:

Freehold property and leasehold property if the term of the lease is more than seven years. This will therefore catch many occupational leases.

4. Who will have to comply:

All overseas entities except governments and public authorities who own or acquire property in the UK. Overseas entities who already own property in the UK will be given 18 months from implementation to comply.

5. What is a beneficial owner:

Individuals with "significant control" (see opposite). This mirrors the PSC (Persons with Significant Control) regime that was introduced in 2016 for UK corporates.⁴

6. Who can see the register:

The register will be, for the most part, accessible to the public. This accords with a commitment made by the government at the 2016 Anti-Corruption Summit.

7. Who will maintain the register:

The register will be held by the registrar of companies. Overseas entities will have a duty to update the information provided at least once every 12 months.

8. What will change in practice:

Overseas entities will need to be registered with Companies House and have a valid overseas entity ID in order to be registered as the owner of property or in order to sell property or grant leases of more than seven years.

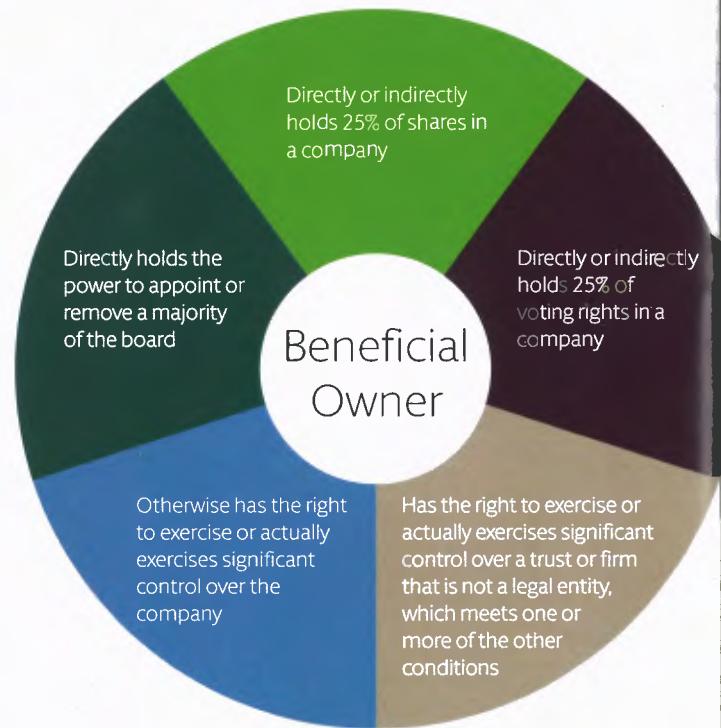
9. How will the register be enforced:

Non-compliance or the provision of false information could result in unlimited fines and prison sentences of up to five years.

