REPORTING TO THE LENDER
PART 1

13th January 2021

Richard Snape

ABOUT RICHARD SNAPE

Richard has been the Head of Professional Support at Davitt Jones Bould since 2002. He speaks at numerous courses for law societies all over the country, various public courses, in-house seminars within solicitors firm and has also talked extensively to local authorities and central government bodies. His areas of specialism include both commercial and residential property, in particular in relation to local government law, conveyancing issues, development land, commercial property and incumbrances in relation to land.

ABOUT LAWSURE INSURANCE

LawSure Insurance is the leading independent UK based insurance broker specialising in providing title insurance covers. LawSure works with leading solicitors' firms and developers to facilitate all types of property developments and transactions, including finding solutions to complex bespoke issues as well as the more straightforward ones.

Our service is free and there is no obligation to take out any of our quotes.

We work with all the major title insurance providers so we can offer the most comprehensive title broking service to our clients. Working with us, you can ensure that you will receive the best quote available in the market. Our independent, comprehensive approach means that we satisfy the SRA requirements for insurance mediation as well as the Insurance Distribution Directive (IDD).

We provide a Demands and Needs statement meaning that our clients can eliminate the risk to them of inappropriate insurance selection.

We only get paid (by the insurer) if and when a quote is taken up - so our service has to be (and is) first class. We often get asked whether it is more expensive using a broker. It isn't! It is at least the same price, and often cheaper – with the certainty that you are doing the best for your client by LawSure reviewing the market on your behalf, saving you time and money. And all for free.

Why wouldn't you?

Insurance products include (among many others):

- Absence of Easement Indemnity Policy
- Absent Landlord Indemnity Policy
- Boiler Indemnity Insurance
- Build Over Agreement Indemnity Insurance
- Chancel Repair Insurance
- Contaminated Land Insurance
- Contingent Buildings Insurance
- Defective Title Insurance
- FENSA Indemnity Insurance
- Flying/Creeping Freehold
- Forfeiture of Lease Indemnity Policy
- Good Leasehold Title Indemnity Insurance
- Ineffective Deed of Enlargement Insurance
- Insolvency Indemnity Insurance
- Judicial Review
- Latent Defects Insurance
- Listed Building Consent Indemnity Insura
- Maisonette Indemnity Policy
- Manorial Rights
- Mines and Minerals Insurance
- Missing Deeds Indemnity Policy
- No Search Indemnity Insurance
- Party Wall Insurance
- Planning Permissions Indemnity Insuranc
- Possessory Title Indemnity Insurance
- Rentcharge Indemnity Insurance
- Restrictive Covenant Indemnity Insuranc
- Right To Light Insurance
- Structural Defects Insurance
- Title Indemnity Policy Scotland
- Town & Village Green Insurance
- Unknown/Adverse Rights Insurance

CONTACT US

If you would like to speak to us to see how we can help or to request a quote, please call our broking team on 01293 880 700 or email us at enquiries@lawsureinsurance.co.uk

OUTCOME FOCUSED TRAINING INFORMATION

Lecture is aimed at: Property professionals and fee earners involved in both contentious and non-contentious property work

Learning Outcome: To give an increased knowledge of the subject matter. To update on current issues, case law and statutory provisions and to be able to apply the knowledge gained in the better provision of a service to the client.

Satisfying Competency Statement Section: B – Technical Legal Practice

For further information please see http://www.sra.org.uk/competence

Contents

BUILDING REGULATIONS AND GRENFELL

Prior to the Grenfell disaster the Welsh Government had already introduced on 1 January 2016 a requirement for sprinkler systems in new residential buildings or conversions regardless of the height. In December 2018 similar requirements were introduced in England but only for residential buildings of 30 metres or more in height. There is also a ban on various types of cladding in relation to buildings more than 18 metres in height. These provisions are not retrospective. They came into force in England on 27 November 2018. They were adopted by the Welsh Government on 13 January 2020.

THE EWS1 FORM AND EXTERNAL CLADDING

Following the Grenfell disaster in June 2017, mortgage companies naturally became reluctant to lend on flats in blocks which might have combustible cladding. On occasion, valuers were valuing such flats at £0. There was, moreover, no standardisation between the lenders.

