

SEMINAR

MONDAY 19th SEPTEMBER 2016

VENUE : **CBRE**

Q & A's

*CONFLICT OF INTEREST - BREXIT - ADR (Alternative Dispute Resolution) - RICS/ IPMS
(Measuring Codes) - GPDO's (General Permitted Development Orders) - PURPLE BOOK -
METHODS OF SALE (Statutes & Regulations)*

OPEN QUESTIONS

NEXT SEMINARS - OCTOBER 17th NOVEMBER 21st

SEMINAR BY DOUG STEVENS TO 1st & 2nd YEAR GRADUATES

DELIVERED AS A POWERPOINT PRESENTATION

1. Q WHAT IS A CONFLICT OF INTEREST

1. A A conflict of interest is anything that impedes or might be perceived to impede an individual's or firm's ability to act impartially and in the best interest of a client. PERCEPTION OF CONFLICT

▶ A conflict of interest may occur where you or your firm:

- Are acting for another person with competing interests at the same time (e.g. advising both the seller and buyer (or more than one buyer) of a single commercial property simultaneously)
- Have other obligations or pressures that detract from or affect your relationship with the client (e.g. acting as an expert witness where you/your firm has an interest in the outcome of the proceedings)
- Comprehensive & robust systems for checking conflicts must be in place and efficiently applied

▪ Q How to Identify & Manage Conflicts OPEN SHIRT acronym

- O OPENNESS The best way to deal with potential conflicts is Openness
- P PARTIES you must declare any concerns to all parties, being as clear and open as you possibly can. Where client confidentiality is a concern, you can still discuss your worries, giving the other side(s) enough information to make a decision about whether they are content for your firm to take the instruction. Managing a possible conflict: can you separate out work that may conflict and just take on neutral work?
- E ERECT In a larger firm a Chinese Wall (Information Barrier) can be erected between those surveyors and staff acting for different clients? Once you have agreed how a potential conflict will be managed, confirm this with the client(s) in writing.
- N NO . If there is a clear conflict or it is likely to be perceived to be a conflict of interest or if you can't disclose enough information for all parties to make an informed decision, then you should say NO and refuse the instruction.

Conflict of interest - How to deal with it - what standards apply ?

- **SHIRT acronym**
- **S Self** Put yourself in your clients position. Would you be happy with the conflict ?
- **H High** standard of service - the best possible advice, support or performance of the terms of engagement you have agreed. Would the potential conflict of interest impact on your ability to provide good and impartial advice to each of your clients?
- **I Integrity** - open and transparent - never allowing bias, conflict of interest or undue influence of others to override your professional or business judgements and obligations.
- **R Respect** - Treat others with respect. If you are proceeding in the knowledge that there may be a conflict of interest and/or withholding potentially important information from at least one of your clients are you treating those clients in a fair and respectful manner?
- **T Trust** - Act in a way that promotes trust in the profession. What is the impact if you were to proceed knowing that there is a potential conflict of interest?
- ▶ **BRIBERY ACT 2010** If you sell a development site to a party who has offered to retain you to let it /sell it on post-development this must be disclosed to the seller client. You cannot receive gifts or money to influence you to over or under value a property.

EXAMPLE OF CONFLICT OF INTEREST LETTER

- ▶ Dear X
- ▶ I refer to <our telephone conversation/meeting> <last week> when I advised you that <describe conflict>.
- ▶ The purpose of this letter is to confirm the potential conflict of interest and seek your written confirmation that you are happy for us to proceed on the basis described above.
- ▶ A similar letter will be sent to <the other client> advising them of the above facts and seeking their agreement to act on the basis stated.
- ▶ As discussed/agreed, we propose to manage this conflict of interest by establishing an information barrier.
- ▶ The information barrier will protect your interests by ensuring that your instruction is handled in a strictly confidential manner.
- ▶ All the information relating to your instruction will remain confidential to the instruction team and will not be made available to, or be accessible by, other people within the firm.
- ▶ Please will you confirm your agreement by signing and returning the attached copy of this letter.
- ▶ I look forward to hearing from you.
- ▶ Yours sincerely

BREXIT - Q What were immediate impacts on property sector ?