10. What should overseas entities be doing to prepare:

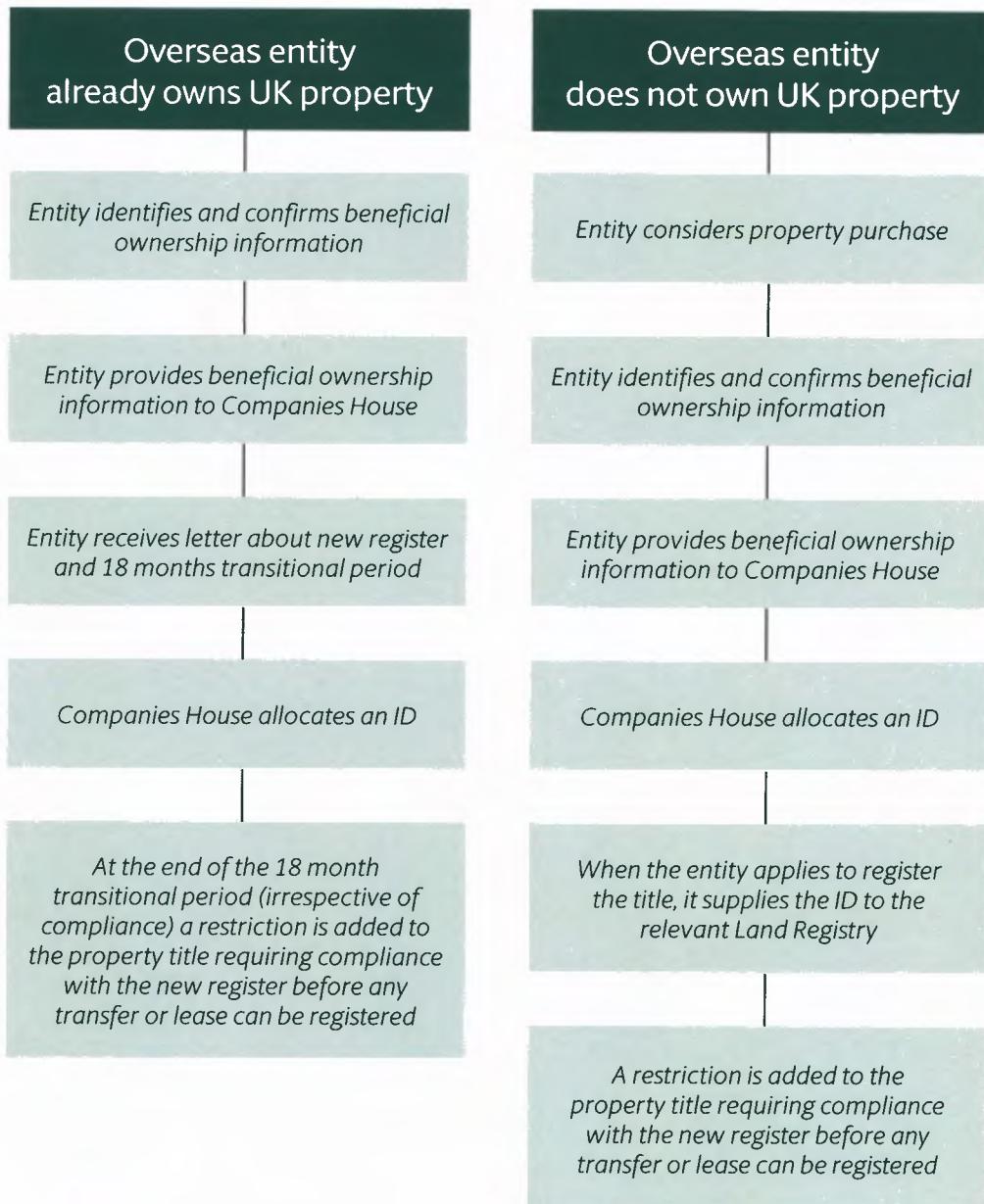
Overseas entities should submit their initial registration with Companies House as soon as possible after the legislation has been implemented and anticipate the information they will need to compile in order to do so.

What is a beneficial owner?



⁴ The PSC legislation includes adaptations to the definition of beneficial owners to allow for different types of entities, including entities without share capital, voting rights or boards of directors.

How the new register will work⁵



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John Condliffe was part of a BPF Working Group who responded to the consultation. John and Laura advised the Investment Property Forum on a response.

⁵ Adapted from the diagram incorporated in the government's Impact Assessment (RPC Reference No: RPC-4242(1)-BEIS, Date: 11/07/2018).

Proptech and its impact on the logistics sector

Robots; underwater distribution centres; airships releasing drones for deliveries. No, this isn't a pitch for a science fiction film but the future of distribution centres. The rise in global e-commerce together with shifts in customer delivery expectations and technological innovation are driving major developments in the logistics sector. Adam Balfour explores three such developments

The location and shape of distribution centres

The near future could see distribution centres underwater or even taking to the skies! A shortage of land is a constant and pressing issue for the logistics sector. Coupled with the growing need to ensure last-mile and last-minute deliveries, the price of traditional warehouses located in the vicinity of big cities is likely to increase drastically. Technology may offer alternative solutions.

Online retailers are already filing patents for airships to release drones or parachute deliveries, and underwater warehouses in lakes.

Coming back down to earth (quite literally), Hounslow Council has granted planning permission for a 2million sq ft underground warehouse alongside the Parkway (A312) near Heathrow Airport. The potential for subterranean development has already been spotted in America with the world's largest underground business complex, "SubTropolis" located in Kansas City. This is housed in an excavated mine the size of 140 football fields and provides 6million sq ft of lettable space, with more than 8million sq ft available for expansion.

