Mortgage Valuation Report Forms and the Identification of Subsidence

Peter Wynn and Graham Hardiment

The authors

Peter Wynn (Senior Lecturer) and Graham Hardiment, both of the Department of Built Environment, Anglia Polytechnic University, Chelmsford, UK

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Abstract

This paper examines whether surveyors engaged in mortgage valuation inspections using questionnaire style report forms supplied by lending institutions, are subject to an increased risk of liability in respect of identifying the present and future threat of subsidence to domestic properties.

Analysis of the mortgage valuation report forms used by 34 different lending institutions, showed that 20% failed to ask any subsidence related questions, only 6%

asked about the geology or soil type of the site, and only 9% asked about the location of trees relative to the building. Evaluation of the report forms showed that the type, quality and quantity of questioning were such that 24 out of the 34 were inadequate and unreliable, leaving the surveyor at an increased risk of litigation.

Introduction

In an environment of escalating domestic subsidence insurance claims the surveyor operates in an increasing litigious climate. The paper examines whether the liability of the surveyor instructed to undertake mortgage valuation inspections is exacerbated by the different standards of mortgage valuation report forms used by lending institutions. Variations within a sample of mortgage valuation report forms supplied by different lending institutions to panel surveyors operating in the domestic housing market in an English region are critically reviewed in the light of recent case law decisions. Conclusions are drawn as to the national implications of the investigation.

Each lending institution supplies a corporate design of mortgage valuation report form to be completed by the surveyor. For reasons of convenience, and to avoid any bias on the part of the authors, a complete sample of all the standard mortgage valuation report forms used within the office of one of the authors has been examined. This extends to thirty-four different lending institutions: a mixture of banks, building societies and insurance companies.

The only aspect of each mortgage valuation report form subjected to analysis are those questions specifically relating to identification of subsidence or the threat of subsidence, or associated aspects such as heave and landslip. No part of any of the actual forms is published in the paper. To maintain confidentiality each lending institution has been given an anonymous reference number between 1 and 34.

The RICS Appraisal and Valuation Manual

Practice Statement 6 of the "Red Book" (RICS, 1996) states that, for the avoidance of doubt, the inspection required to produce a valuation is not a building survey. However it also states that site stability and soil conditions are recognised as material considerations whose relevance is to be considered in the production of a valuation.

Practice Statement 9 (RICS, 1997a), dealing with Valuation of Residential Properties for Mortgage Purposes, states that it is unlikely that any Lender will seek to limit the normal inspection procedures of the Valuer. Guidance Note 3 (RICS, 1997b) says that the Valuer's duty is to prepare a report on the basis of the information contained in the instructions received, unless there are obvious errors or inconsistencies.

Mortgage Valuation Reports as Questionnaires

Whilst a model report form (RICS, 1997c) is available, most lending institutions provide their own pro-forma standard forms for completion by panel surveyors

instructed to carry out mortgage valuation inspections. Guidance Note 3 (RICS, 1997b) states:

> "Where Lenders issue their own valuation report forms which state their requirements, it is unnecessary to add further information except where this Manual suggests otherwise."

The report forms require surveyors to respond to a series of specific questions designed to collect facts, professional opinions and views from the surveyor carrying out the inspection. They thus fall into the Oxford English Dictionary definition of a questionnaire as "a list of questions by which information is sought from a selected group." (Simpson and Weiner, 1989). The data collection collected in questionnaires may be qualitative or quantitative (Blaxter et al, 1998).

Naoum (1998 p53) states that :

> "Questionnaires have been widely used for descriptive and analytical surveys in order to find facts, opinions and views"

There is a need to record accurate and reliable information upon such forms to enable lending institutions to determine the risk of the security for mortgage purposes, and therefore the quality of questioning to elicit reliable information is significant.

An examination is made of the extent to which the forms examined comply with guidance available on questionnaire design in terms of their format and content.

Format of Subsidence Related Questions

The mortgage valuation report forms can be classified on the basis of the question styles used into the following types:

A) Closed questions with no facility to expand for a positive response.