- ▶ A In build up to 23rd June less investment activity due to uncertainty - IN or OUT ?
- ▶ A Some contracts included a BREXIT clause to allow withdrawal from contract
- ▶ A From 24th June many investors wanted to redeem their holdings - much of it held in property
- ▶ Q What is a redemption ?
- ▶ A A redemption is the return of an investor's principal in a [fixed-income](#) security, such as a preferred stock or bond, or the sale of units in [a mutual fund](#).
- ▶ Q How did many of the large UK funds react to the redemptions ?
- ▶ A They froze activity - stopping more redemptions. They diluted the price.
- ▶ Q How did the funds raise the money to meet the redemptions ?
- ▶ A They sold their most liquid assets - City & West End - with international appeal
- ▶ Q Why is BREXIT good for international investors ?
- ▶ A £ was /is weak against foreign currencies

JUNE 24TH - BREXIT RESULT KNOWN - £ FALLS - STOCK MARKET FALLS - CAMERON RESIGNS ** THE SCENARIO IS THAT YOU ARE DEALING WITH A RENT REVIEW w/e 24th June 2016

- ▶ Q WHAT DO WE ASSUME IN RELATION TO THE DATE OF THE NEW LETTING WHICH THE RENT REVIEW CLAUSE ENVISAGES -ie, WHAT STAGE IS THE DEAL AT ?
- ▶ A THE NEW LEASE IS TO BE SIGNED ON 24TH JUNE 2016 WITH BREXIT RESULT/FALLOUT KNOWN
- ▶ Q WHAT DO YOU ARGUE AS THE TENANT/TENANTS REPRESENTATIVE ?
- ▶ A “The world has changed”. “I want a discount from the rent I had agreed”. “With a weak £ it will cost me more to buy in goods from abroad”. “Jobs are at risk so consumers will spend less”
- ▶ Q WHAT DO YOU COUNTER-ARGUE FOR LANDLORD ?
- ▶ A “It`s a short term blip”. “There is no evidence that jobs will be lost or that sales will fall or that lettings will be aborted or that rents will fall”. “Previous events such as 9/11 or 7/7 have not impacted on rents”

Q What is alternative dispute resolution (ADR) ?

- ▶ Alternative dispute resolution (ADR) refers to a range of techniques for resolving disputes without seeking redress from the courts.
- ▶ **NAMA** acronym
- ▶ **N Negotiation** is the process of getting parties together with a view to reconcile differences and establish areas of agreement, settlement or compromise.
- ▶ **A Adjudication** involves the appointment of an independent adjudicator who considers the evidence and makes a decision which is binding to all parties. It is widely used within the construction industry.
- ▶ **M Mediation** involves the appointment of an independent third party (the mediator) whose role is to help all parties to a dispute to come to an agreement. It is a voluntary process and all parties have to agree for mediation to go ahead. Mediation is not binding.
- ▶ **A Arbitration** involves the parties agreeing to refer the dispute to a third party (the arbitrator) and agree to be bound by the arbitrator's decision. Arbitration is governed by the Arbitration Act 1996. It is a quasi-judicial process
- ▶ **Use of ADR is increasing – Courts slower and more expensive – costs awards against the losing party who rejected ADR offer from other party**

Q What are general permitted development orders (GPDO's) used for?

- ▶ A To make it quicker & easier for Govt to make changes to the Town & Country Planning (Use Classes Order) 1987 to reflect market changes.
- ▶ A They allow certain changes of use without the need for planning permission - often referred to as PDR`s (Permitted Development Rights)

• Q WHAT ARE THE USE CLASSES ?

- A CLASS A Retail A1 Financial A2 - Restaurant A3 - Pub A4 - Take-away A5
- CLASS B Offices B1 - Industrial B2 B3 B4 B5 B6 B7 B8 (Warehouse)
- CLASS C Hotels C1 - Colleges Hospital C2 - Residential/dwellinghouses C3
- CLASS D Non-Residential D1, museums - D2 cinema, bingo, gym
- SUI GENERIS Non-classified

GPDO`S continued

- ▶ **April 2014** a GPDO made significant changes to help increase the number of residential units to help housing shortage and to help ailing High Streets.
- ▶ Change of use (temporary for 2 years) A1 retail to A2 financial or A3 leisure
- ▶ Class B1 office use could be converted to Class C3 residential if conversion completed by May 2016 + many other developments (changes) permitted
- ▶ **April 2015** permanent changes from A1 to A2 or A3 permitted (max 175 sq m)
- **April 2016**
- retail (A1) and specified sui generis uses to dwellinghouses (C3)
- premises in light industrial use (B2) to dwellinghouses (C3)
- previous temporary permitted development right to change buildings in office use (B1) to C3 dwelling houses is put on a permanent footing;
- ▶ The Government`s target is 1million new homes by 2020
- ▶ The issue is that over 6m sq ft of offices have been lost to residential and there is now a shortage of offices in London & nationwide

Q WHAT GUIDELINES/CODE IS THERE FOR MEASUREMENT OF PROPERTY ?