Developers are also looking at taller distribution centres as automation allows for higher racking systems as square footage is looking increasingly expensive. The natural way is up. All new P3 warehouses for example have 12m clear internal heights, which is 2m more than the current norm. This increases storage capacity by 20%.

Robots and smart tools

Technology is also changing how existing distribution centres operate.

Robots already play a significant role and this is set to increase. Certain retailers' distribution centres are now almost fully automated and can process millions of items a week. Ocado Technology is trialling "CargoPod" autonomous vehicles to deliver groceries in residential areas of Greenwich. A growing shortage of labour, potentially exacerbated by Brexit, may lead to Wall-E lookalikes working in warehouses and handling our groceries before long!

The introduction of AI management systems also allows for the receipt and dispatch of more goods through quicker loading turnaround times.

While current warehouses may need about 25 loading bays, warehouses of the future may use drones leading to higher site density and ultimately greater value.

Powering the future

The main challenge will be to ensure the warehouses of the future have enough power. Some owners have set out ambitious solar panel installation projects on the roofs of distribution centres, hoping to see as much as 80% of their energy generated in this way. IM Properties has built a 69,000 sq ft warehouse in Birmingham with photovoltaic roof panels which is fully electricity-cost neutral.

The world's first carbon-neutral warehouse was launched in Enfield, Middlesex in 2016. The 173,000 sq ft development has reduced its power consumption through the use of motion controlled LED lighting and creates its own power through photovoltaic panels across its three buildings.

By enabling self-sufficiency, businesses can keep operating costs down and provide customers with cheaper warehouses.

Conclusion

Technological innovation is likely to face greater demand due to changing consumer behaviour as well as the redesign of logistics networks.

It is important to note that the road to automated distribution centres has been littered with obstacles, such as high costs, inflexibility, and non-scalability. As such, only 8 per cent of warehouses in the grocery retailing industry are currently automated. But the future is coming ...



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Q & A

In this edition Kathryn Hampton investigates the world of Plan Tech, whilst Katie Dunn considers the implications of cybersecurity for Smart Cities

Q. *What is PlanTech and now can it help me?*

A. The technology to revolutionise the planning process is already here and is being used in other countries around the world to build the homes, offices and infrastructure they need to flourish.

The benefits are wide-ranging: developers can secure a more robust consent, more quickly; communities are better informed and feel properly engaged and ultimately better places are created.

Here are a few examples of how technology can be used to improve the planning and development process:

Blockchain

This ledger technology allows instantaneous and inviolable sharing of data by the use of timestamped blocks. This could be used to speed up the grant and implementation of planning permission by using it to validate a planning application and to record compliance with planning conditions, Section 106 obligations and Community Infrastructure Levy payments.

The beauty of blockchain is that it can be updated in real time and can sit behind various formats. City Zenith, a Chicago-based company has recently launched a platform creating an interactive 3D city model. The idea is that, in time, users will be able to access the data embedded in the model and see all the property and planning information relating to the buildings.

3D Printing

Blockchain can also ensure a smooth and timely transition to construction and fits particularly well with 3D printing. The planning requirements can be fed into the computer linked to the printing robots, who will proceed with the build, ensuring that it is planning compliant.

3D printing is advancing at a fast pace. In the Netherlands the first 3D printed neighbourhood is expected to be up and running next year. Houses are being printed by robots that can complete a building in 12 hours. Models currently cost around \$10,000 in materials but the company producing the houses expects to reduce this figure to \$4,000.

The Dubai Government announced its 3D Printing Strategy in April 2016 and expects 25% of Dubai's construction to be 3D printed by 2030. Its new 'Office of the Future' took only 17 days to print and was installed on site in two days.

Virtual and augmented reality

Another exciting advancement in the PlanTech world is the use of virtual reality (VR) and augmented reality (AR). What's the difference? AR superimposes a computer-generated image on a user's view of the real world. VR on the other hand, is an all surrounding computer-generated experience in a simulated environment, so VR is much more immersive.

One of the key aspects of the planning process is the assessment of the impacts of a development. This often involves lengthy Environmental Statements and reports which take a long time to put together and a significant amount of time to review.