The industry's response was the EWS1 (external wall survey) Certificate which was introduced in December 2019 after discussion between UK Finance and the Royal Institution of Chartered Surveyors. A recognised property professional with the requisite qualification would carry out an inspection where deemed appropriate and would produce an EWS1 Certificate which would be required by the mortgage company. The certificate would last for five years and would only be required for multi-let residential properties of more than 18 metres (c. six storeys) in height. If the cladding was deemed safe then the mortgage company would proceed, it would require the cladding to be replaced, a process which can take a significant amount of time.

Unfortunately, in January 2020, the Department of Housing Communities and Local Government muddied the waters somewhat when it produced **Advice for Building Owners of Multi-Storey, Multi-Occupied Residential Buildings**. This suggested that the EWS1 may be appropriate in some multi-let premises of less than 18 metres in height and which do not have external cladding, the concern apparently being high pressure laminate which is causing some concern. This concern increased after it was found to contribute to a fire in a block of halls of residence in Bolton in November 2019. As a consequence of this, some mortgage companies have required the EWS1 on buildings with three storeys and where brick is the building material. This is surely not what was intended.

In late 2020 there appeared to be only there appeared to be only 300 qualified fire safety inspectors in the country and insurers are not prepared to allow other property professionals to carry out the assessments due to the potential level of liability where there is a claim. Estimates vary but at the higher end there may be up to 3 million flats which may be affected. The certificates can cost upwards of £10,000 and there are examples of landlords or agents (who commission the assessments) being quoted years for one to become available.

On 13 January 2020 in Wales (27 November 2018 in England) cladding was finally banned in multi-let residential properties of more than 18 metres in height. If the building was completed under the 2018 Building Regulations the mortgage company should not require the certificate.

The EWS1 is undergoing review and this cannot come too soon for many, especially at the current time when many are unable to relocate to the countryside from their small city-centre dwellings. If changes are not made soon, some estimate that the level of negative equity in such premises will be greater than during the credit crunch of 2008-2011.

Note: On 22 November 2020 the Department of Housing announced that they have reached agreement with the RICS and UK Finance whereby an EWS1 Certificate will not be required for buildings without cladding. At the time of writing, many mortgage lenders are saying that they know nothing about this. They are also pointing out that many brick buildings may have cladding behind the brickwork.

In January 2021 the RICS announced consultation to standardise when an EWS1 Certificate would be required by surveyors.

Halifax and BM Solutions state that the conveyancer should make clear to the client that their mortgage will be dependent on an EWS1 Certificate where this has been flagged by a surveyor or valuer and there will be a special condition in the mortgage offer. Where required, an EWS1 Certificate must be obtained unless the building has 2018 building regulations (2020 in Wales).

ENFORCEABILITY OF POSITIVE COVENANTS

Enforceability of Positive Covenants

1. Positive Covenants and Restrictions

The problem here is that in freehold land a positive covenant will not burden third party purchasers. See **Austerberry v Oldham Corporation [1885]** - this was confirmed by the House Lords in **Rhone v Stephens [1994] 2 All ER 65** where maintenance of a flying freehold roof could not be required against third party purchasers. Mortgage companies may be required to be told about flying freeholds and insurance may be available. It is suggested that the best manner of enforcement would be to include direct covenants and restrictions on the register. There are many ways of circumventing this, e.g. estate rentcharges and the doctrine of mutual benefit and burden, i.e. if a right is claimed, a corresponding obligation must be taken on. The classic example of this is in relation to maintenance of private roads and drains in small estates. This is not suitable however in relation to overage.

Direct covenants and restrictions

Here each new purchaser enters into a direct covenant with the original seller or their successor. They are therefore contractually bound. A restriction should be placed on the register (in registered land) to the extent that no disposition is to be registered unless the transferee produces to the Land Registry a deed of covenant in that form.

Section 33 Local Government (Miscellaneous Provisions Act) 1982

As above, Local Authorities may enforce positive covenants if they invoke their powers under the Act and the transfer refers to the 1982 Act, or its predecessor, the Housing Act 1974.

2. Estate Rentcharges

In some parts of the country freehold properties are subject to fixed sum rentcharges, a sum of money is paid per annum to the rent owner. In such rentcharges cannot be created since 21st July 1977 when the Rentcharges Act of that year came into force. Existing fixed sum rentcharges will come to an end on 21st July 2037 or within 60 years of first becoming payable whichever is the latter. However, rentcharges which reasonably reflect maintenance costs can be created. The relevant provisions as thus:

Rentcharges Act 1977 s2

(1) Subject to this section, no rentcharge may be created whether at law or in equity after the coming into force of this section.

