

# Surveyors' liability in a rapidly changing landscape

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2 December 2021

# Overview

- Scope of duty – different types of valuation/ surveying; **MBS v GT**
- Expert evidence
- Margin of error in valuation, including the potential effects of the Covid-19 pandemic

# Scope of duty

- Instructions
- Standard conditions of engagement
- RICS Valuation – Global Standards effective from 31 January 2020: <https://bit.ly/2ZgMyfO>
- RICS – UK Standard: <https://bit.ly/2TZ0e00>
- Relationship with standard of care: ***Arab Bank Plc. v John D. Wood Commercial Ltd [2000] 1 WLR 857***



# Scope of duty – home surveys

- RICS Surveys of Residential Property 3rd edition, May 2016 reissue: <https://bit.ly/3d7D7qP>
- RICS Home survey standard 1st edition, November 2019 (effective from 1 March 2021): <https://bit.ly/2UnA6fq>
- Used to be (i) 'valuation'/'condition report'; (ii) 'homebuyers' and (iii) 'building survey'



# Scope of duty and damages

- ***South Australia Asset Management Corp v York Montague Ltd [1997] A.C. 191***
  - Defendant to be liable for damages which fall within the scope of their duty
  - Information/advice distinction
- ***BPE v Hughes-Holland [2017] UKSC 21:***
  - Lord Sumption referred to the ‘descriptive inadequacy’ of the Advice/ information labels (though continued to use them)
  - SAAMCo described as a tool
  - Advice/information categories are on a spectrum



# Scope of duty and damages

- ***Hart v Large* [2021] EWCA Civ 24**
  - Question for the judge was to ascertain the kind of loss against which D had a duty to protect C against
  - Consideration of the duty overall
  - SAAMCo approach is merely a tool to assess the correct measure of loss rather than a rigid classification to be applied in every case



# *Manchester Building Society v Grant Thornton UK LLP* [2021] UKSC 20

1. Now the authority on scope of duty and the application of **SAAMCo**
2. Contains three sets of judgments: but 6 out of 7 JSCs basically agreed: **SAAMCo** is about scope of duty, not causation (cf. Lord Leggatt)
3. Moves away from 'information'/'advice' distinction as artificial and unhelpful
4. '**SAAMCo** counterfactual' is but a subordinate tool/'cross-check'

# *Manchester Building Society cont'd.*

- (1) Actionability question
- (2) Scope of duty question
- (3) Breach question
- (4) Causation question
- (5) Duty nexus question
- (6) Legal responsibility question



# Experts in different fields



- Is the expert from the same discipline?
- Does the expert need to be from the same field?
- ***Sansom v Metcalfe Hambleton & Co [1998] P.N.L.R. 542:*** cannot rely on structural engineer in determining negligence of a surveyor
- ***Pantelli Associates Ltd v Corporate City Developments Number Two Ltd [2010] EWHC 3189:*** allegations of professional negligence to be supported by a relevant professional with the necessary expertise.

# Expert evidence and hindsight

- ***Leigh v Unsworth (1972) 230 E.G. 501*** – lapse of time
- ***South Australia Asset Management Corp v York Montague Ltd [1997] A.C. 191*** – correct valuation to be determined using information available at the relevant date



# Expert evidence and hindsight

- ***Preferred Mortgages Ltd v Countrywide Surveyors Ltd [2005] EWHC 2820 (Ch)*** - to establish a proper value for a property at a given date, evidence had to be produced of how a valuer would have viewed the property at that date



# The Margin of Error in valuation

- Claimants must demonstrate (by reference to expert evidence) the questioned valuation is (i) wrong and (ii) outside the appropriate bracket of reasonable valuations.
- The Court is entitled to reach a view on the correct valuation figure which is different to or between the values given by the experts on either side (***Housing Loan Corp plc v William H Brown Ltd [1997] EGCS 72***)
- The appropriate bracket depends on the facts of each case and, in particular, the rarity of the type of property in question. Brackets from 5% to 20% have been found (***Capita v Drivers Jonas [2011] EWHC 2336 (Comm)***)

# The margin of error in valuation

- These generally accepted propositions were outlined in ***K/S Lincoln v CB Richard Ellis Hotels Ltd [2010] PNLR 31***:
  - For standard residential properties the bracket is 5%;
  - For a more unique property, it should be 10%; or
  - Properties with exceptional features the bracket could be as much as 15% above or below the 'true' figure

# The margin of error in valuation

- 5% adopted in:
  - *Webb Resolutions Ltd v E.surv Ltd* [2012] EWHC (2 bed city centre flat)
- 10% adopted in:
  - *Blemain Finance Ltd v E.Surv Ltd* [2012] EWHC 3654 (valuable Putney property)
- 15% adopted in:
  - *Titan Europe 2006-3 plc v Colliers Intl UK plc* [2015] EWCA Civ 1083 (re: a large commercial property)
  - *Barclays Bank plc v TBS & V Ltd* [2016] EWHC 2948 (QB) (re: a care home)
  - *Barclays Bank v Christie & Co* [2017] PNLR 8 (seaside arcades); and
  - *Dunfermline BS v CBRE* [2017] EWHC 2745 (Ch) (development site)



# The margin of error in valuation

- The effect of the covid-19 pandemic - surely, valuation has become a more precarious exercise? Given:
  - Practical difficulties of valuing – inability to inspect at times
  - Volatility of prices – generally rising market due to need for increased home working space and stamp duty holidays
  - But - prospect of a potential crash given (i) covid economic effects/end of furlough and bans on evictions (ii) end of stamp duty holiday

# The margin of error in valuation

- HHJ Keyser QC in ***Paratus AMC Ltd v Countrywide Surveyors* [2011] EWHC 3307 (Ch)**:

*“Third, the market was buoyant, even volatile. There had been a very substantial rise in property prices in the preceding year and the market was still rising. This presented a valuer with difficulties that would not exist in a stable market — see ***Singer & Friedlander Ltd v John D Wood & Co* [1977] 2 EGLR 84**, per Watkins J at 85-86—and in my view justifies a greater margin of error than might otherwise be appropriate in the case of modern residential flats.”*

- found margin of 8% for residential flat



# The margin of error in valuation

- RICS alert in April 2020 – valuers to consider whether changes need to be made to valuation assumptions as a consequence of restricted access and/or valuation info
- RICS, Impact of Covid-19 on Valuation: <https://bit.ly/3xNEXF4>
  - (in particular section 5: ‘Material valuation uncertainty, market conditions and the valuation approach’)

# Thank you!

Any questions?

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