The use of VR and AR can reduce this markedly by replacing the written word with visual examples which provide a lifelike replica of the completed development, allowing planners, councillors, developers and local residents to understand more about how the building will look and operate. It is already being used in planning inquiries in the UK and particularly in relation to daylight and sunlight modelling.

Providing a working model of the development dramatically increases the chances of ensuring that a quality product is ultimately produced, which is excellent news for the built environment.

Drones

According to PwC, the global market for business services using drones is worth more than £96 billion, with a sizeable chunk going to real estate management. As well as addressing compliance and transparency issues, the use of drones can help developers to show the current state of a site and existing issues which might be affecting it.

The surveying benefits which drones offer could mean that a developer is able to demonstrate the positive effects of its development compared to the existing site.

AI

The amount of data within planning applications, local plans and development plan documents is colossal. Harnessing this information in an effective way provides a fantastic opportunity to reform the planning system.

Artificial intelligence products can review and collate data at an astonishing pace. If other industries are

embracing this latest technology to innovate and grow, the planning world needs to ensure that it is not left behind.

Companies like Google and Facebook are already designing their own cities using this technology and local planning authorities need to get behind this too, particularly as resources and staffing numbers are squeezed.

Back to the future

Such new technology gives the government and the real estate industry the means to revolutionise the UK planning process, but is there the will to do so? I certainly hope so.

Yes, it will take some time and effort to put these new systems in place, but investing in this area now could dramatically improve the success of our economy and the places that we live, work and play. After all, opportunity doesn't knock on your door anymore - it sends you an email.

Putting the "Smart" in Smart Cities

Q. As a property professional living and working in London, one of the world's major Smart Cities, can I expect to see cybersecurity racing up my agenda?

A. Cybersecurity is of paramount importance in any technological advancement and Smart Cities are no different. The Mayor of London recently unveiled his plan to make London the world's smartest city; recognising that Londoners treat digital connectivity as importantly as they do other basic utilities. The Mayor's "Smarter London Together", published in June 2018, emphasised the importance of cybersecurity in one of its five key missions. Mr Khan plans to support public service providers with data-led initiatives through a designated London Office for Data Analytics and establish a city wide strategy for cybersecurity.

The prioritisation of cybersecurity seems to be a smart move. According to ISACA's 2018 Smart Cities Survey, energy, communications and financial services are the three critical infrastructure systems most susceptible to cyberattacks. Of those attacks, malware/ransomware and denial of service attacks were found to be most crippling. These systems form the very foundations of any city, be it smart or otherwise.

What does all this mean for the property owner?

The hot topic at the moment is data breach, following the introduction of the General Data Protection Regulation and potentially eye-watering fines. It's easy to see why. Property managers should certainly keep their own house in order and consider the data they collect from tenants, employees and service providers etc. They should also give thought to the data that they may be less aware of, such as information collected for security purposes from CCTV cameras, ID cards, passes and security gates.

There may be an even weaker link: the building management system (BMS). BMSs are increasingly sophisticated and the systems they control have become ever more connected. These cyber "bridges" linking the various services of the building not only offer a platform to launch a widespread data breach but also expose the property owner to physical disruption. It's not difficult to imagine the chaos that could result from a hacker or terrorist gaining control of the lifts, heating and cooling systems or access controls to a property.

What should I do?

Property owners need to ensure that they have the appropriate level of security in place, both physically and virtually. They should review the data they hold and how they use it. Finally, they should have an eye to the future when entering into new leases and insurance policies to make sure they cover the emerging risks and costs as well as the existing ones.

No city is smart without cyber security.



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Case Round-Up

Lien Tran summarises recent case law

Canary Wharf Investments v Brewer [2018] EWHC 1760 (QB)

Interim injunction obtained against “urban explorers”

The claimants, Canary Wharf Investments (C), have freehold and leasehold interests in possession of various parts of the Canary Wharf estate. The defendants (five named defendants together with persons unknown) were “urban explorers” who climbed buildings and cranes on the estate and posted pictures and videos on social media which detailed the methods they used. They had also detailed their method of access, risking further trespass by others in future.

C was concerned about the risk to the defendants, the public and security workers. C first sought to ban the defendants from the estate itself, but they continued to trespass. Therefore, C made an application for an interim injunction to prevent the defendants from trespassing on the estate, and for delivery of photographs, video and all other media obtained as a result of the trespass.

