



# Public Sector England Webinar – Overage

Clare Hardy, Senior Associate

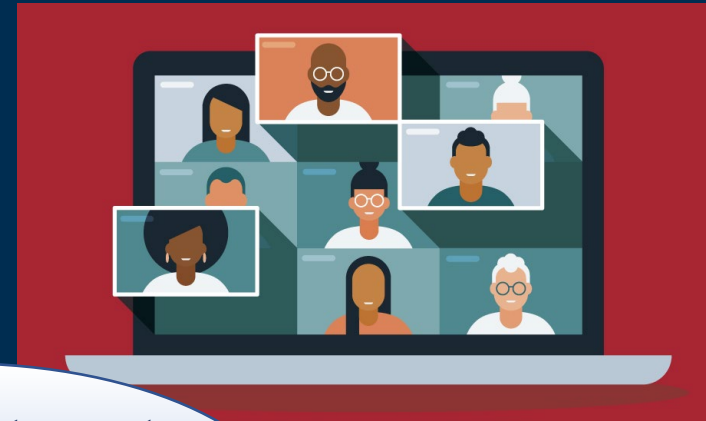
Paul Hilsdon, Partner

David Watson, Partner

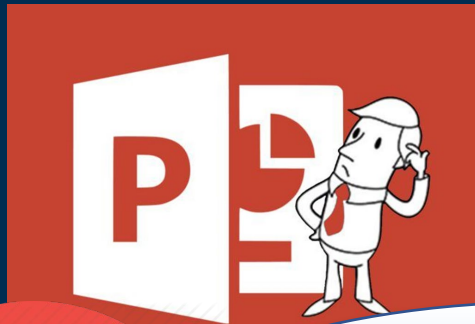
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CHAT

# Agenda

- Best consideration and other public law issues
- What is overage?
- When to use overage
- Trigger events
- Recent Overage Case Law
- Overage Security – drafting considerations

# Best Consideration

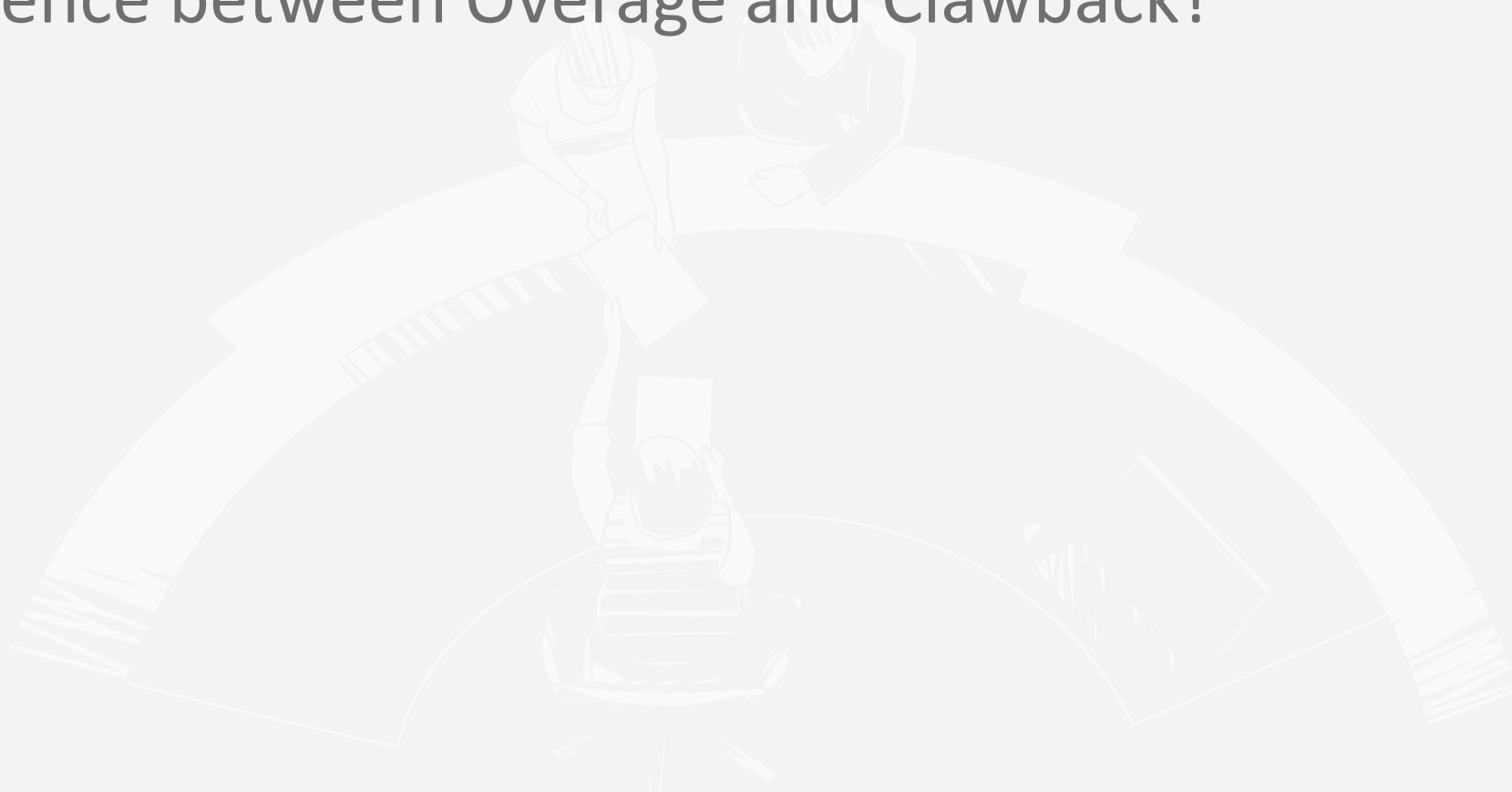
- Section 123 Local Government Act 1972
- Power to dispose of land
- Must obtain best consideration that can reasonably be obtained
- Consideration must have an economic value