(2) Any instrument made after the coming into force of this section shall, to the extent that it purports to create a rentcharge the creation of which is prohibited by this section, be void.

(3) This section does not prohibit the creation of a rentcharge—

(a) in the case of which paragraph 3 of Schedule 1 to the Trusts of Land and Appointment of Trustees Act 1996 (trust in case of family charge) applies to the land on which the rent is charged;

(b) in the case of which paragraph (a) above would have effect but for the fact that the land on which the rent is charged is settled land or subject to a trust of land;

(c) which is an estate rentcharge;

(d) under any Act of Parliament providing for the creation of rentcharges in connection with the execution of works on land (whether by way of improvements, repairs or otherwise) or the commutation of any obligation to do any such work; or

(e) by, or in accordance with the requirements of, any order of a court.

(4) For the purposes of this section "estate rentcharge" means (subject to subsection (5) below) a rentcharge created for the purpose—

(a) of making covenants to be performed by the owner of the land affected by the rentcharge enforceable by the rent owner against the owner for the time being of the land; or

(b) of meeting, or contributing towards, the cost of the performance by the rent owner of covenants for the provision of services, the carrying out of maintenance or repairs, the effecting of insurance or the making of any payment by him for the benefit of the land affected by the rentcharge or for the benefit of that and other land.

(5) A rentcharge of more than a nominal amount shall not be treated as an estate rentcharge for the purposes of this section unless it represents a payment for the performance by the rent owner of any such covenant as is mentioned in subsection (4)(b) above which is reasonable in relation to that covenant.

Note: HSBC appear not to give mortgages where the estate rentcharge has right of entry.

Smith Brothers Farms Ltd v Canwell Estate Company Ltd [2012] EWCA 237. An Estate Rentcharge, to be valid, needs to reflect maintenance costs and cannot have a profit element – S.2(5) Rentcharges Act 1977. Here, the Estate Rentcharge covered maintenance for the whole of an estate including roads which would not be used by the covenantor. It was still valid as maintenance need not be in relation to the particular piece of land of the covenantor.

The estate rentcharge was still reasonable even though it referred to maintenance of the estate and a private road that the property owner would never use. It seems to be very difficult to question apportionments of rent charges.

Extinguishment of Rentcharges

Fixed sum rentcharges can be extinguished under s8-10 of the Rentcharges Act 1977. This is done by application to the Department of Housing, Communities and Local Government. There is a statutory formula as to the amount which is usually around 16 times the annual rentcharge. A certificate of redemption will be obtained which can be used to notify HMLR. This can only be done if the rent owner is known. Otherwise, insurance may be appropriate. However, make sure that the policy covers not just debt but other remedies (see later).

The Tribunals, Courts & Enforcement Act 2007 treats rentcharges as normal rent in relation to remedies. If there has been no collection of the rentcharge for more than six years, it is statute barred from that moment onwards.

If the rentcharge applies to land which is then sub-divided then each plot will have joint and several liability. For a fixed sum, rentcharge application may be made under s4 of the Act for an apportionment. This does not apply to estate rentcharges.

The Problem

S1 of the Rentcharges Act 1977 provides that a rentcharge created since implementation is void if it has any profit elements. The rentcharge must collect purely from maintenance. However, administration charges can be expensive and clients should be warned of this. Unlike leasehold flats and administration charges there is no statutory ability to question the reasonableness of administration charges. It must be made clear in the provisions that charges must be reasonable. Even then application through the Courts, and not Tribunals, to question reasonableness may be difficult.

Note: Currently there is no obligation that the estate rentcharge administration costs are reasonably incurred. Even if such an obligation existed, there is no ability to question the estate rentcharge in the tribunals and there would have to be much more costly court proceedings.

Note: **Roberts v Lawton [2016] UKUT 396 (TCC)** s121 (4) of the Law and Property Act 1925 allows the holder of a rentcharge to appoint trustees who will be tenants under a 99 year lease if a rentcharge is not paid within 40 days of being due. This will be the case whether the charge is formally demanded or not. Here the arrears amounted to between £6 and £15. This was held to be a lease which can be registered at HMLR. The lease will continue even if the arrears are paid. In the present case, the holder of the rentcharge used this fact to hold home owners to a ransom in order for them to pay administration charges. S121 (4) will apply equally to estate rentcharges. The provision can be excluded but only in the document that creates the rentcharge.