The High Court granted the injunction. The defendants recognised that they did not have a legal right to trespass on C’s land, and there was ample evidence to show that, without an injunction, the defendants would continue to trespass. The court reasoned that a landowner was entitled to an injunction to restrain trespass even if no damage had been caused. Even if enforcement is difficult, particularly against unknown persons, it did not justify refusing an injunction. The court was satisfied that the injunction was sufficiently targeted to ensure that it only captured those who threatened to act unlawfully.

First Tower Trustees Ltd v CDS (Superstores International) Ltd [2018] EWCA Civ 1396

Non-reliance statement is not entirely reliable

The landlord had leased warehouse premises to the tenant. The lease contained an acknowledgment by the tenant that it had not entered into the lease in reliance on any landlord’s representation. In its replies to pre-contract enquiries in February 2015, the landlord stated that it was unaware of any environmental problems relating to the property. However, in April 2015, the landlord became aware of asbestos contamination in the

warehouse. None of this information was passed on to the tenant before completion of the lease.

Remedial works were necessary to deal with the contamination, and the tenant had to move to alternative premises while those works were carried out. The tenant argued that the landlord was liable for misrepresentation under s.3 of the Misrepresentation Act 1967.

At the High Court, the judge held that the landlord was liable. When the landlord appealed, the Court of Appeal upheld the decision. The court found that the tenant had entered into the lease on the basis of the landlord’s misrepresentation that there were no asbestos problems at the property. Although the lease attempted to exclude liability for misrepresentation, the non-reliance clause did not satisfy the test of reasonableness under the Unfair Contract Terms Act 1977 and so was unenforceable. The court also stressed the importance of pre-contract enquiries. If the non-reliance statement enabled the landlord to exclude all liability, the function of replies to enquiries before contract became worthless.

Baker v Craggs [2018] EWCA Civ 1126

Overreaching does not apply to the grant of an easement

Mr and Mrs Charlton were the freehold owners of a property, Waterside Farm, in Somerset. In 2012, the Charltons sold part of the farm (including a yard) to Mr Craggs. The transfer to Mr Craggs did not reserve any right of way over the yard in favour of the Charltons’ retained land.

Mr Craggs’ solicitors submitted an application to register the transfer at the Land Registry but failed to respond to requisitions in time, resulting in the application being cancelled and a new application having to be submitted. Therefore, while the transfer was ultimately registered four months after completion, Mr Craggs lost the benefit of his priority period (which would have allowed him to get his transfer registered without any other transactions being registered first).

In the meantime, the Charltons had transferred another part of Waterside Farm to Mr and Mrs Baker. The transfer granted the Bakers a right of way across the yard that had been sold to Mr Craggs. The transfer was then registered, and the benefit of the right of way over

the yard was recorded in the register. When Mr Craggs was eventually registered as the proprietor of the land he had purchased, the Land Registry recorded the property as subject to the rights granted in the transfer to the Bakers.

The High Court had previously held that the grant of the easement to the Bakers was a conveyance to a purchaser of a legal estate in land. As the proceeds of sale were paid to two trustees (the Charltons), Mr Craggs' equitable interest in the land was "overreached" and subordinated to the easement. (Overreaching occurs where equitable interests are converted from interests in land to interests in money. This enables land to be sold free of the rights of the beneficiary).

The Court of Appeal reversed this decision on the basis that the only legal estates in land which are capable of existing are an "estate in fee simple absolute in possession (a freehold)", and a "term of years absolute (a lease)". The doctrine of overreaching therefore did not apply here, as the grant of an easement to a purchaser of land is not a conveyance of a legal estate in land within the meaning of s.1(1) LPA 1925. As Mr Craggs was in actual occupation of the land, his equitable interest was an overriding interest. Therefore the purported grant of the Bakers' easement could not prevail over Mr Craggs' right to be registered as the proprietor of the land free of the easement. Mr Craggs therefore had a right to be registered as the legal owner of the property free from the right of way.