# Land Disposal

- Must be compliant with subsidy control rules
- Must comply with requirements of local authority constitution
- Must exercise powers reasonably
- Consider implications of accepting constraints on overage

# What is Overage?

- Difference between Overage and Clawback?



# When to use Overage

- Options and Conditional Contracts
- Negative Overage Provisions
- Positive Overage Provisions
- Length of Overage Arrangements

# Trigger Events

- Planning permission
- The earlier of implementation of planning and disposal with planning
- Disposal at a higher price within fixed time period
- Disposal of completed development



# Recent Overage Cases

*George Wimpey UK Limited v VI Construction Ltd [2005] EWCA Civ 77,*

*Barnet London Borough Council v Barnet Football Club Holdings Ltd [2004] EWCA Civ 1191*

*Groveholt Ltd v Hughes [2005] EWCA Civ 897,*

*Ministry of Defence v Country and Metropolitan Homes (Rissington) Ltd [2002] EWHC 2113 (Ch),*

# Recent Overage Cases

*Walker v Kenley [2008] EWHC 370,*

*Renewal Leeds Ltd v Lowry Properties Ltd [2010] EWHC 2902,*

*Sparks v Biden [2017] EWHC 1994 (Ch)*

# Overage Security – drafting considerations

- Why security?
- *Akasuc Enterprise Limited -v- Farmar and Shirreff [2003] EWHC 1275 (Ch)*
- Which security?

# Overage Security – drafting considerations

*No [disposition {or specify type of disposition}] of the registered estate [(other than a charge)] by the proprietor of the registered estate [, or by the proprietor of any registered charge, not being a charge registered before the entry of this restriction,] is to be registered without a certificate signed by: {choose one of the bulleted clauses}*

- *a conveyancer*
- *the applicant for registration [or their conveyancer]*
- *{name} of {address} [or their personal representatives] [or [their conveyancer {or specify appropriate details}]]*
- *{name} of {address} [or their personal representatives] and {name} of {address} [or their personal representatives] [or [their conveyancer {or specify appropriate details}]]*
- *{name} of {address} and {name} of {address} or the survivor of them [or by the personal representatives of the survivor] [or [their conveyancer {or specify appropriate details}]]*
- *{name} of {address} or [after that person's death] by {name} of {address} [or [their conveyancer {or specify appropriate details}]]*
- *that the provisions of {specify clause, paragraph or other particulars} of {specify details} have been complied with [or that they do not apply to the disposition]*

# Overage Security – drafting considerations

- Is the solution appropriate?
- What constitutes a disposal?
- “Permitted Disposals”?
- Satisfying the Restriction
- A brief word about legal charges

# Any questions



# Next Webinar

## Subsidy Control Bill

**Tuesday 13th July 2021 10:00am - 11:00am**

The publication of the Subsidy Control Bill is an important step in the development of subsidy control legislation specific to the United Kingdom. Although the UK's withdrawal from the EU has brought an end to the State aid regime previously regulated by the EU, the introduction of domestic legislation means that there will still be some control over the provision of subsidies from UK public resources. Clare Hardy and Tiffany Cloynes will provide an overview of the Subsidy Control Bill to help public bodies familiarise themselves with the requirements of the Bill and ensure that they are compliant when the legislation comes into force.

Clare Hardy & Tiffany Cloynes, Devolved & Local Government

 [Register Now](#)

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