A IPMS (INTERNATIONAL PROPERTY MEASURING STANDARDS)
(alongside RICS Code of Measuring Practice 6th Edition)

- ▶ SECTOR BY SECTOR RICS ARE STARTING TO ADOPT INTERNATIONAL MEASURING STANDARDS
- ▶ MANDATORY USE ALONGSIDE EXISTING RICS Code Of Measuring Practice (COMP) 6TH EDITION
- ▶ IN THE UK WE ADOPT DIFFERENT BASES OF MEASUREMENT TO EUROPE & GLOBALLY.
- ▶ THE FLOOR AREAS USED IN SALES/LETTING DOCS AND VALUATIONS CAN VARY SUBSTANTIALLY COUNTRY BY COUNTRY (dependent on what`s included or excluded, ie residential variation 24%).
- ▶ THERE IS JOINT CONSULTATION (RICS and other bodies) on a SECTOR BY SECTOR basis
- ▶ OFFICES WAS AGREED FIRST (MAY 2015) - RESIDENTIAL DUE IN SEPTEMBER 2016
- ▶ INDUSTRIAL (in consultation) - RETAIL (no dates known)
- ▶ SINCE 1ST JANUARY 2016 all RICS professionals undertaking and commissioning property measurements will be required to follow the RICS Property Measurement Professional Statement.” It will enhance transparency and consistency in the way office property is measured throughout the world”
- ▶ 3 STANDARDS IPMS 1, 2 & 3.

IPMS (offices) 1, 2 & 3

- ▶ Previous RICS COMP used GIA & NIA for offices (GEA for planning & development)
- ▶ IPMS 1 compares closely to gross external area ("GEA") with some differences (balconies and accessible rooftop terraces are included in IPMS 1 but excluded for GEA). IPMS 1 is particularly used in a planning context.
- ▶ IPMS 2 compares closely but not exactly to gross internal area ("GIA"). In addition to the differences mentioned between IPMS 1 and GEA, areas occupied by the reveals of windows when measured and assessed as the internal dominant face are included in IPMS 2 but excluded for GIA. IPMS 2 is particularly used in a costings context.
- ▶ IPMS 3-Office compares to net internal area ("NIA"), but has the largest number of differences between the old and new measure. IPMS 3 is particularly used in the context of agency and valuation; taxation; and property and facilities management.
- ▶ IPMS 3 is used for measuring the internal area of a building in exclusive occupation, including internal walls and columns (previously excluded from net internal area) It also includes some measurements that must be stated separately (balconies, covered galleries, rooftop terraces).
- ▶ **All internal walls and columns within an occupant's exclusive area are included within IPMS 3 - Office. The floor area is taken to the internal dominant face and, where there is a common wall with an adjacent tenant, to the centre-line of the common wall.** NB The dominant face may be to a window, ie, measuring over a window ledge

IPMS 3 (offices) Cont'd

- ▶ Measurements should now be taken to what is known as the 'internal dominant face' (the area within each vertical section [wall] that makes up the perimeter of the building/unit). This can include inside the window recess (to include inside glazing), as long as the glazing is 50% or more of the floor to ceiling height.
- ▶ In a multi-let scenario, the area occupied by the dividing wall between two tenants' accommodation is included within the floor area and apportioned equally between the two as a limited use area.
- ▶ Will the rentalised area increase with IPMS 3 ?
- ▶ Essentially no, the useable floor area calculations are representative of the former net internal area.
- ▶ From 1st January 2016 it is the IPMS basis of measurement which must be used.
- ▶ We await (with some trepidation) the outcome of ongoing consultations between RICS and other international bodies how IPMS will vary from the current 6th Edition COMP on retail, residential, industrial etc.

now published and has replaced the PURPLE BOOK (Oct 2014) but the 12 core principles below are unchanged