R on the Application of Principled Offsite Logistics Limited and Trafford Borough Council and others [2018] EWHC 1687 (Admin) kerr

Occupation for rates mitigation is beneficial occupation

Principled Offsite Logistics (P) operates a business model in which they occupy premises for short periods of time in order to minimise the owners' liability to pay business rates under the Non-Domestic Rating (Unoccupied Property) (England) Regulations 2008. P stores items in unoccupied premises, and if that storage constitutes occupation that lasts more than six weeks, owners can avoid paying rates for three months.

Trafford Council had issued a number of summonses against P, seeking a rates liability order for non-payment of rates. P applied for judicial review to challenge the

decision to issue those summonses. The issue for the court was whether P could be said to be in beneficial occupation of property where the purpose of that occupation was purely to mitigate rates liability.

The court held that the motive here – the avoidance of rates for the owner – was irrelevant. "Occupy", "occupancy" and "occupation" were given their ordinary meanings. There is no requirement for a motive beyond the occupation itself inherent in any of those words. P was therefore held to be the beneficial occupant, regardless of the fact that theirs was occupation for the sake of occupation.

London and Ilford Ltd v Sovereign Property Holdings Ltd [2018] EWCA Civ 1618

Overage agreements: beware the narrow trigger event

London and Ilford (L), a developer, purchased a property from Sovereign (S), with the intention of redeveloping the office space into 60 residential units. On completion, the parties entered into an overage agreement, which provided that L would pay £750,000 to S if a 'first trigger event' occurred during the overage period.

The trigger event was defined as L's receipt of planning approval for the "Development" of the 60 residential units. 'Development' was defined as comprising a change of use. During the overage period, the planning approval was granted and S claimed the £750,000.

However, it transpired that L's plans would contravene building regulations due to incompatibility with fire escape requirements. L refused to pay the overage, arguing that the purpose of the overage agreement was to provide a commercially valuable benefit in exchange for payment and that the commercial risk should be on S.

Summary judgment in favour of S was granted at first instance. When L appealed, the Court of Appeal dismissed the appeal and held that the regimes of planning permission and building regulations were entirely separate. The trigger event was clearly expressed as relating to planning consent for change of use and there was no mention of building regulations. Both parties were experienced developers and professionally advised and therefore such a

pre-condition for the payment of overage requiring compliance with building regulations could have been included in the overage agreement if that is what the parties had intended.

Prezzo Ltd v High Point Estates Ltd [2018] EWHC 1851 (TCC)

Landlord's obligations to insure

Prezzo had a lease of the ground floor and basement of a building, defined as the "Premises" in the lease. The lease required the landlord to insure the "Premises" for the benefit of the landlord and the tenant. Prezzo had covenanted to pay insurance rent to the landlord.

A fire occurred at the premises which damaged the restaurant and building. The insurer indemnified the landlord and sought to use its right of subrogation to claim the amounts paid out in relation to the rest of the building from Prezzo, believing Prezzo to have caused the fire. However, Prezzo argued that there was an implied waiver of the right of subrogation. Where the landlord has insurance for the benefit of the landlord and tenant, then the landlord's loss must be recouped from the insurance monies and they should have no further claim against the tenant.

The court held that Prezzo's lease expressly limited the insurance provisions to insurance of Prezzo's ground and basement premises. "Premises" did not include the wider building. The parties could have drafted the lease to require the landlord to insure the whole building, but they did not. Even though the landlord's superior lease included a requirement to insure the whole building, Prezzo's lease did not incorporate the insurance obligations of the superior lease.

Therefore the insurer's right of subrogation had only been waived in relation to the ground and basement premises, but not the wider building. The insurer was able to claim against the tenant for loss and damage to the remainder of the building flowing from the fire.

Network Rail Infrastructure Ltd v Williams & Anor [2018] EWCA Civ 1514

Network Rail liable for failing to eradicate Japanese Knotweed

Williams and Waistell were neighbours who owned properties in South Wales next to a railway embankment. The back walls of their houses adjoined a path belonging to Network Rail, which had an abundance of the invasive plant Japanese Knotweed growing on it. Network Rail had been aware of the plant's growth since 2008 and had been managing it to ensure railway safety. The knotweed had been present for over 50 years and there was no physical damage to the properties. However, the claimants argued that they were unable to sell their houses due to the presence of knotweed and sued Network Rail. The mere presence of the plant in the vicinity represented a major risk to potential lenders and purchasers, which resulted in a reduced market value of their properties.

