BlueBox Newsletter

Technical briefing for property professionals

Issue 39 Sept. 2015

Claims and how to handle them

'Hello, you may not remember but you carried out a survey for me a few months ago…'. **This is the sort of phone call practitioners dread. Will it be a request for another survey or the start of a complaint? If it is the latter, it's not a time to put your head in the sand and hope it will go away but a time when you need to take positive action to manage the situation. In this article, Chris Rispin will outline a possible strategy you could adopt to ensure costs are minimised and RICS guidance is followed.**

What's in this issue:

The first thing to emphasise is the number of legitimate complaints as a percentage of the total number of commissions is very small. This reflects the care practitioners take when doing their job. However, most have had that difficult phone call and the purpose of this article is to help you decide when to advise your insurers there might be a problem.

Many practitioners worry that insurance companies simply "roll over" and pay-off a complaining client to save money whether the complaint had any merit or not. Then, when they raise your insurance rates the following year it is enough to make your blood boil. To add insult to injury, if the "settlement" is just under your excess the money usually comes out of *your* pocket!

Developing a strategy

When considering how to respond to a potential claim, consider the following:

- Most PII policies are worded in accordance with the standard template negotiated and approved by RICS so this is important as there are quite a few benefits in there that other professions do not have. For example there is dispensation for late notification, although try and avoid this as you want your insurer on your side and ideally willing to quote at the end of the insurance year.
- Your policy will set down when you have to notify a potential claim or circumstance that could lead to a claim. So when is a claim not a claim and just an enquiry or a request for further advice following the survey or valuation? This may be obvious as the client may use the word 'complaint' when they call you. However, in establishing the nature of that 'complaint' it may not turn out that way. So it's important to establish exactly what the issue or issues are and then ask **the customer to set down the complaint in writing**. You should back this up by having that requirement set down in your complaint procedure, which you would send out during the process of handling the enquiry. If that is the case then unless you get something in writing from the customer it is unlikely to be

New Surveyor Comparable Tool from 'Rightmove' for SMEs

BlueBox *partners* has obtained a unique agreement with the country's leading property portal, 'Rightmove'. 'Rightmove Plus' has now been improved through the development of the **Surveyor Comparable Tool (SCT)** so that finding comparable information is much easier. The **SCT** combines access to the Land Registry data with *'Birds eye'* and *'Street view'* all in the same place and much more efficiently. In line with RICS requirements, the reports now provide an audit trail for complete transparency. For more info, please email info@blueboxpartners.com

We are now able to offer a subscription service combined with *'pay-as-you-click'* access to archived property sales data at a price that is unbeatable anywhere else. We can offer Rightmove Plus (which includes the **Surveyor Comparable Tool**, access to the Rightmove AVM, and Rental comparables) at £70 plus VAT a month, which includes 20 free clicks for the **Surveyor Comparable tool**. This offer is only available through BlueBox *partners* to small/medium sized firms and sole practitioners. We think this a "must have" for any valuer undertaking residential valuations.
Please contact Chris Rispin on 0345 260 3500, option 2 for more information.

classed as a complaint

- Even if it seems unlikely this discussion will result in a formal approach and as 'good practice' dictates, you should keep a record and log of all discussions, letters, emails, and telephone calls because you never know what could land on your doormat… ;
- If you do receive a letter of complaint, this **IS** the trigger to notify your insurers (and to mumble mild obscenities under your breath);
- You then have to decide whether to return to the property **before** advising insurers. This will depend on any specific limitations placed on you by insurers but our advice would be always to return. A face-to-face discussion can potentially defuse the tension and often head off the complaint as you are no longer a faceless voice at the end of a phone. However, if you go alone it is easy to be over-defensive and say something inappropriate that could make matters worse. To avoid this, you should be accompanied by another qualified surveyor who can take the lead in the discussion. If you are a sole trader, this could be another local surveyor with whom you have a reciprocal arrangement. Whatever the circumstances, when you are arranging the meeting and when you arrive at the property you should clearly explain what the revisit is about, which is to view the alleged problem, take photographs and allow the opportunity to review the situation;
- During these discussions, most insurers will not want you to mention you have insurance cover or you have to report back to an insurance company. In this world of transparency we think this is farcical. As chartered surveyors, we are required to have PII and often need to declare this before we undertake the work and yet when the crunch comes, we are not allowed to confirm it – how stupid does that make us look. However, that is our personal opinion and frustration!
- When discussing the matter, you should not admit liability. However, there may be occasions when you realise an offer of say £50 could settle the matter. Although this may appear appropriate, there is a risk. We have seen many situations where the complainant accepted the offer only to come back for more when further work is discovered. Many complainants also think that you must be guilty if you are so quick to settle. Before you make a quick offer, you need to discuss this with your insurer and agree a plan of action;
- Your insurer is likely to need your full file and notes of your subsequent discussions and re-inspection (if there was one) together with your assessment of the situation and recommended solution.