B) Closed questions with a box to expand for a positive response

C) Open questions with a box allowing response

Type A was used by 6% of the lending institutions, Type B by 45% and Type C by 29%. The remaining 20% of the institutions did not include any subsidence related questions.

It is argued that use of closed style format of questioning of Types A or B must increase the probability of litigation against the surveyor. There are three predominant reasons why it is believed this is the case: bias, brevity and ambiguity.

Bias

Bias, or uncertainty, is introduced where the surveyor is forced to choose an option with which he or she is not entirely comfortable. A typical Type A question would be :

Q. Has any property in the immediate vicinity suffered from subsidence

YES / NO

With this example question the surveyor is forced to answer with a yes or no response even if unsure. The accurate and professional response of 'do not know' is not available. This problem is recognised by Naoum (1998) who argues that closed type questions introduce bias, by either forcing the respondent to choose from predetermined alternatives or by offering the respondent an alternative they might not have otherwise chosen. In debating closed style of questioning McNeill (1990 p 26 -27) points out that:

> "the problem is that the researcher has imposed a limit on the possible answers that the respondent may give, and this may cast doubt on the validity of the data collected….the wording of questions especially closed questions, must be clear, precise and unambiguous"

Fortunately it appears that the limitations of Type A questions is appreciated by most lending institutions so most commonly a Type B approach is used by the addition of a rider such as

If yes please give details below

Brevity

However the brevity of the reports, which often are only one A4 page in length, has the consequence that where a 'yes' response is given there is not usually sufficient space on the form to give a complete and comprehensive response. This must on occasions leave the surveyor vulnerable. This situation is exacerbated where the mortgage report adopts the format of asking three or four questions followed by one 'yes expansion' box, as is the case in over half the sample.

Ambiguity

Ambiguity can be introduced by the multiple questioning style used by most of the sample of lending institutions which adopt the closed style of questioning. This leaves the surveyor in an indefensible position as a consequence of feeling forced to respond comprehensively. According to Blaxter et al. (1998) the questions should not be imprecise or ambiguous and therefore double questions should be avoided. McNeill (1990 p 26-27), and Naoum (1998) concur. Kane (1987 p 78) states of double questions:

> "The wording of some questions makes them difficult or impossible to answer accurately. Sometimes they contain two or more unrelated or even contradictory parts, the answers to which may be different"

Two commonly appearing examples within the sample examined were:

> **Q**. Is there evidence of movement, subsidence, heave, landslip in the property or in the immediate vicinity. **YES / NO**

> **Q**. Is the movement significant, recent, or progressive. **YES / NO**

Does not the first question ask eight questions? The four factors in the property, and four factors in the immediate vicinity, and therefore does a negative response assume a negative response to all eight questions? With the second question it is not clear what a negative response or a positive response is actually saying.

Ambiguity can arise with both Type A and Type B approaches from the 'fuzzy word' question (Kane, 1987 p 78). This is a question that incorporates a word that has different interpretation or meaning to different people, and therefore produces meaningless answers. In the first example quoted 'immediate vicinity' is not defined anywhere on the form. This may be partially overcome by comment in the expansion box of Type B provided sufficient space is provided.

Type C questions give the surveyor the greatest opportunity to express true professional opinion. Naoum (1998) argues that open type questions have the advantage of giving the respondent the opportunity to express their views, but he points out that this type of question style is more difficult to analyse and interpret. Kane (1987 p76) states that :

> "When open-ended questions are asked enough space must be allowed for the respondent to answer the questions.." McNeill (1990 p26) adds that :
>
> "open questions make it possible for respondents to say what they really feel".

Range of Information Collected by the Forms

Examination of the thirty-four forms shows there was considerable variation between the procedure for data collection by each lending institution. It was nevertheless clearly apparent that questions in respect of subsidence could be categorised into ten questions of the following types :-

Table I Questions Specifically Asking the Surveyor Carrying Out the Mortgage Valuation Survey to :-

1 IDENTIFY SUBSIDENCE IN THE BUILDING

2 IDENTIFY SUBSIDENCE IN IMMEDIATE VICINITY

3 CATEGORISE ANY MOVEMENT i.e. RECENT / PROGRESSIVE

4 DETERMINE IF THERE IS A RISK OF FURTHER MOVEMENT

5 IDENTIFY SOIL TYPE OR IF MADE UP / INFILL LAND

6 REPORT REPAIRS TO BUILDING AS RESULT OF SUBSIDENCE

7 PROVIDE INFORMATION ON MINING IN THE AREA

8 REPORT LOCATION OF TREES / SHRUBS IN RELATION TO BUILDING

9 DETERMINE RISK OF LANDSLIP

10 DETERMINE RISK OF HEAVE

Analysis was carried out on the research sample to identify which of these questions were asked by each lending institution. The resulting data are shown in Table II.