At first instance, the County Court rejected the claimants' nuisance claim because there was no physical damage to their properties. However, since the knotweed resulted in a diminution in the value of their properties, the court awarded them the costs of eradication and the residual diminution in value following treatment.

When Network Rail appealed, the Court of Appeal upheld the first instance decision but for different reasons. Even though there was no physical damage to the properties, Network Rail's failure to prevent the interference amounted to nuisance because it had actual knowledge of the presence of knotweed on its land and should have been aware of the risk to neighbouring properties. As well as a risk of future physical damage to the claimants' property, the knotweed interfered with the amenity value of the land which affected their ability to fully use and enjoy their properties.

Trillium (Prime) Property GP Ltd v Elmfield Road Ltd [2018] EWCA Civ 1556

Court gives literal interpretation to rent review clause

Elmfield Road was the landlord of office premises in Bromley which it let to Trillium. The parties entered into a reversionary lease of the premises in 2005, as per

of a complex series of transactions. The reversionary lease was due to commence in 2010 and contained an unusual calculation of the initial rent, which was defined as the highest of three alternative calculations. One of these alternatives was calculated "in accordance with" the provisions of the rent review paragraph. The rent review paragraph stated that the annual rent was to be determined by reference to the initial rent and the increase in the RPI index from 2005. Trillium argued that the calculation contained an obvious mistake as it resulted in double counting (as the base rent already reflected RPI up to 2010) and did not achieve the general purpose of a rent review clause.

The Court of Appeal held that there was no ambiguity in the language of the rent review paragraph, so the court must apply it. The ordinary and natural meaning of the words was clear and the rent review paragraph made sense on its own. It was not clear that there was a mistake in the rent review wording, nor that the arrangement was commercially absurd.

The unusual facts reflected a carefully structured bargain between the parties. Even if it may have seemed like an uncommercial or imprudent arrangement, this did not provide justification for departing from the clear language of the contract.



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Leading the way with a lamppost: London's first Chief Digital Officer in interview

In August 2017 Sadiq Khan, Mayor of London, appointed Theo Blackwell as London's first ever Chief Digital Officer. The appointment was to help realise the Mayor's ambition to make London the world's smartest city. A year into the job, Theo reflects on the challenges, PropTech in real estate and the future potential of the lamppost

Interview conducted by Jane Dockeray and Sarah Brown.

As London's first Chief Digital officer, what do you see as the three biggest challenges?

Probably the growth of London; the challenge of fragmentation; and how we scale innovation to match those factors.

London is going to grow by two million people by 2040 so we've got to plan infrastructure to meet the needs of current Londoners and those in the future. We want to avoid being trapped behind legacy systems, dominated by big suppliers which do the job but don't make us more nimble and open to innovation in the future.

One of the problems is that London is very fragmented in its approach to innovation. With 32 boroughs averaging 250,000 people in each borough, the size of London creates a localised view. The challenge for the future is how we can seize the benefits of scale and adopt innovation so that we stop being the sleeping giant.

London is recognised as one of the smartest cities in the world but there's still a great deal of potential to really scale up that innovation.

Can you tell us a bit more about the new Smarter London Together roadmap which you are involved in?

The Smarter London Together roadmap has identified five things that this city really needs to do to be open to innovation. One, we need to have citizen-focused services. Two, we need to make sure that we get data sharing arrangements in place so that we can standardise information about borough services; three, greater gigabit connectivity; four, we need to invest in public service digital skills and also the skills of the population; and five we need to create the right institutions that will enable us to collaborate and create a kind of innovation glue through the collation of the willing.

What PropTech innovations do you see as making London a smarter city?

We have 40 Opportunity Areas described in the London plan, so that's 40 areas where there's going to be

significant growth. London in the future won't just be one smart city; it will be a collection of smart cities. The challenge is to make sure that innovation is introduced through digital services which are applied consistently throughout so that a great idea that's developed in Rotherhithe can be adopted in Old Oak Common.

If we can create a common standard around things like air quality services and how we measure movement, we can design a better urban environment. It's a big opportunity for the smart city industries and real estate to help set out common standards which will create a platform for future innovation. At the moment, because of fragmentation we are not seeing the benefits of scale that come with being a city.