Settling the matter

What happens next depends on the significance of the claim. This could range from a suggested settlement letter or a full blown defence where insurers can support you with a loss adjuster and legal advice. In some cases the legal advice does not form part of your excess but will still be taken into account when calculating your next premium if the costs have been particularly high.

On the positive side, it does mean you will have top quality support to guide you through the process and ensure that you get a realistic settlement. During this stage, insurers will take a commercial decision as the cost of going to court can be significant and quite often disproportionate to the actual claim. This may leave you feeling aggrieved but increasing defence costs where there is a genuine risk of losing may lead to a weighting on your premium for years to come.

Focus on negotiation

In recent years the process of dealing with a claim has gradually changed so it is unlikely you will receive a writ after your first discussion. Solicitors advising claimants should be versed in the need for both sides going through a period of negotiation to establish the facts and see if there is any scope for settlement before proceeding to court. A judge may well decide not to hear a case if s/he is not satisfied that this process has taken place.

Most surveyors have what is called a "Claims Made" policy so that it is important to notify a claim to your current insurer. If you are seeking a new insurer, it is really important to include all the notifications under the current policy period as this could seriously affect the terms of your new policy if notified late. Given the RICS standard clauses the new insurer is unlikely to be able to refuse cover if notification was missed but if you are at risk, check with RICS to clarify the precise requirements. Also, late notification does not raise your credibility if you are in the process of dealing with something that could lead to a claim.

Finally, insurance is there to give support when occasionally things go wrong. Insurers expect this to happen and may be surprised if you do not have a record of complaints. Ironically, there is often benefit in demonstrating some claims that have been dealt with successfully.

Compulsory fire sprinklers in new homes in Wales

As practitioners in Wales should be aware, sprinklers will be required for all new houses and flats from the first day of 2016. This will also include dwellings formed by a material change of use. The exceptions are those developments where some form of building regulation notice has already been served.

Although we are no experts on fire sprinklers, as these new properties move into ownership and later sold, practitioners will have yet one more service to assess. Sprinklers are closely associated with fire safety so documentation showing correct installation and regular annual maintenance is likely to become important during any assessment. If these documents are not available then further investigations will be appropriate.

For more information, see the following websites:

- Residential Sprinkler Association http://www.firesprinklers.info/
- British Automatic Fire Sprinkler Association http://www.bafsa.org.uk/

The end of the Green Deal

Regular readers of this newsletter will know we have been 'lukewarm' in our support of the Green Deal. However, our level of enthusiasm is no longer an issue as the Government has now announced there will no further funding to the Green Deal Finance Company. In her own press release, the Energy and Climate Change Secretary Amber Rudd stated the move was prompted by low take up levels and concerns over industry standards.

Although this withdrawal of funding does not affect existing Green Deal Finance Plans or Green Deal Home Improvement Fund applications and vouchers, we think practitioners should cautiously assess properties subject to 'Green Deal' agreements especially those that had cavity wall and loft insulation fitted. Anecdotal feedback from a variety of sources (including DECC it seems) points to a lack of quality control resulting in a number of dampness problems. Although the corpse is no longer twitching, because over 15,000 properties have received funding from this scheme the legacy of the Green Deal will be with us for some years to come.

Carbon monoxide problems from removed chimney

In their August 2015 press release, the Health and Safety Executive (HSE) announced that a £6,000 fine had been imposed on a housing association for a carbon monoxide breach. The level of the gas in a dwelling was high enough to activate the carbon monoxide alarm and put the tenant at risk.

Subsequent investigations revealed the problem had been caused when a roofer had removed a chimney and tiled over the space in an effort to resolve a dampness problem. However, he did not realise one of the flues in the chimney was still being used to vent a gas fire and boiler.

