



# REAL ESTATE RUNDOWN PODCAST:

FINANCE AND RAISING MONEY ON COMMERCIAL PROPERTY

ANDREW JONES AND LUCIE BYRON

WRIGHT | HASSALL



## ANDREW JONES

Welcome to the latest instalment of Real Estate Rundown. My name's Andrew Jones. I'm a partner in the Commercial Real Estate team here at Wright Hassall and I'm joined today by my colleague Lucie Byron.

## LUCIE BYRON

Hi there.

## ANDREW JONES

Hi, Lucie. Lucie heads up our Real Estate Finance team and the reason I've asked Lucie to join today is, I'm quite interested to hear about finance and raising money on commercial property and properties in general. Something that a lot of our clients look at doing but I just want to get the inside track on, if I'm a borrower, what do I need to think about? What do I need to look at when raising money?

So, the first question for me, Lucie really is separate representation, and dual representation is something that borrowers often have never heard of before and I think it's quite a crucial part of the process. Could you just explain that please?

## LUCIE BYRON

Yeah sure. The first thing to say is that it's quite a jargon heavy kind of work for lawyers and over the last couple of years, it's become an increasingly specialist area, with more and more lawyers just only doing finance. So, that makes us a little bit lazy, and we do use a lot of abbreviations and terms. So, we would call these 'sep rep' or 'dual rep' and what that means is how many lawyers are going to be involved. And as a general rule of thumb, 'sep rep', which is where each party, the bank and the borrower have their own lawyers, and 'dual rep' is where you have one lawyer acting for bank and borrower. Smaller transactions, and by that, I mean under £1,000,000 or so worth of borrowing usually will work on a 'dual-rep' basis and you might see 'sep-rep' on larger or more complicated transactions, perhaps involving pension funds or specific types of assets. So, the main impact for you as a borrower client really is one of cost and time. Cost in the sense that it is by far the norm for borrowers to have to pay the lender's legal fees as well as their own. And of course, when you've got two sets of lawyers involved, that does mean that there's a there's a bit of back and forth between those parties. Which can mean the transaction takes a little while longer.

## ANDREW JONES

And has the market changed over the years in respect of having the same lawyer acting for both parties?

## LUCIE BYRON

Definitely, 'dual rep' used to happen all the time, and I think what then happened was our rules were looked at by the SRA.

## ANDREW JONES

Solicitors Regulation Authority.

## LUCIE BYRON

Another example of the jargon that we're talking about.

It became more likely that conflicts would arise or there were borrower solicitors who were certifying things for lenders, making mistakes, some people got their fingers burned. So by and large, main High Street banks on larger transactions will have the separate representation process, so that £1,000,000 plus threshold that I talked about before. Your second-tier lenders, Bridgers, those kind of sort of more specialist lenders will nearly always have separate representation.

## ANDREW JONES

I suppose it puts another pair of eyes on everything for the lender.

## LUCIE BYRON

It really does.

## ANDREW JONES

Yeah, checking everything. Making sure everything's in good order.

So, what is the process from the lender first issuing a term sheet or whatever the jargon is on that one, Lucie?

## LUCIE BYRON

It's not that different to a purchase really in the sense that the lender has to check that they're going to get what we call good title to the properties. i.e., if they had to step in and get rid of it, that they were going to get the money back. So, they want to go through a process of property due diligence checking everything in respect of the property and its legal status. That normally starts after the valuation or can run alongside the property being valued. Let's face it, if the numbers not right. It's not really worth proceeding. And it's not always the case that properties come up to the value that borrowers think they're going to. So, it's a good rule of thumb to be pretty confident that the valuation is going to be where it needs to be or that you have that report before you really get stuck into paying the lawyers.

## ANDREW JONES

Is there any merit in getting a valuation done early, or is there a risk that you are using the wrong valuer?

## LUCIE BYRON

Yeah, I think that is a risk. The lender will have a panel of valuers that they will select from. What they would usually do is ask you to have a look at three quotes from a few different valuers and you can approve. It might be one that you've worked with before or it might be you want to choose on price. You know, it depends on your circumstance at the time and the type of asset. So, get the valuation in and then the legal work starts, which is really a whole load of property due diligence and what that means is questions, questions, questions, answer more questions. So, you need to get all of your property information together. Send it over to the lender's lawyer or your lawyer if it's 'dual rep'. And they will go

through it, make sure everything is tickety boo. Correct some problems if there are any and then prepare a report and send that to the valuer to check.

