



# Risk management for surveyors – how to be prepared for your PII renewal

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**Surveyors will be aware of the requirement to have Professional Indemnity Insurance (PII), both for RICS membership and to protect themselves in the event of a claim.**

**Despite the fact that valuers are facing considerably fewer claims than they did in the years following the 2008 economic crisis, there has still been a reduction in the availability of PII and surveyors are facing a challenging time when they come to renew their insurance.**

Underwriters are understandably nervous about the uncertainty of Brexit; any evidence of a downturn in the economy is likely to cause unease amongst the market. Property values could fall, particularly in London, if foreign investors are put off buying properties by the new stamp duty for purchasers who are based overseas. Uncertainty over the mortgageability of properties in buildings with any kind of cladding has caused a partial paralysis in the residential property market and Insurers are concerned that the EWS1 form that has been introduced to help address this problem will expose surveyors to further claims. In the circumstances,

the cost of PII for valuation surveyors has increased sharply and surveyors are being faced with more limited coverage and increased premiums.

In order to address Insurers' concerns, and to stand the best chance of negotiating a good deal on renewal, surveyors must be able to demonstrate that they are putting robust risk management at the heart of their businesses. In this note, we look at how they can use effective risk and file management to reduce the likelihood of a successful claim and to get on the front foot in the renewal process.

## Scope of retainer

The primary basis of a surveyor's duty to their client is in the written contract of engagement with that client. Surveyors need to be explicit about the scope and purpose of their advice and must ensure that they have a clear written record of what they have agreed to do. Failure to record the scope of the retainer clearly in writing will put the surveyor at a serious disadvantage should there be any subsequent dispute as to the terms of the instructions.

Fundamentally, at the outset of every instruction, surveyors should identify:

- The client, or class of clients, who can rely on the advice
- The purpose of the report – for example, is it just to provide a valuation, or is it to also advise the client on the course of action to take
- Any assumptions or special assumptions relating to the survey or valuation eg title, hazardous materials, method of construction, planning.

This information should then be made clear in both the written confirmation of instructions and the report itself, together with any restrictions on use of the report, or any qualifications to the advice set out in the report, and in the case of a valuation, the relevant date. If any variations to the original scope and terms are agreed, it is important that these are also recorded in writing.

Surveyors should obtain a written agreement to the Terms and Conditions from the client and try to ensure that any uncertainty surrounding the service being provided is resolved before they start work. All records of queries and concerns

raised by the surveyor to the client should be made in writing and kept on record. Surveyors should use this an opportunity expressly to state any areas of specialist work which they are not going to cover in the report.

## Liability

Serious consideration should be given to the negotiation of exclusions, limitations of liability and restrictions on the classes of person entitled to rely on the advice. From a risk perspective, we consider the following clauses are the most fundamental when negotiating the terms of engagement:

### Liability caps

Capping liability is a sensible way in which to minimise risk; however, careful consideration should be given to both the wording and the extent of the cap because, if they are to be enforceable, liability caps need to be 1) properly incorporated into the contract and, 2) considered 'reasonable' by the courts.

Any surveyor wishing to agree a liability cap should ensure it is set out in clear words not only in their Terms and Conditions but also in the engagement letter. Where a surveyor is dealing with a consumer, they should ensure they have fully explained the impact of the clause, and obtained the client's written agreement to it, before they start work, to have any chance of being able to rely upon it in the event that the client should bring a claim.

### Personal liability exclusion

Surveyors should always include a clause in their terms of engagement which excludes personal liability for the individual who undertakes the survey or valuation. In the case *Merrett v Babb* [2001], following the insolvency of his former employer, Mr Babb was held to be personally liable for losses resulting from errors in a survey, leaving him facing a

massive bill for damages and costs. The inclusion of a personal liability exclusion should prevent a surveyor from being left in the same position as Mr Babb.

### Proportionate liability clause

Sometimes the services of a valuer are provided alongside those of other professionals, such as quantity surveyors, solicitors, architects, engineers, building surveyors etc. If more than one of the professionals is liable to the claimant, they will be treated as being 'jointly and severally' liable, which means the claimant can pursue just one of the professionals to recover all of the damages suffered. Including a proportionate liability clause provides protection to a valuer if any loss is caused by more than one party, as the court can only make an award of damages against the surveyor that reflects their individual culpability.

## The survey/valuation process

### When undertaking a survey or valuation, a surveyor should always

- Precisely follow RICS Guidance – any failure to comply with RICS guidance will be cited by a claimant as evidence of negligence.
- Keep detailed site notes and photographs – in the absence of such records, a surveyor may struggle to prove they did inspect or check the property, or the relevant part of it.
- Record any specific constraints on inspection – again, in the absence of any clear evidence that a particular part of the property was not available for inspection, the court is likely to find that the surveyor could, and should, have inspected it.
- Record all communications with the client – this is particularly important if the scope of the surveyor's instruction is changed in any way following a discussion with a client; and where the surveyor has been explaining any limitations or exclusion to the client.

### When preparing the report

- Clearly set out any assumptions.
- Clearly set out any further steps the client should take.
- Collate and provide comparable evidence to support the valuation.

### Upon completing the report

- Keep a record of any further advice to the client.
- File site notes and comparable evidence.
- Keep hard copy records for a minimum of 6 years.

## Summary

The key is to be clear and concise when setting out the scope of work in the engagement letter and/or terms and conditions; this is the valuer's opportunity to regulate the risks. Surveyors should also ensure they are afforded sufficient protection by including the relevant liability exclusions and limitations. If surveyors follow the steps above, they should be in a strong position to defend any claims they may face, which should also put them in a stronger position when seeking terms for their PII.



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