Although this was a very specific situation, it points to a problem commonly encountered on inspections. Chimney stacks and their flues are regularly removed, blocked or capped without properly considering their function. Therefore, when carrying out condition surveys, always make a note of the flue terminals at chimney level and link these with the fireplace and chimney breast use in the rooms below. If there is a possibility of inappropriate repairs or use, then call for further investigations and warn the client (and occupier) not to use the appliance(s) until it's given a clean bill of health.

Watch out for blocked or removed flues—are these vent caps placed on live flues?

Fire and carbon monoxide alarms in tenanted property

In a recent news item on the RICS website, Andrew Bulmer, the UK residential director for RICS, outlined an important change in the regulations in the lettings sector. On 1st October 2015, Part 2, Regulation 4 of The Smoke and Carbon Monoxide Alarm (England) Regulations 2015 comes into force. Andrew points out it is a draft item of legislation which has not yet been made a UK statutory instrument but a debate in the House of Lords, which started last week, has caused the item to be reconsidered by the House of Commons.

By 1 October 2015, premises occupied under an assured shorthold tenancy (within the meaning of Chapter 2 of Part 1 of the Housing Act 1988) must have:

- A smoke alarm on each storey of the premises on which there is a room used wholly or partly as living accommodation; and
- A carbon monoxide alarm in any room of the premises which is used wholly or partly as living accommodation and contains a solid fuel burning combustion appliance.

The regulations are very clear that the detectors are checked by or on behalf of the landlord to ensure that each prescribed alarm is in proper working order on the day the tenancy begins if it is a new tenancy. A tenancy renewal is not a new tenancy.

A room that is a bathroom or lavatory is considered to be a 'living room' – for the avoidance of risk it would seem sensible to take the view that any room with a solid fuel burning appliance should have a CO detector fitted.

Andrew recommends that the tenant is clearly told to check the detectors on a regular basis during their tenancy and inserting a clause in the tenancy agreement would seem a sensible precaution. However, this does not alter the requirement for the detectors to be checked by or on behalf of the landlord on the day the tenancy begins.

For more information, follow this **link**

RICS video on Legionella in let property

Andrew Bulmer has had a busy month. In early September, Andrew and his colleague Peter Bolton-King, the global property standards director for RICS, released a three minute video about the hot topic (forgive the pun) of testing for legionella in domestic water systems of let property. Simply shot, the video includes a question and answer session between Andrew and Peter that covers a number of important matters. To watch this video, follow this **link**. We congratulate the residential team at the RICS for producing this video and shows that useful, informative and timely advice can be produced inexpensively – let's see more of these. For more information about a landlord's duty, follow this **link.**

Not long to Christmas – how is your CPD?

As the end of another year approaches, many residential practitioners can be found racking their brains trying to remember their RICS password so they can check their CPD record. Have you got enough hours? Do you need to fill a few gaps? Well, we might be able to help. The following is a summary of the events in which BlueBox partners are involved.

Current Residential Property Issues Conference 2015. Various dates from September to late November 2015. Various locations. Topics include building movement; leasehold enfranchisement; the valuation battleground; damp diagnosis; assessing drainage and valuer registration. To book online see www.proconferences.com

HomeBuyer Report Workshop, 8th December 2015, BlueBox/SAVA, Milton Keynes.
This one-day workshop focuses on this important survey product and will suit APC candidates, experienced practitioners those who are beginning to offer condition reports and those who want to reflect on their own practice. For more information, follow this link: http://www.nesltd.co.uk/training/residential-surveyor

RICS Residential Building Surveys – a practical workshop.

RICS, 9th December 2015, Manchester.
This one-day course will be run by Phil Parnham and look at the RICS version of the building survey. It will investigate a range of issues by deconstructing the residential building survey so practitioners can review and evaluate their own approach. For more information follow this **link.**

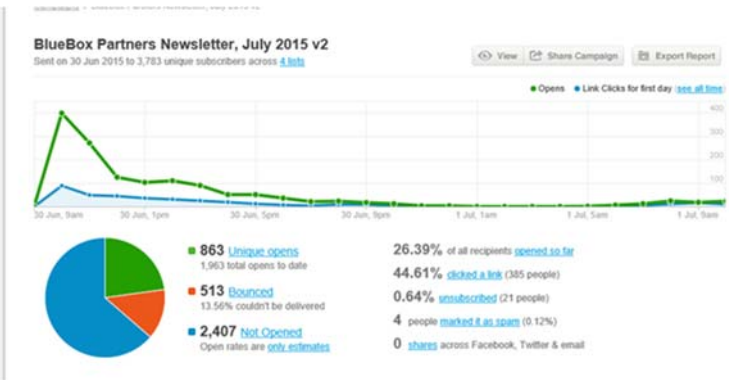
The BlueBox newsletter – how is it doing?