What more do you think the real estate sector can do or should do to get the best out of tech innovation?

The real estate sector is very important for tech innovation. Having more data information linking businesses in a new commercial area with businesses just outside gives benefits of scale for both the new development and locally. Data information can identify the services that can support a new commercial development and also help integrate a new business in an existing zone. This can be a real boost for local business and create a conversation between local, new and existing businesses.

There's been a huge amount of innovation in the private rented sector, but the main area of interest for me is looking at the Internet of Things and the embedded technology in new developments.

Do you have any specific plans or goals for the real estate sector?

Our major proposal is that all new developments, residential and commercial, will have full fibre connections. We are also considering how developers would negotiate with additional infrastructure provider

We also have quite big plans on smart infrastructure and in particular the "humble lamppost". Many lampposts a

about twenty years old and just provide light, but in the future we want to create a new lamppost which can house air quality sensors, security, electric vehicle charging, and 5G coverage.

For 5G coverage the city will need probably about 250,000 connectors about the size and shape of a brick. They will go on state buildings, state assets and the assets of the property sector.

We're leading the procurement process with Bordeaux, the Hague and a couple of other cities for potentially 80 cities across Europe, so that's around 20 million lampposts. In ten years' time, this functionality would help us develop policies for things like transport and air quality. We see the lamppost as a key to making a smart city and if we're adopting rules for delivering these lampposts, it would make sense to get real estate to engage from the beginning.

We spend a lot of time negotiating wayleaves for electronic communications with different providers. Sadiq Khan has proposed standardised wayleaves to enable digital infrastructure. Do you see this as a way forward and do you support it?

We've done some really good work with City of London on wayleaves. We want to see a standardised approach across London. We think it's absolutely vital to make London investible by the private sector and digital infrastructure providers. The state is not going to provide the full cost of the investment needed. It will provide some but we need to reduce the cost of digs for fibre and access to buildings. This will make London a place that it's easy to do business with and will serve Londoners better.

We will also make it easier for fibre to serve communities by using our public assets such as the tube and public buildings to ensure fibre goes as far as possible into communities so it can then be connected to neighbourhoods. We are already running 4G fibre network through the tube and looking at how we can do that on overground lines and from there to a whole range of public buildings. You will see these plans progress over the next year or so as we address some of the problems.

There's a lot of confusion between people about mobile coverage and fibre and I can understand that. There are some areas of London that are quite poorly served and

others that have had much more investment because of perceived market demand. In future, delivery will be according to a measured and long term plan to readdress the previous piecemeal approach.

Are there initiatives in other cities which you look to as examples for your vision of London?

I think Amsterdam is a smart city with mobility. Some of the work that the innovation sector does in New York is interesting but we have quite different challenges from American cities. The next phase of mobility is a key concern in London but we already have a really well run public transport system so our issues are very different to the States where there's a huge reliance on the automobile. Because of this, I often look to Europe because we have close ties with Europe and we will remain a European city regardless of what happens. That said, we commonly sign memoranda of understanding with other cities. We work closely with Chicago and San Francisco as well.

Can you give us some real life examples of technology making a difference for citizens?

I think the reduction in queues, a ticketless society, being able to pay for services online, paying your accounts and taxes online are all benefits for citizens. Saving spare time by reducing queues benefits a whole generation of people.

I think we will see cleaner, less cluttered cities as a result of technology. Not just through clean tech but also with better air quality brought about by better planning of new developments.

For example, why, in an internet age, do we need physical planning notices outside a property or estate agents' signs? If we can have a less cluttered environment this will bring benefits to citizens in terms of amenity.

We may be a long way off from flying taxis, but I think in the future you will be able to see the use of drones for transportation particularly in the NHS. I'm quite an optimist for the future, but to get the full benefit, we need to make sure of the foundations, including upskilling people's digital abilities.

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This newsletter is written in general terms and its application in specific circumstances will depend on the particular facts.

If you would like to receive this newsletter by email please pass on your email address to one of the editors listed below.

If you would like to follow up any of the issues, please speak to one of the contacts listed below, or to any real estate partner at our London office on +44 20 7296 2000, or to any real estate partner in our worldwide office network as listed at the back of this newsletter:



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