



Person Profile: Michelle Pascua, Solicitor

I'm [Michelle Pascua](#), a newly qualified Solicitor in the Banking Team.

Having initially joined Devonshires in 2017 as a Paralegal in the Securitisation team, I subsequently secured a Training Contract, undertaking seats in Securitisation, Housing Management and Property Litigation and in Banking, Governance and Corporate.

Since qualifying into the team recently, I have worked on a wide variety of transactions such as group re-financings, amalgamations and private placements. I assisted on a £150m bond tap issue for Optivo and have been involved in advising housing associations on new sustainability linked loan facilities.

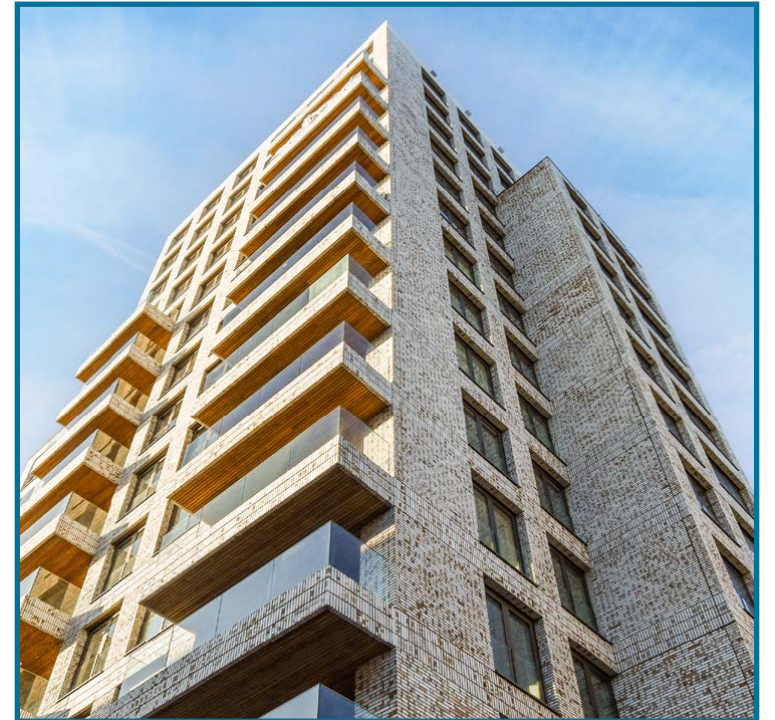
Outside of work, I enjoy hiking, cycling and running and hope to one day take part in a marathon! I also enjoy baking, with my speciality being carrot cake.

Devonshires has taken all reasonable precautions to ensure that information contained in this document is materially accurate however this document is not intended to be legally comprehensive and therefore no action should be taken on matters covered in this document without taking full legal advice.

Sector Update: Building safety and funding arrangements

Due to the potential fire risk liabilities and associated remediation works that have been on the radar since Grenfell, some lenders have updated their requirements as to the properties that are deemed as acceptable security. Some require assessments and EWS1 forms or no longer accept properties with combustible cladding or insulation. For housing associations that have buildings with fire safety issues, there may be a significant impact on the properties they are able to charge as security.

Understandably, lenders need reassurance that their security will maintain its value, that they do not become liable for remediation works or the safety of the tenants and that any remediation costs are not detrimental to the overall financial position of the borrower.



The Building Safety Act 2022 (BSA) has alleviated some concerns by clarifying where liability sits for remediation works and providing statutory repercussions for non-adherence including through Remediation Contribution Orders (RCOs) and Building Liability Orders (BLOs).

In response to the BSA, six lenders (Barclays, HSBC, Lloyds, Nationwide, NatWest and Santander) confirmed, in a joint statement with RICS in July 2022, that they will accept defective buildings as security, on certain conditions, one being that the building qualifies for a Government remediation scheme ([click here](#) to read more). In recognition that associations may not in all circumstances be entitled to Government funds, the Department for Levelling Up, Housing and Communities confirmed to the NHF that “a letter [from the organisation] citing there is a costed and funded plan in place for remediation works would be sufficient evidence” for such lenders. In September, UK Finance identified three further pre-requisites for lenders to give effect to this commitment including a new RICS valuation framework and more data from the Government on funding. Some lenders have publicised their willingness in the interim to consider properties on a case-by-case basis. However, we have not yet seen evidence that lenders are relaxing their position.

Updates to the ESW1 form (requiring the assessor to adopt a risk-based approach where combustible materials are present) and new [statutory obligations](#) under fire safety legislation for those responsible to assess and manage risk, amongst other things, should mean that certain contractual requirements for security imposed by lenders fall away, as lenders can rely instead on the borrower’s statutory compliance and related covenants in the funding agreement.

Grenfell and ensuing reforms have also influenced general loan covenants. Notwithstanding the RCOs and BLOs available under the BSA, associations will face significant costs in respect of both remediation and compliance with new obligations. These costs will impact financial covenants, particularly where they include expenditure related to major repairs, maintenance and improvement as part of the interest cover test. We have seen some lenders agree to disregard specific costs for a temporary period for the purposes of testing compliance.


Combined with the volatility of the current financial climate, interest rate rises and “net zero” requirements, we anticipate that revisiting these provisions will be on the cards for even more borrowers.

For more information, please contact [Rachel Dros](#) or [Alice Overton](#).

Here are some deals the team have worked on this quarter



Octavia Housing: We advised Octavia Housing on three deals comprising the restatement of a revolving credit facility agreement with Lloyds Bank plc, a sustainably linked loan with National Westminster Bank Plc and a sustainably linked loan with Northern Bank Limited (trading as Danske Bank).



Cross Keys: We acted for Cross Keys Homes on a private placement with the issuance of secured notes to Aviva Life & Pensions UK Limited, Sun Life Assurance Company of Canada and Sun Life Insurance (Canada) Limited.



Heyford Regeneration: We advised Heyford Regeneration Limited on the amendment and restatement of its loan with Lloyds Bank plc.