




Valuation: The Challenges, The Law & Risk Management


Duncan Greenwood
DAC Beachcroft LLP



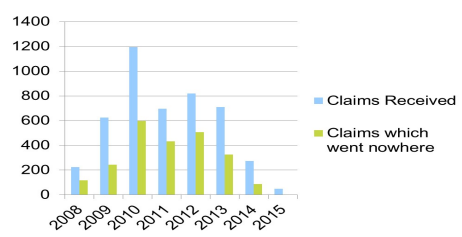
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Agenda

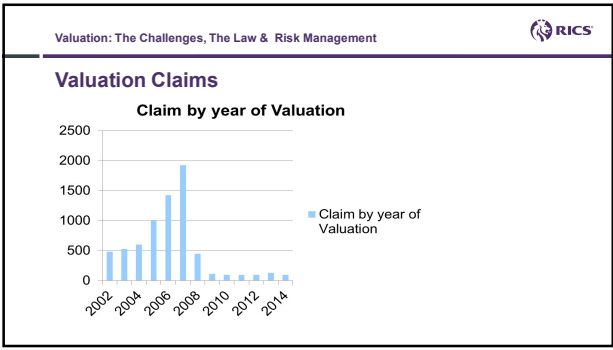
- Challenges
- Valuation claims: where are we now?
- Valuation claims and how are losses calculated
- Why is effective risk management important?
- Common problems
- Top tips
- What next?


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Valuation Claims




Year	Claims Received	Claims which went nowhere
2008	200	100
2009	600	200
2010	1200	600
2011	700	400
2012	800	500
2013	700	300
2014	300	100
2015	100	50




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Valuations – Key Legal Principles


- Why are claims made?
- Breach of duty
- Example: Property valued at £5m, true value is £3m
 - Actual loss: £4.5m
 - But SAAMCO capped loss: £2m



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The SAAMCO Cap

- Valuers only responsible for the loss for which they had assumed responsibility to lender, i.e. the adequacy of the security
- Valuers are not responsible for all the lender's losses (e.g. collapse in market values)
- Valuer's liability capped by reference to the amount of the overvaluation (if less than actual loss)

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The Bracket (Margin of Error)

- Valuation is an art; not a science
- Courts now apply the following permissible margins of error, either side of a notional "correct" valuation:
 - Standard residential property: +/- 5%
 - An unusual property: +/- 10%
 - An exceptional property: +/- 15% (or even higher in an appropriate case)


See *K/S Lincoln and others v CB Richard Ellis Hotels Limited* [2010] EWHC 1156, per Mr Justice Coulson

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Trends – Recent Decisions


- Bridging Loans v Toombs (2014)
- Canada Square v Kinleigh Folkard & Hayward (2015)
- Titan v Colliers International (2015)
- Tiuta International v De Villiers (2016)
- Barclays Bank Plc v Christie Owen & Davies Ltd (trading as Christie & Co) (2016)



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Why is Effective Risk Management Important?

- "Why do you have brakes on a car? So you can go faster. Why do you have a good risk management policy? So you can pursue your business goals more energetically."*
- John Hurrell, Chief Executive, Association of Insurance and Risk Managers




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Why is Effective Risk Management Important?


- Time commitment
- Loss of profit
- Increased excess(es)
- Increased premiums
- Damage to reputation




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Common Problems - Valuation


- Lack of expertise
- Valuing over the purchase price
- Unique properties
- Justify / explain the valuation
- Methodologies / inputs




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Common Problems – Responsibilities to Third Parties


- *"Our valuation report is only for the use of our Client and no responsibility is accepted to any third party for the whole or any parts of its contents"*
- Reliance by third parties



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Common Problems – Reliance on Third Party Information


- Build costs
- Floor areas
- Planning information
- Comparables
- Assumptions

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Common Problems


- Over-influence by borrower/broker/lender
- Failing to take account of recent sale prices
- Compliance with instructions/scope of duty
- Being helpful! (follow-up advice)
- Failure to flag information you do / do not have.



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Common Problems - Planning

- Planning – advising on probability of planning
- Best practice bulletin on strategic land



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Common Problems - Valuation

- Comparables






- VPV as an afterthought...

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Top Tips – Quoting for Valuations

- Conflicts
- Risk vs Reward
- Liability caps vs fee levels
- Third party reliance
- Type of client

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Avoiding Claims – Top Tips

- Terms & Conditions + SLA's
- Clear retainer letters
- Stick to your area of expertise
- Establish correct facts
- Explain methodology and assumptions
- Highlight issues to be addressed


What I <i>don't</i> take responsibility for	What I <i>take</i> responsibility for
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Avoiding Claims – Top Tips


- Attention to detail
- Contemporaneous records
- Electronic records – written/photographic
- Being helpful! (Follow up advice)
- Use of email
- Document all handovers



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Avoiding Claims - Vetting


- All valuation reports need to be vetted
- Provides invaluable risk management to claims exposure
- Errors more likely to be picked up
- Opinions should be challenged
- Ensure you are not operating outside of the scope of your VAC accreditation

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Professional Indemnity Insurance


- Don't sit on bad news!
- Notify:
 - all claims [whatever the merit]
 - any circumstances that might give rise to claims
- Retain all relevant documents/electronic records
- Co-operate fully in defending claims
- Do nothing that could prejudice the defence



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What Next?

- Brexit
- The bubble
- RICS Guidance – the valuation of buy-to-let properties and HMO properties
- Risk, Liability and Insurance in Valuation Work 2017
- New Red Book (in Autumn)
- RICS conflicts of interest (Jan 2018)



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Discussion



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