Editorial

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The appraisal of a building requires up-to-date information upon the condition, value and liability, and opportunities to be brought together in order to make an assessment. Condition relates to the quality and limitations of the existing building; value, the assessment of the market in determining how much a property (or the opportunity to create something different) may be worth; liability refers to the implication for the owner, occupier, investor or developer that the property may present, and opportunity relates to the alternatives available to remedy or enhance the existing building.

I raise this point because much of this work depends upon being in control of the expectations of the client at all times. All appraisers have to keep all aspects of their knowledge and experience up-to-date at all times. But that is not easy when new rules can be slipped out without notice. Ever since governments discovered the merits of the web, they have released rules or statute with a minimum of fanfare. On a Monday morning, at the beginning of November, the UK Government released the Criminal Procedure Rules (referred to as the CrPR to distinguish it from the Rules that relate to the conduct of Civil Proceedings).¹ They relate to all charges made on or after 6th November, 2006 in England and Wales. Versions of a similar document had been made available for discussion among interest groups before its publication, but the published document differs from what was assumed to be the final draft.

But how do Criminal Procedure Rules affect those involved with the appraisal of buildings? Avoiding any suggestion that anyone may be involved in fraud, it is the section that deals with the provision of expert evidence that is worth a look. These are the first Criminal Procedure Rules on expert evidence. The new rules deal with the duty of an expert to the criminal court and with the content of an expert's report. They provide explicitly for pre-trial discussion between experts, and they allow the court to order that expert evidence for the defence should be given by a single joint defence expert.

Most people will be aware that the Civil Procedure Rules are due to be revised in 2007, and it is expected that many of the changes introduced in the CrPR will be a foretaste of what is to come.

Part 33 of these new Rules deals with expert evidence. This is the equivalent of Part 35 in the CPR (in a nice touch, Part 35 in the CrPR deals with evidence of Bad Character). This Part starts (33.1) with a definition of an expert as being a person who 'is required to give or prepare expert evidence'. The expert's duty is identified (33.2) as being to help the Court to achieve the 'overriding objective by giving objective, unbiased opinion on matters within his expertise'. Part 33 also emphasises that this duty not only overrides any duty the expert may have to those who instruct him or her, but also the duty to inform all parties if the opinion expressed in a report changes (the expert only has to advise those instructing him or her; it is their duty to inform the Court and the other participants).

The content of the expert's report is set out at 33.3. This report must include the expert's qualifications, relevant experience and relevant accreditation. There had been much debate as to whether the Department for Community Affairs would impose a standard for experts, considering the pressure from interest groups who believed that experts must be accredited by their organisation. So far that would appear to have been resisted, but for how long?

The report content must include details of all literature that has been relied upon in reaching the conclusions, as well as those facts that have been given to the expert. The expert has to make clear which facts in the report are within his or her own knowledge. Because of recent controversy, if some part of the report relies upon tests that have been carried out by a third party, the examiner or tester's details and qualifications must be listed.

Where the expert has identified that there are a range of opinions, or that such a range exists within the authorities the expert cites, the expert must summarise the range and give reasons for his or her own opinion. The report must include a statement 'that the expert understands his duty to the court, and has complied and will continue to comply with that duty', as well as a declaration of truth. The emphasis that the duty continues after the completion of the report has not been so stated before.

So we have new Rules that may streamline the procedure and, as a result, save some money. But buried further down within the new Rules is the statement that a party may not introduce expert evidence, without the court's permission, if the expert has not complied with a direction under rule 33.5. That Rule deals with the direction of the court that pre-hearing meetings are to take place.

The positive aspect of these Rules is that those instructing experts have a duty to advise the expert of all timetables and direction changes, and must inform the expert at once when his report is served on another party in the matter. These changes in the way that expert evidence (Criminal only in this case) must be provided were slipped out in an amended form in an unheralded way and immediately affected anyone charged on or after that date. This form of revision does not make it easy for those affected to keep themselves up-to-date.

The confusion of complexity and frequency of new regulation is affecting those involved in the design of new buildings or in the alteration and change of existing property. Not only does the practitioner need to recognise that a change has been made, but also there is the requirement of understanding the implications of the change, learning the techniques for administering the change, as well as doing some work to earn some money. The increase in the pressure on all professions increases the risk of mistakes being made.

The periods when a rapid change in regulations has taken place have historically been times when mistakes were made. For example, Ronan Point² was erected when changes to structural assessment had just been introduced, and an error in calculation slipped through the checking procedures. Similar changes were in progress in South Korea when they were designing the Sampoong Department Store³ and in New York when the elegant Citycorp⁴ building was being created. The current pace of change and economic climate are replicating those conditions within which the failure of these buildings took place. These failures not only resulted in the loss of many lives but also resulted in litigation to recover the ensuing financial losses. If one thought that the change in regulations was difficult to cope with, it is nothing when compared with the trauma that results from receiving a claim. For some reason we have been condemned to live in interesting times.

To keep in with this issue, Sarah Wilson writes about the new regime of Limited Liability Partnerships, and examines how they operate and keep their liability readers informed. Deborah Osborne provides an overview of how the courts perceive conditions precedent in building contracts. Jorge de Brito *et al.* report on the investigation of the windows and doors in Portugal National Palace. Jonathan Scott *et al.* report on an environmental site assessment tool, designed to be used by planners and developers of speculative housing, for the appraisal of whole new housing developments. The aim of the

tool is to establish the implications of trade-offs between passive solar designs — which seems particularly pertinent — when considering the implication of changes in regulations. Stephen Lau *et al.* provide a critical review of how designers and building byelaws are ignorant of the need to gauge changes in lifestyle and, as a result, changes in user requirement for buildings in Shanghai.

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Notes

- ¹ Criminal Procedure Rules, http://www.dca.gov.uk/criminal/procrules_fin/contents/rules/part_33.htm.
- ² Four people died as a result of a gas explosion which caused sections of the outer wall to drop away; the modern design had a major fault, which allowed a domino style collapse of wall and floor sections from the top of the building to the ground.
- ³ Five hundred and one people were killed in the collapse, which also caused property damage amounting to about \$216m.
- ⁴ Two-inch-thick steel plates had to be welded over each of the skyscraper's 200 bolted joints because of an error whereby welded joints were changed for bolts in a structure that was dangerously under designed.