The last BBp newsletter (issue 38) was sent out using a new webmailer and this gave us access to a range of information about the circulation and use of the publication. We thought you might be interested in some of the main outcomes.

- In total, we sent the newsletter to just under 3,500 email addresses;
- Of these, 26% opened the newsletter, 15% of the emails 'bounced' back and the rest remained unopened;
- Based on this one newsletter, we now know we have 863 readers. Although it is difficult to be certain, we think that is somewhere between a quarter and a third of all residential practitioners.

Statistics always reveal other facts (not all of them important) and here are a few we found interesting:

- The vast majority of readers who opened the newsletter did so on the day of distribution;
- One sad person clicked on the link at midnight – we think they need to get out more. Although they may have been out and had just come home!;
- We are a global publication and have 10 readers in the USA, 6 in Ireland, 4 in Spain and 2 in France. Alternatively these readers were on holiday when they read the newsletter—now that is very sad!



It is important not to over analyse this sort of statistical information but it has helped us see two things: the newsletter does provide a service to the residential sector and we need to better manage our distribution list!

If you have any comments on how the newsletter could be improved or if you want to contribute to a future issue, contact us at info@blueboxpartners.com.

Expert fails to follow RICS Guidance

In a recent disciplinary case a surveyor acting as an Advocate and an Expert, failed to follow the appropriate RICS Practice Statement. He also compounded the situation by failing to carry out his professional work with due skill, care and diligence and with proper regard for the technical standards expected of him.

Specifically he failed to:

- obtain written instructions to act as an expert on behalf of his client as required by PS3 of PSSAEW (Practice Statement Surveyors Acting as Expert Witnesses);
- advise his client in writing that the Practice Statement applied in such circumstances;
- advise his client in writing that due to his previous role in seeking to negotiate a settlement of his rent this could prevent him from providing independent advice to the arbitrator as an expert;
- advise his client in writing of the advantages and disadvantages of undertaking dual roles of advocate and expert witness;
- distinguish between the two roles of advocate and expert witness.

Each one of these is clearly described in the Practice Statement. Also;

- *he used standard data from a University and Farmers Union rather than rely on his own expert local knowledge;*
- *provided evidence as an expert to his advantage, in contradiction of his overriding duty to the arbitrator (contrary to PS2.1 of PSSAEW); and*
- *he provided evidence which failed to take into account all relevant factors in assessing the rent properly payable as required by paragraph 1 of Schedule 2 of the Act .*

In his Final Award, the Arbitrator made reference to the surveyor giving evidence which led the Arbitrator to conclude that 'there were occasions when he was in breach of the RICS Practice Statement and Guidance Note and that he lacked a clear understanding of his role as an Expert'. The Arbitrator took these matters into account in deciding what weight to give to the Surveyor's evidence.

Commentary

This was an Agricultural letting case, (which may not be your specialism) but we think it is the principles set down by the RICS that are important here.

There is little point in discussing the merits of whether his actions did breach guidance as the surveyor pleaded guilty to all the charges. The importance of this brief article is to act as a warning that it is important to keep up to date with technical standards and make sure you adopt the procedures as set down by the professional body whatever your specialism.

That may seem like common sense, but there may always be mitigating circumstances. For example, in this particular instance the defendant stated that he was trying to keep his client's fees to a minimum. Effectively that could be considered as cutting corners. How often does that happen in an attempt to please the client? Hopefully the plethora of cases taken against surveyors in the last 5 years will have taught that straying away from established and recommended best practice to please a client is not acceptable. Equally where you are asked to act as an Expert then make sure you have the competence to act and read up on the current process to be adopted, particularly ensuring that you are not conflicted.

Contact
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