- ▶ 12 core principles - **A MICRO DVD (A MM I CCC RO DVD)** acronym
- ▶ **A CT** Act in an honest, fair, transparent and professional manner
- ▶ **M ONEY** Client money separately accounted for and insured
- ▶ **M ARKETING** Marketing and advertising material to be honest and truthful
- ▶ **I NSURANCE** Professional Indemnity Insurance
- ▶ **C ONFLICTS** Avoid conflicts of interest - if you can't then deal with them openly & fairly
- ▶ **C LARITY** Ensure that clients are provided with terms of business/engagement that are fair and clear especially in relation to fees & with details of the firm's Complaints Handling Procedure
- ▶ **C OMMUNICATION** Fair, clear, timely and transparent communications
- ▶ **R EALISM** Give realistic assessments of selling prices / rents based on market evidence and professional judgement
- ▶ **O BLIGATIONS** Identify client and your obligations to them & other parties - money laundering
- ▶ **D ILIGENCE** Carry out work with skill care diligence - ensure all staff employed have the skills to carry out tasks
- ▶ **V IEWINGS** Carry out viewings in accordance with clients wishes & safely
- ▶ **D ISCRIMINATION** Always act in a non-discriminatory manner

Q WHAT ARE THE FOUR MAIN METHODS OF SALE ?

- ▶ Private Treaty
- ▶ Informal Tender
- ▶ Formal Tender
- ▶ Auction

Private Treaty

- ▶ Q What are the characteristics of private treaty
- ▶ Sale by private treaty is the most common method
- ▶ A Party autonomy - can be private and confidential or open market
- ▶ A No obligation to sell but no certainty on timescale or completion of transaction

Informal Tender

- ▶ Can follow on from private treaty to draw negotiations to a close in a ‘best bids’ process
- ▶ Terms of the bidding process to be clearly set out and sent to all prospective bidders covering timing, funds or financial arrangements, any conditions on board approval, solicitors etc.
- ▶ Reserving the vendor’s right “not to accept the highest or any offer made”

Formal Tender

- ▶ Also known as sealed bids
- ▶ Generally used where public accountability is an issue
- ▶ Exercises more control
- ▶ Comprehensive marketing and legal information provided with an ITT (invitation to tender)

- ▶ **Advantages**
 - ▶ Parties bidding blind with no opportunity to impose conditions or increase or decrease their offer after submission
 - ▶ Fairness
 - ▶ Can lead directly to a sale contract
 - ▶ Even in a formal tender vendor can state that they are not obliged to accept the highest or any offer received

AUCTION

- ▶ Quick and relatively certain method of sale (subject to realistic reserve)
- ▶ Best means of disposing of quirky property
- ▶ Higher brochure cost
- ▶ Open sale

Q WHAT STATUTES & REGULATIONS GOVERN PROPERTY SALES ?

▶ **Misrepresentation Act 1967**

Agent has a duty of care to avoid a misrepresentation of fact or a false statement which has the effect of inducing the party to purchase

Q What is a disclaimer - is it effective ?

A Use of a disclaimer clause clearly notified to the party may protect the vendor and agent if the disclaimer is fair and reasonable

Headley Byrne & Co Limited vs Heller & Partners (1964)

Agents liability for negligent statements subject to three tests

- Foreseeability - was the damage reasonably foreseeable
- Proximity - was the legal relationship between the agent and the purchasing party sufficiently proximate
- Fairness - was it fair just and reasonable for a duty of care to arise

▶ **Estate Agents Act 1979**

- ❖ Introduced to regulate estate agency particularly in relation to clients money
- ❖ S.18 Agree terms - especially level of fees & when payable
- ❖ Under Section 21 notification of a personal interest in a property
- ❖ Policed by the Trading Standards Office of each Local Authority

STATUTE AND REGULATIONS continued

- ▶ **Unfair Trading Regulations 2008**
 - ▶ **Misleading Marketing Regulations 2008**
 - ▶ **Consumer Protection Regulations 2008** (CPR`s)
 - ▶ **Business Protection Regulations 2008** (BPR`s)
-
- ❑ These regulations largely supercede the previous three main Acts.
 - ❑ Fundamental difference is that the regulations now apply to potential buyers and vendors extending the duty of care not just to actual clients but to potential clients, potential viewers and potential buyers in addition to the actual buyer
 - ❑ In addition to the giving of false or misleading information it is regarded as an unfair practice to hide or fail to provide information, to fail to demonstrate professional diligence and to exert undue pressure on any party
 - ❑ It is policed by the Competition Markets Authority (CMA) previously the Office of Fair Trading (OFT)