Table II Occurrence of Key Subsidence Related Questions

	QUESTION										
	1	**2**	**3**	**4**	**5**	**6**	**7**	**8**	**9**	**10**	**Total**
LENDING INSTITUTION											
1											0
2	✓	✓			✓		✓		✓	✓	6
3											0
4	✓	✓					✓				3
5	✓	✓							✓		3
6		✓							✓		2
7											0
8	✓	✓							✓	✓	4
9	✓	✓							✓	✓	4

10							✓				1
11	✓										1
12	✓								✓	✓	3
13	✓	✓				✓			✓	✓	5
14											0
15	✓			✓		✓			✓	✓	5
16	✓	✓							✓	✓	4
17	✓								✓	✓	3
18	✓		✓	✓							3
19	✓	✓		✓							3
20	✓	✓							✓		3
21	✓	✓					✓		✓		4
22											0
23	✓										1
24	✓	✓							✓	✓	4
25	✓	✓							✓	✓	4
26	✓	✓			✓	✓	✓	✓	✓	✓	8
27	✓	✓		✓			✓	✓	✓	✓	7
28	✓		✓								2
29							✓				1
30	✓	✓	✓						✓	✓	5
31	✓	✓					✓		✓	✓	5
32											0
33	✓						✓		✓	✓	4
34											0
Total	24	17	3	4	2	3	9	3	19	15	99

Table II shows that the forms of 7 of the lending institutions, representing over 20% of the sample, do not include any of the 10 key questions.

Question 1 - *identify subsidence in the building* - is the most frequently occurring question being asked on over 70% of the sample of forms. However Question 2 - *identify subsidence in the immediate vicinity* - occurs on only 50% of the sample.

A question to - d*etermine the risk of landslip* - is the second most popular arising in 56% of the report forms. Whereas a question to - *determine the risk of heave* - occurs in 44% of the sample. The question - *provide information on mining in the area* - is even less frequent occurring in 26% of the forms.

Question 5 is the least common with only 6% lending institutions in the sample asking the surveyor for - *identification of soil type or presence of made up ground/infill.* Only 9% of lending institutions asked surveyors to- *report the location of trees in relation to the building* (Question 8). This is in spite of the fact that soil type, the presence of made ground and trees are key factors in subsidence risk in some areas.

Analysis also showed that where movement had occurred, under 12% of the lending institutions asked surveyors to - *determine the risk of further movement* - (Question 4) and under 9% of the sample asked surveyors to - *categorise any movement* (Question 3) or - *report repairs as a result of subsidence* -(Question 6).

Implications of Range of Questions on Mortgage Valuation Reports

With increased demand for prime building land, made up and infill sites are being developed for domestic housing. The cases of *Beaton (1991)* and *Cross (1989)* demonstrate an expectation from the courts that valuation surveyors should report on all the site variables where relevant, including soil type, and slope of the site. Analysis of the report forms however, shows that only 2 out of the34 sample of lending institutions ask the surveyor to comment upon *soil type, or if the site is made up or infill land*.