The valuation will contain a lot of assumptions about what's there, and that number will be derived on those assumptions. It's always a process that the lenders want to go through to make sure that lawyer and valuer are on the same page. Once that process happens, we've then got another bit of jargon which is 'CP sign off'. CP stands for conditions precedent. So that's any non-legal bits. Things like making sure all the documents are properly signed. That any accounting information or anything like that, that should have been prepared by the borrower and sent to the bank is all in place. And that any outgoing lender is going to release their security over the property and once all those CPS are signed off, finally you can get your hands the money.

### **ANDREW JONES**

So just taking a step back to that information, are there things that the borrower can start getting ready to provide to their solicitor or the lender's solicitor?

### **LUCIE BYRON**

For sure. Definitely. There are some things that you can't proceed without. We always try when we're acting for borrowers to get as much as we can from the public records. Things like the Land Registry title, details of planning etc. So that we're asking our borrower clients, who are essentially trying to run their businesses, fewer questions than we then we might otherwise do. But tenancy information and full tenancy information, so every occupier of the building, whether it be a residential with an assured short hold tenancy or you've got a 15-unit industrial estate, a good tenancy schedule with copies of all of the documents, including if you've done a rent review, rent review memorandums and all those sorts of ancillary bits are really important. And why are they important? Because basically in those circumstances where you've got an investment property, it's the rent that pays the debt. So, the rent coming in will go into the borrower company or owner and that is what the bank will want to verify to make sure that you can pay your debt. The other big thing to get hold of is all the regulatory documents. If it's residential property, it's your gas and electrical safety certificates and EPC's. We'll talk about EPCs separately later and if it's commercial, those dreaded asbestos registers and fire risk assessments. Valuers often put assumptions into their reports that all of those documents are in place. Now, if you're a landlord and you have commercial tenants, usually you pass on obligations to have those documents down to your tenants. Some lenders will take their solicitors word on that, and you can say the obligation is passed on. Others don't. So, you just need to make sure you have your ducks in a row.

### **ANDREW JONES**

And you may have to be liaising with your tenants then to get some of this information?

### **LUCIE BYRON**

Indeed, and quite often, I think you'll find that tenants don't necessarily always keep those records up to date.

## ANDREW JONES

No, and there's no real incentive, I suppose, for them to provide it other than the legal obligation in the lease.

## LUCIE BYRON

Yes. I think the other thing to remember is we can only take the properties as they are. We can't create things that aren't there, and if you haven't got something, the best possible thing you can do is just say you haven't got it so that the two lawyers can try to come to a workaround.

## ANDREW JONES

Yeah. So, going back to the information, is this where other advisers can be quite useful and helpful?

## LUCIE BYRON

Yes, absolutely. Get your team working together. Often, you'll have to produce lots of financial information at application stage, and your accountant should have that at their fingertips. Valuers, of course, are important, they are appointed an act for the lender, but you need to give them access to your property and the more information you can give to a valuer when they're inspecting the property, the fewer assumptions they'll be in their report and the smoother things will go through. If you are developing property and borrowing money to do that, your professional team are also really important. So, your architect, your structural engineer, your building firm if you've got a build contract, all of those professionals need to be involved in the lending process. Because questions will be asked about the work that they're doing to.

## ANDREW JONES

And back to investment properties, presumably managing agents, they hold a lot of this stuff as well?

## LUCIE BYRON

They do and the best thing you can do is have a really good managing agent who can just give your lawyer a lovely Dropbox or similar just full of all the relevant information.

## ANDREW JONES

How often does that happen?

## LUCIE BYRON

*(laughing)*

I'm not going to answer that.

## ANDREW JONES

Might prejudice yourself. No, that's great Lucie, thanks for that. Insurance, that can be a bit of an issue as I understand; what's the problem there?

## LUCIE BYRON

There's a there's a few things on insurance. One of which is that each lender has got their own requirements about what they expect to see, and you know, we talked about jargon already. Insurance is something that is absolutely full of jargon. First of all, the thing I should say is when we're talking about insurance here, I'm talking about buildings insurance. So, you know the insurance you have in place to protect your assets, every lender has their own requirements, some to be first lost payee.

## ANDREW JONES

What does that mean?

## LUCIE BYRON

That means that they get the money if it burns down.

Some of them want to be a co-insured, so they want to have their name on the policy. Others want to just have their interest noted. Not every insurer accepts every lender's requirement.

## ANDREW JONES

We have to align the two sort of professionals if you like.

## LUCIE BYRON

Absolutely. Hopefully you'll be having your insurance sorted by a very competent and capable insurance broker who will be experienced at moving your insurance around and making mid-term adjustments.