Note also s121 (3) allows possession of the land by the rent owner under similar circumstances. These provisions only apply if the rentcharge was created from 1st January 1881 onwards when the Conveyancing Act of that year came into force.

Any possession or long lease would bind a mortgage company if the rentcharge was created before the mortgage and not if the lease was created before the mortgage.

Some estate rentcharges include an express right of entry but the effect of s121 (3) is to have a statutory right anyway. It is suggested that there should be a clause whereby the mortgagee is given at least 28 days notice by the rent owner prior to proceedings being brought. This may cause problems with newbuild Help to Buys for reasons we have seen in relation to ground rents.

Some mortgagees e.g. Barclays are requiring such a mortgagee protection clause and exclusion of s121, especially where the residents are not members of the management company.

Note: Some mortgage companies now include details of requirements for estate rentcharges in Part 2. Even if not included, it is suggested that the mortgage company is notified whenever Section 121 is not excluded. Many require a deed of variation and/or a

mortgage protection clause. Mortgagee-only insurance may be available but some mortgage companies do not accept it.

4. Mutual Benefits and Burden: The rule in Halsall v Brizell (1957)

If a landowner wants to obtain a benefit, then it must submit to any corresponding burden. This may be by way of enforcing obligations in relation to private roads in smaller developments. However, the **Thamesmead Town v Allotey (1999)**, payments for maintenance of private roads and drains was able to be collected, but not for gardening and landscaping if the owner does not wish to avail themselves of such rights.

Note: Post the above case, a mortgage company may well require direct covenants and restrictions on the register in relation to maintenance of private roads and drains. This will often be the case in anything but the smallest of developments.

Wilkinson v Kerdene Ltd [2013] EWCA 44. Here, the doctrine of mutual benefit and burden was held to apply to the whole of a holiday village in Cornwall. This included maintenance of roads, car parks, footpaths and other recreational facilities and also maintenance to the outside of bungalows and the foul sewer system.

5. Long Leases

If the lease was created pre 1 January 1996, both positive and negative covenants will pass with the land if they touch and concern the land, i.e. they are leasehold covenants.

Note: **Woodall v Clifton (1909)** Options to purchase, as opposed to options to renew the lease, will not pass with the land. If the lease was created from 1 January 1996 onwards, then all covenants will pass unless expressed to be personal under Sections 2 and 3 of the Landlord and Tenant (Covenants) Act 1995. On enlargement of a long lease without a rent and without forfeiture provisions, positive covenants will pass onto the freeholds under Section 153 of the Law of Property Act 1925.

6. Commonhold

Under Part 1 of the Commonhold and Leasehold Reform Act 2002, a Commonhold Association may be set up, and the various freeholders will become members. They will agree to be bound by positive and restrictive covenants via the Memorandum and Articles of Association. Since September 2004, very few commonholds have been set up, mainly as there is no right to sublet in relation to a dwelling for more than seven years and thus affordable housing cannot be built into the developments via shared ownership leases. Moreover, as the mortgage companies are concerned at the Commonhold Association being struck off, thus giving rise to a series of flying freeholds, many are reluctant to give mortgages.

JAPANESE KNOTWEED

Japanese knotweed is a notifiable substance. It is illegal to cause it to be propagated in the wild under the Wildlife and Countryside Act 1981. The Local Authority can issue remediation notices and charge for its removal. The new residential enquiries, TA6 (4th Edition), raise an enquiry as to whether the property is affected by Japanese knotweed. It allows the responses of yes, no or don't know. No would be a statement of fact and potentially actionable. Don't know may be a representation that attempts have been made to investigate. Moreover, the property may be affected by Japanese knotweed if it is within the neighbourhood. It is suggested that responses should make clear that there has been no attempt to find out. The presence of knotweed is also required in response to the CPSE enquiries.

The mortgagee must be told of the existence of knotweed, although valuation reports may pick this up. The mortgage offer may be withdrawn unless the knotweed can be controlled by experts before reaching any building.

Note: Under the Anti-social Behaviour Crime and Policing Act 2014 local authorities may serve community protection notices on property owners who fail to control their knotweed.

Williams & Waistell v Rail Infrastructure Ltd [2018] EWCA Civ 1514 here Rail Infrastructure Ltd were successfully sued in nuisance for not removing knotweed growing on neighbouring land to dwellings owned by Williams & Waistell. Damages were assessed at £10,000 plus £5,000 towards remedial costs.