The adverse impact of trees or shrubs in close proximity to buildings is a subject well documented as a main cause of subsidence in domestic buildings, especially where they are located in cohesive soil types. In the *Daisley* (1972) case the surveyor carrying out a structural survey was found guilty of professional negligence when he failed to report the presence of 40ft high poplar trees positioned only 25ft away from a property built on shrinkable clay subsoil. The court felt a surveyor's education and expertise should reasonably extend to identification of soil types, recognition of tree types, and tree root dangers, such that the client could expect to be warned of the risk to his property. The *Beaton (1991)* and *Cross (1989)* cases similarly illustrate that the courts will find a valuation surveyor negligent for failing to recognise the risks of trees in close proximity to buildings, and for failing to warn the purchaser of any feature which is likely to involve uncertainty at present or in the future. However only 3 out of 34 lending institutions ask surveyors to *report on the location of trees or shrubs in relation to the building.*

The *Hingorani (1973)* and *Morgan (1973)* cases show that the courts expect surveyors to follow a trail of suspicion and recognise concealed evidence of subsidence, such as cracking. Analysis of the report forms shows that only 3 out of 34 lending institutions ask the surveyor to *report repairs to the building as a result of subsidence* which would almost certainly necessitate the surveyor making enquiries of the vendor.

Implications of Findings

From the research undertaken it is clear that it is the combination of risk factors which significantly increases the threat of subsidence. When carrying out valuation inspections on domestic buildings the surveyor needs to take account of all of the key site variables to put him or her on alert as to the risks of ongoing or the future threat of subsidence.

Examination of the mortgage valuation report forms however, has revealed that the vast majority do not incorporate a number of those questions pertinent to identifying factors relevant to subsidence. Incorporation of all of these questions as a standard, would in the authors view facilitate the surveyor's inspection procedure.

Conclusion

It is concluded that 24 out of the sample 34 report forms examined are inadequate and unreliable, for reasons of quantity or quality and style of questioning. Additionally, in considering the expectations of the courts with regard to the liability of the valuation surveyor to identify subsidence or future threat of subsidence, it is clear that reliance upon the 24 aforementioned mortgage valuation report forms would leave the surveyor in a position of increased liability.

The inadequacies of the report forms places great emphasis on the surveyor to adopt a standardised procedure for inspection, and fill the gaps with site notes in an effort to limit future liability. Even so the mortgage valuation report form has to be completed,

leaving the surveyor vulnerable to be held to account at some future date for a response forced upon him through an ambiguous or inappropriately styled question.

It could be argued that the 24 lending institutions in this sample are not protecting the interests of the prospective purchaser by placing too much reliance on the competence of the surveyor, instead of asking the right questions prompting a response or causing the surveyor to make the necessary enquiries.

The lending institutions may argue against the findings on the basis that additional guidance manuals are supplied to panel surveyors, which clarify expected requirements of surveyors engaged in mortgage valuation instructions, and that such manuals contain a 'catch all' caveat that *any factor which is likely to affect the value of the property should be reported.* They may also argue that if not contained in a guidance manual this is likely to be incorporated as a term of the contract between the surveying company and lending institution. However the availability of such manuals to the valuers making inspections appears limited.

Finally, lending institutions may argue against the findings on the basis that the sample is biased or restrictive and confined to a convenient area. However, although the sample represented 34 different lending institutions operating in the domestic housing market in one English county, it is worth noting that most, if not all of the companies operate in the housing market in other parts of the United Kingdom, using the same standard mortgage valuation report forms, and therefore the findings have national significance.

Recommendations

The following recommendations are made:-

1. Research is needed to establish the reasons why certain lending institutions fail to recognise the importance of asking key questions in respect of subsidence in their mortgage valuation report forms, and to establish the feasibility of adopting a more comprehensive and standardised approach.

2. Complementary qualitative research should be undertaken to measure the views of mortgage panel surveyors using existing mortgage valuation reports.

3. Further research is needed to ascertain the extent of availability of guidance manuals issued by lending institutions, and to establish the implications of their content on the liability of surveyors engaged in mortgage valuation work.

4. Where question style report forms are to be used to collect data there should be a good practice guideline published incorporating some of the general principles that govern research questionnaires, and in consideration of the following criteria :-

    - The report forms should incorporate predetermined key questions relevant to domestic subsidence to cause a response or enquiry from the surveyor.

- Reports should comprise of a minimum recommended length in excess of the one A4 page to allow more comprehensive analysis and reporting.

- Where closed style questions are used the ‘yes expansion’ boxes should follow each question rather than a group of questions

- Multiple questions should be avoided to prevent ambiguity.

- Terms such as ‘immediate vicinity’ should be defined within the report.

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