

Terms of Engagement – belt and braces

Although the requirement to issue terms of engagement has been with us for decades, some firms and valuers are still reluctant to send them out. Some, who mainly undertake commercial secured lending, believe banks will not accept the terms of engagement. Others, dealing with private clients, fear they will damage their relationship with their client, especially where they have dealt with them for a long time. There is a notion in some quarters that the relationship is based upon a gentleman's agreement and it would be an affront to turn it into a contract.

Terms of engagement shouldn't be confused with terms of business, the latter dealing with the commercial aspect of your relationship with your client, such as how and when to pay fees, rules for terminating the instruction and so on. A long standing client may be understandably unhappy if you suddenly start dictating terms of business.

Terms of engagement set out the basic facts of your valuation instruction so that there is no confusion about what you have been asked to do. They also define the scope and depth of the service you will provide, and in doing so set boundaries to your liability. It makes sense to get the facts straight before you start the job, which is why it is a fundamental requirement of Red Book.

Some firms who have regular repeat business with a client are reluctant to issue terms of engagement for every job and instead agree one set which remains in force for a period of time. This may have some merit so far as the definitions, assumptions, scope of service and caveats are concerned but at least half the items included in terms of engagement are variable and must still be agreed case by case.

Some firms have a document called Standard Terms of Engagement. This usually covers all those items listed in VPS 1.2, g – k. The variables of the case, items a – f, are put in a covering letter. We find this approach invariably means that some terms fall into the gap between the documents. Consequently, the terms of engagement are rarely comprehensive.

Having 'standard' terms of engagement means adopting a 'one size fits all' approach which is rarely appropriate. It is essential that terms of engagement are put together case by case. The bulk of the 'standard' parts concern the assumptions and scope and depth of inspections and investigations. Whilst we accept there may be a default position for these, the specifics of each case often vary. Unless these variations are allowed for, it results in a misdescription of the service you are offering e.g. saying you will measure the property when, in fact, you will rely on area measurements provided by another source, would not look good in court.

In our view, Terms of Engagement should be a single document, set out under headings following the list in VPS 1.2. Each item in that list is vital to the instruction and it is bad practice to bury the information in a paragraph about something else. Terms of Engagement must be simple, clear and comprehensive. The covering letter should simply thank the client for the instruction '*which will be carried out in accordance with the enclosed Terms of Engagement*'.

Getting it right

Most of the requirements for minimum content set out under VPS 1.2 are self-explanatory. Nevertheless, the following requirements are often misunderstood:

Purpose of the Valuation

This refers to the end use of the valuation. It is essential to pin down the precise end use otherwise you do not know what regulation and legislation applies. We commonly see 'for accountancy purposes' or 'transfer between parties', which could mean many things from inclusion in year end accounts to merger or takeover to tax calculation. You should be specific, for example, 'for inclusion in accounts for year end April 2013'. Later in the Terms of Engagement you should limit your liability to the specific purpose of the report.

The interest to be valued

We find many valuers do not refer to the interest to be valued. Remember that we do not value property but an interest in a property. It is vital that we specify the interest being valued as well as including the interest in our opinion of value. For example; *'in our opinion the market value of the Freehold interest in the above land and buildings is.....'*

Identification of the asset or liability to be valued

You must classify the property and its use. For example; 'Retail shop held as an investment', or 'Dwelling house for owner occupation'.

Valuation date

Remember there are several dates in a valuation; the date of instruction, date of inspection, date of the valuation and date of the report. You must specify a date for the valuation. For tax and accounting purposes there will be a specific date known in advance. For other purposes it is acceptable to state that the date of the valuation will be the date of the inspection or the date of the report provided that has actually been agreed with the client.

Identification and status of the valuer

The valuer must be named. Their qualifications, experience and membership of the Valuer Registration Scheme stated. They may have an assistant who does much of the work and drafts the report, but the valuer is the person who accepts responsibility for the valuation. The assistant may be mentioned in the report but only the valuer should sign the report.

Special Assumptions

These must be stated in the Terms of Engagement and in the report. Most valuations are subject to a special assumption, being something which is not true but which will be assumed to be true. For example, 'vacant possession' when the property is actually occupied, that planning consent has been obtained when it has not, that building works are complete when they are not. Make sure the special assumption is realistic otherwise the valuation is meaningless. You may need to provide an opinion of value without the special assumption for comparison.

Assumptions

This is all about due diligence. Clients and courts tend to assume you have done full due diligence on the property unless you say you haven't. VPS 2.5 lists six things upon which valuers do not normally undertake due diligence. The list is not exhaustive. We recommend following a three-fold approach to each matter as follows: say what you will **not** do; say what you **will** do; State your default assumption.

Banks

Many valuers believe that lender clients will not accept Terms of Engagement and they must rely entirely on the Service Agreement with the Bank and the letter of instruction in each case. Whilst we accept that some Banks will not accept them, others will. Some Banks just ask for a 'Red Book valuation' and have no service agreement as such other than their letter of instruction.

You are unlikely to get a lender to sign Terms of Engagement because the local lending manager rarely has the authority to do so on behalf of the Bank. But you can still send them with your letter accepting the instruction and they will sit on the file, providing you with some measure of protection.

Banks' service agreements differ. Some are comprehensive in which case VPS 1.2 has been satisfied. But others are not and are silent about many important issues. Unless you define and therefore limit your instructions, you are putting yourself at risk in a dispute. Our advice is to acknowledge the instruction and send Terms of Engagement wherever possible and certainly refer to Terms of Engagement in the preamble to the report and include a copy in an Appendix.

Homebuyer Contract letter

Many firms and surveyors are unaware that the letter which accompanies the Description of the Service and the Standard Terms of Engagement is called the Contract Letter and the Practice Note, section 3.2, provides a list of required minimum content. The contract letters we review as part of Valuer Registration commonly fall well short of this requirement. Often, many important items are missing, some of which are there to protect the firm and surveyor from liability. **We recommend all firms and surveyors review their contract letter against the requirements of section 3.2.**