Ryb v Conway Consultants, June 2019. In this case a surveyor was successfully sued for not spotting Japanese Knotweed in a residential garden in North London. He should have taken photographs and made a record of the knotweed. The claimant successfully argued that he would not have bought the property or would have wanted a reduced price if he had known. Damages were assessed at £50,000.00.

The Court of Appeal have now confirmed the first instance decision but on different grounds. Loss of value cannot be claimed as this is pure economic loss. However, damages were available for lost development potential and possible future damage to property.

Note: The guidance notes to the fourth edition of the TA6 state that a property may be affected by Japanese Knotweed if it is within 3 metres of the boundary and the client should state 'don't know' if they are unsure. Most mortgage companies will lend if there is a satisfactory management plan available.

SOLAR PANELS

Leases of Roof Space

The lease is a business tenancy within s23 of the Landlord and Tenant Act 1954 and so contracting out notices must be served. Care should still be taken at the end of the period as unless steps are taken to terminate the lease and rent continues to be paid, a 54 Act protected business tenancy may be created. Furthermore, the tenant will obviously have exclusive possession of the roof space. The Agreements also tend to exclude s6 to s8 Landlord and Tenant (Covenants) Act 1995, and the landlord homeowner will remain liable even after transferring the property: See **Avonridge Property Co. v. Mashru [2005] UKHL 70**. The lease will also, obviously bind third party purchasers. It would need to be registered substantively at HMLR but, would bind in any case as an overriding interest under Schedule 3 Land Registration Act 2002.

Note: In the future when properties are subsequently purchased having had solar panels installed, then be sure that the mortgage company consents and that the lease is satisfactory to both mortgagee and client. In particular, it must be excluded from the Landlord and Tenant Act 1954.

UK Finance: Leasing the roof for solar panels

We have published new guidance for firms seeking to lease roof space to install solar panels on mortgaged properties. We recognise that borrowers may wish to do this both to improve the environmental performance of their homes and to reduce energy bills. Our new guidance will help ensure that the interests of both householders and lenders are properly protected.

The guidance applies to firms operating in England and Wales and includes:

- background information on the process of seeking consent from the lender to enter into a leasehold agreement with the borrower; and
- a helpful, standardised letter that can be used to seek the lender's consent.
- In getting the consent of lenders, firms wishing to lease roof space to install panels will have to fulfill a series of requirements protecting both the lender and the borrower. These include giving undertakings that:
- no panels will be installed until there has been a proper inspection to ensure this can be done without damaging the property;
- any damage to the property caused in installing, maintaining or removing solar panels will be repaired;
- panels will be removed to allow home-owners to carry out property repairs or improvements if necessary, and any charges for this will only reflect reasonable costs;
- lenders have the right to break the lease if they end up taking possession of the property and solar panels hinder efforts to sell it;
- solar panel equipment is insured by the firms installing it, and the borrower has been advised to inform his or her own insurance company about the new arrangements;
- solar panel equipment, once installed, will be properly maintained;
- all relevant planning consents have been obtained;

- the firm installing the panels is accredited to the Microgeneration Certification Scheme, which should ensure that equipment is properly installed;
- the firm installing the panels has supplied a letter signed by the borrower giving permission to contact the lender for consent;
- full contact details for the solar panel firm have been provided; and
- the lender has been given a chance to see the agreement between the householder and the firm installing the panels.

Once all the requirements are fulfilled, the lender will tell both the householder and solar panel firm that it gives consent. But the firm installing the panels must agree to tell the lender about any relevant changes to its agreement with the householder.

Lenders also recommend that borrowers seek professional advice from a suitably qualified conveyancer on the terms of the lease to install solar panels and any impact it may have on the value of the property.

We understand that home-owners may want to lease roof space for the installation of solar panels for environmental reasons or to reduce their energy costs. Our guidance will help to ensure that this is done properly, the process runs smoothly and the interests of home-owners and lenders are protected.

To assist installers, CML (now UK Finance) has drafted a template letter which installers can provide to lenders and which confirms to the lender that the agreement with the home owner meets the minimum UK Finance requirements.

Solar panels and the Lenders' Handbook

5.20.1 Where a property is subject to a registered lease of roof space for solar PV panels we require you to check that the lease meets the UK Finance minimum requirements. Where you consider it does not, check part 2 to see whether you must report this to us and for details of any additional requirements.

