



neglect **assist**

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Ways To Calculate Your Surveyor's Negligence Claim

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Know what you can and can't claim for

When making a claim of negligence against a surveyor it is very important to understand what losses you can and cannot claim for.

Damages in a surveyor's negligence cases are usually assessed as the diminution in value between the price paid by the buyer and what the market value of the property actually was, i.e., what the reasonable buyer would have paid for the surveyed property, if the defects had been correctly identified within the negligent survey. This follows the 'negligent provision of information' rule established in *Watts v Morrow*.

Many people sometimes think that this equates to the 'cost of cure'. In fact, in a surveyor's negligence case, the cost of fixing the defects not identified within the negligent survey may not add up to what you can reasonably expect to recover.

5 Pitfalls You **Must Avoid To Win Your** **Surveyor's** Negligence Claim

For this reason, it is important to also think carefully about whether there are any other associated losses which can be claimed for in your case. Case law confirms that these 'heads of losses' must flow directly from the negligent survey in order to be recoverable.

On the other hand, there are some losses that simply cannot be claimed for, usually because they do not flow directly from the negligent survey. For example, it is not usually possible to claim cash sums because of any stress, worry or upset but, in certain cases, damages for inconvenience and distress may become recoverable.



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Make sure to include all of your associated losses

Typically, the role of the Court is to put the claimant back into the position they would have been in, had they been properly advised in the first place.

Some examples of the broad types of associated losses that may be claimed as part of a surveyor's negligence claim (and that our expert solicitors have claimed for in the past) include; the loss of income from a holiday home business, wasted fees and costs associated with the negligent survey such as repairs carried out and additional surveys obtained, fees and commissions paid to the surveyor and third parties, the costs paid for legal advice in order to rectify the problems identified and additional stamp duty land tax paid.

Don't forget to also apply a suitable rate of interest to your overall losses.



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But don't be greedy!

However, whilst it is vital to ensure that all of the different types of losses are included within your claim, it is also important to be realistic when presenting your final total.

Very often, people make the mistake of thinking that the compensation they might be entitled to is much greater than the diminution in value of the negligently surveyed property.

Importantly, the aim of compensation is not to punish a negligent surveyor, rather it is to compensate the person who has suffered as a result of bad advice.

In the buoyant property market of the recent past, there were (potentially) plenty of other buyers of the negligently surveyed property. This has the effect of reducing the recoverable damages and sometimes even extinguishing claims, because the large pool of other potential buyers means that the price paid by the reasonable buyer might be close to (or the same as) the price paid by the claimant.

A claimant also has a duty to mitigate their losses. This means taking reasonable steps to reduce the losses you that have incurred to a minimum.



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Identify what type of claim you might have

When calculating losses, it is important to first identify whether the case falls within the Large v Hart exception to the rule established in Watts v Morrow.

In these types of cases, an omission by the surveyor which may fall within the category of 'negligent advice' (as opposed to negligent information) can sometimes lead to much increased recoverable damages.

In Large v Hart, the Court of Appeal found that the defendant surveyor was responsible for all the losses caused by the inadequacy of their advice. Whilst this case was fact-specific, this resulted in damages representing the difference between the value of the property with no defects and the value of the property with all the defects that actually existed (even those which the surveyor could not have seen at the time).

Whilst it might be argued that Large v Hart provides the exception rather than the rule, our expert solicitors will be able to advise you if your claim may fall into the provision of advice category of claim, as subsequently clarified by the Supreme Court in the case of Manchester Building Society v Grant Thornton UK LLP.



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Employ a specialist adviser

In surveyor's negligence claims it is often crucial that the claimant obtains an independent third-party report from another professional surveyor that supports, (i) the allegations of negligence, and (ii) the quantum of the claim. Whilst solicitors can set out your heads of loss, it is usually necessary to employ an expert with specialist knowledge in order to fully calculate your losses.

Generally speaking, it is possible to instruct such experts directly, if you can find the right person. Alternatively, a solicitor might be able to recommend experts to you, negotiate terms of engagement on your behalf and instruct them to complete a calculation.

NEXT STEPS

Please do not hesitate to contact Tim Hampson at Wixted & Co. Solicitors for a free consultation to see if we could act for you on our “no win, no fee” basis.

5 minutes of your time spent now could make a huge difference to your claim.

ACT FAST, DO NOT DELAY, PROTECT YOUR POSITION BY ACTING TODAY.

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ABOUT THE AUTHOR

Tim Hampson is a solicitor with over 11 years qualification who specialises in professional negligence claims, with specific expertise in claims against surveyors and valuers. Tim has litigated on behalf of clients in the County Court, the High Court and the Court of Appeal and has considerable experience of working within a team of lawyers and third parties – including liaising with other solicitors, counsel and experts – in order to achieve a positive outcome for his clients.

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