## ANDREW JONES

Another part of the team needed here.

## LUCIE BYRON

Yes. And making those mid-term adjustments to meet lenders requirements, they will be familiar with these kind of requests. It can delay drawdown of money because we often find that there's one particular lender we act for who has quite detailed requirements. So, looking at it from a borrower's point of view, we send out those requirements at the beginning. We get a copy of the insurance policy; they don't always meet the requirements. We send that back and then we do get bogged down in everything else, and then about 3 days before everybody wants the money, we realize the insurance doesn't meet the lender's standards. So, find that out early would be my advice. Find out what they need.

## ANDREW JONES

It's crucial because it can stop the drawdown of the money.

## LUCIE BYRON

Indeed. Yes.

## ANDREW JONES

Okay. You mentioned EPC's, Energy Performance Certificates. Seems to be they're becoming more and more crucial in transactions these days. Why are they important to lenders?

## LUCIE BYRON

Yes, it's not an automatic assumption that they're really relevant in lending transactions because under the regulations, borrowing money isn't a statutory trigger for you to have to get a new EPC. That doesn't mean that the lenders will accept that though. Remember earlier I mentioned it was a similar process to a purchase. So, what a lender needs to know is if they take that property, they can dispose of it quickly. If there's an out of date or non-compliant EPC, they can't do that. If you've got an expired EPC, but you've got a tenant in your investment property that is mid-lease and that there hasn't been a trigger for you to get a new EPC, the lender will still ask you to get one. People get mad about that.

## ANDREW JONES

Another expense I presume.

## LUCIE BYRON

Absolutely. I mean, the cost of EPC varies hugely depending on the assessor and indeed the type of property. It can only be a couple of £100 for a very simple investment property. But yes, it is another cost to add to the whole process of borrowing money which is a lot more expensive than it used to be. And lenders are really digging their heels in about this now. You can't say to them, "I'll get it after completion" or you know, "I'll get it next time I let it. I know I have to; I promise I'll abide by the rules. Promise. Promise". It just doesn't work.

## ANDREW JONES

I guess it has an impact on value potentially.

## LUCIE BYRON

That's why. Because now we've got requirements about minimum thresholds for energy, that does mean that the valuers do make assumptions that there is a valid EPC of a certain rating in place to put a number against the property.

## ANDREW JONES

It affects the marketability and their ability to sell that property in the future. It's a really important thing that perhaps people don't fully appreciate.

## LUCIE BYRON

There are a lot of people getting caught out by it, particularly if you've got a large portfolio of properties where you're spinning lots of plates in those circumstances and there's just that one property where it's kind of slipped through the net is the one that could catch you out.

## ANDREW JONES

So, what's the one single piece of advice that you would give to borrowers or lenders, but particularly borrowers to make the whole process run a bit more smoothly?

## LUCIE BYRON

Get your information together, get it to your lawyer in as big a chunk as you possibly can do. Don't just send it without commentary. If you haven't got something or you're struggling to find something or something has been lost, say so. The more information we can give in that first set of enquiries, to say we know that this isn't included, and you've asked for it, we don't have it because... That gives us more time to try and find a solution to that problem. We can't solve every problem. We talk about title indemnity insurance a lot in this game, but not every problem can be solved by title indemnity insurance.

## ANDREW JONES

And just briefly, title indemnity insurance, what is that?

## LUCIE BYRON

It's a sticking plaster for legal problems is the best way that I can put it. Lost documents would be a great example, if there was a deed that imposes covenants on your property that's a billion years old and nobody can find it. That is something you can insure against. A question I get asked quite a lot is about planning and if the property is being used for something that it doesn't have planning for, or there's a wilful breach of something, you can't just get an insurance policy against that.

## ANDREW JONES

It's not a sticking plaster for everything.

## LUCIE BYRON

It's not a sticking plaster for everything. We will have a good go, and we do know a lot of insurers who will look at some quite wacky requests, but not everything is capable of being fixed by insurance.

## ANDREW JONES

So, the best thing is getting the information and getting it early.

## LUCIE BYRON

Yeah, and a skilled lawyer will be able to flutter their eyelashes at their opponent and convince them that there's a way forward.

## ANDREW JONES

There we go. Good piece of advice. Well, thanks. That's really helpful and hopefully our borrower clients and lender clients will find that really useful so thank you for that.

## LUCIE BYRON

No problem at all.



## WE ARE HERE TO HELP!

For more information, please get in touch with either Andrew or Lucie via the following contact details.



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