5.20.2 If, after completion, the borrower informs you of an intention to enter into a lease of roof space relating to energy technologies, you should advise the borrower that they, or the energy technology provider on their behalf, will need to seek consent from us.

5.20.3 UK Finance has issued a set of minimum requirements where a provider/homeowner is seeking lender consent for a lease of roof space for solar PV panels. See part 2 for our additional requirements relating to these leases.

CONFLICTS OF INTEREST AND THIRD PARTY OBLIGATIONS

In the famous case of **Mortgage Express v Bowerman [1996] 2 All ER 836,** it was held that were there was evidence of a mortgage fraud, in that the value of property had risen enormously in a series of sub-sales, this fact should be notified to the lender. Moreover, such notification would not be in conflict of interest to the borrower as he had an interest in knowing. A failure to disclosure the information gave rise to a claim in negligence.

In this case both solicitor and valuer were held to be negligent. This case may well need to be revisited in the context of Money Laundering where a disclosure of your suspicion might give rise to a tipping-off offence under the **Proceeds of Crime Act 2002**. Disclosure must first be made to NCA. The Law Society, however, suggest that disclosure may be made to the mortgagee (and other solicitors) unless they should be suspected of being implicated in the fraud.

Contrast **National Home Loans v Giffen, Couch and Archer [1997] 3 All ER 808,** where the solicitor had become aware of outstanding arrears on a loan which was meant to be paid off by the mortgage. Here, there was no duty to reveal this information as, unlike Bowerman, it did not affect the value of the property.

See also **Omega Trust Co. Ltd v Wright Son & Pepper [1996] NPC 189** for a similar decision.

Nationwide Building Society v Balmer Radmore [1999] SJlB 58

Made clear that in deciding the scope of the solicitor's duty express terms of the retainer must be looked at. The **Bowerman** duty on valuation will apply unless inconsistent with an express duty. Moreover, if information has been obtained not only in respect of the transaction in question but in respect of other dealings, it must be disclosed. It was concluded that information as to the correctness of the valuation, and the bona fides of the valuer must be disclosed.

Contrast **Bristol and West Building Society v Baden Barnes Groves & Co [1996]** unreported.

If there is information which has not come into the solicitor's possession in connection with the carrying out of instructions, there is no duty to disclose.

According to **Balmer Radmore** the solicitors and the agents need to be on guard for the following:-

- back-to-back sub-sales
- sudden reduction in purchase price
- direct deposits

All these may give rise to suspicions of Money Laundering and the need to report the client.

The solicitor must report on title;

- Sub-sales;
- Reduction in purchase price;
- Of direct deposits.

The report must be sufficiently clear to the lender and explain the solicitor's reasons as if writing to an

educated lay person.

Mortgage Express v S Newman [2000] PNLR 298

After exchange of contracts, the solicitor discovered the purchase of the property was much less than that originally stated, and that the property seemed to be subject to shorthold tenancies.

She believed that she only needed to establish good title and did not notify the lender.

Held: although negligent the solicitor has not consciously suspected a mortgage fraud and could claim against the SIF Solicitors Indemnity Fund.

Note: However, if the same facts occurred today solicitor's negligence in failing to spot a mortgage fraud was occurring could amount to a money laundering offence.

This case was confirmed by the case of **Leeds & Holbeck Building Society v Clarke [2002]** unreported. However, the burden of showing fraud can easily be rebutted.

E-Surv v Goldsmith Williams [2015] EWCA 1447 Surveyors valued a property at £725,000 in spite of the fact that it had recently been purchased for £390,000. The solicitors admitted negligence to the mortgagee in failing to disclose that the seller had not been the registered proprietor for at least 6 months. The surveyors successfully claimed off the solicitors for not disclosing the increase in purchase price. The High Court decided that this was relevant information to provide to the surveyor and any potential for conflict of interest was overridden by the Lenders Handbook.

In this case the court recognised that Mortgage Express v Bowerman (above) was still good law and survived any express provisions in the Lenders Handbook. Reports may need to be made to the mortgagee and reference made to the valuer even though more than 6 months have passed.

On 11th November 2015 the Court of Appeal confirmed that the solicitor should have reported the increase in price to the lender. However, as E-Surv could not prove that the lender would have changed their mind if the solicitor had so reported, the level of damages was nil.