

# TECHNICAL BULLETIN

FOR RESIDENTIAL SURVEYORS

## GOING OFF THE GAS GRID

GOING OFF  
THE GAS GRID

LEASEHOLD PROPERTY

THINKING ABOUT  
NUISANCE

SAP 10

COMPLAINTS AND  
CLAIMS



# THE TECHNICAL BULLETIN

FOR RESIDENTIAL SURVEYORS

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Welcome to the Technical Bulletin for Residential Surveyors. This Bulletin is designed for residential practitioners who are members of RICS and/or the Sava Scheme.

Produced jointly by BlueBox partners and Sava here you will find technical articles, updates on convention changes and best practice. We hope you will find this useful in your day-to-day work and we welcome any feedback you may have and suggestions for future publications.

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# GOING OFF THE GAS GRID

## MOVING TO GREENER ENERGY

SAVA TECHNICAL TEAM

The Committee on Climate Change recently issued a **report** describing why the UK housing stock is not fit for purpose and recommending possible changes to improve the efficiency of housing stock and reduce our carbon emissions. This included a recommendation that all new properties should not be connected to the gas grid by 2025.

While not going as far as the Committee on Climate Change, in his spring statement, the Chancellor acknowledged the need to move to greener energy when he stated that *“to help meet climate targets, the government will advance the decarbonisation of gas supplies by increasing the proportion of green gas in the grid, helping to reduce dependence on burning natural gas in homes and businesses”*.

In this article we consider the Committee on Climate Change’s report, considering the recommendation in more detail and the alternatives to gas central heating.

### Who are the Committee on Climate Change?

The Committee on Climate Change (CCC) are an independent, statutory body. They were established under the Climate Change Act 2008 and advise the UK Government on emissions targets and report to Parliament on climate change.

### The Report

The key messages within the CCC report are:

- UK homes are not fit for the future
- Performance and compliance of new homes falls short of design standards
- There is a skills gap in housing design, construction and

- installation of new measures
- Existing homes across the UK must be retrofitted and made low-carbon and low-energy
- New homes must be built to be low-carbon, low-energy, water efficient and climate resilient. No new homes should be connected to the gas grid
- There are urgent funding needs which need to be addressed with the support of HM Treasury
- Householders must make a big difference with small changes

The Committee on Climate Change say: *“We will not meet our targets for emissions reduction without near complete decarbonisation of the housing stock.”*

The report suggests that by 2025, at the latest, new homes should no longer be connected to the gas grid. Instead, they should be fitted with low-carbon heating systems such as heat pumps and low-carbon heat networks. But even before the 2025 target date the CCC says that newly built homes could be made ‘low-carbon ready’. This could be achieved by, for example, using radiators compatible with heat pumps and low-temperature compatible thermal stores. The space heating demand should also be significantly reduced to 15-20 kWh/m<sup>2</sup>, achieved by the combination of a heat pump and excellent thermal insulation.

**UK Energy Use**

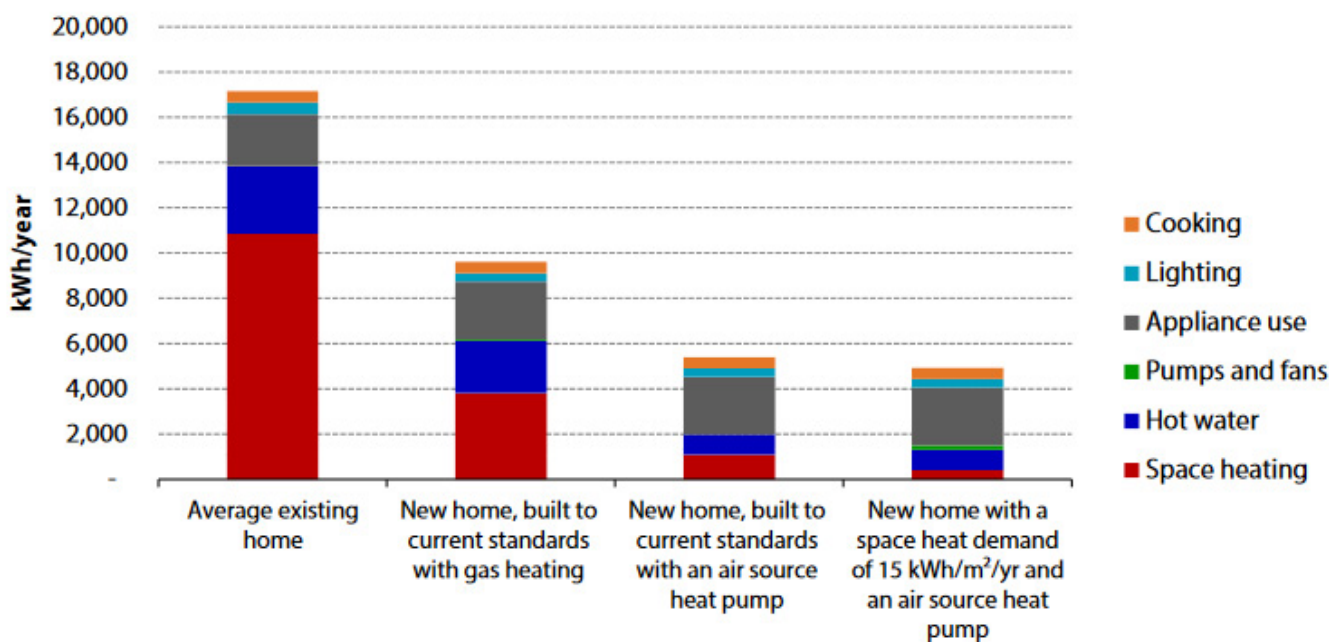
The report states that according to the Department

for Business, Energy and Industrial Strategy (BEIS) 2018 document Energy Consumption in the UK, heating and hot water production for UK homes makes up 25% of total energy use.

While it is clear, from reports such as *The Clean Growth Strategy*, that the UK has made vast improvements in reducing emissions, especially since 1990, we still have a long way to go to meet our 2030 obligations – to achieve a reduction in greenhouse gas emissions of 40% below 1990 levels. However, the CCC say, *“Greenhouse gas emission reductions from UK housing have stalled”*.

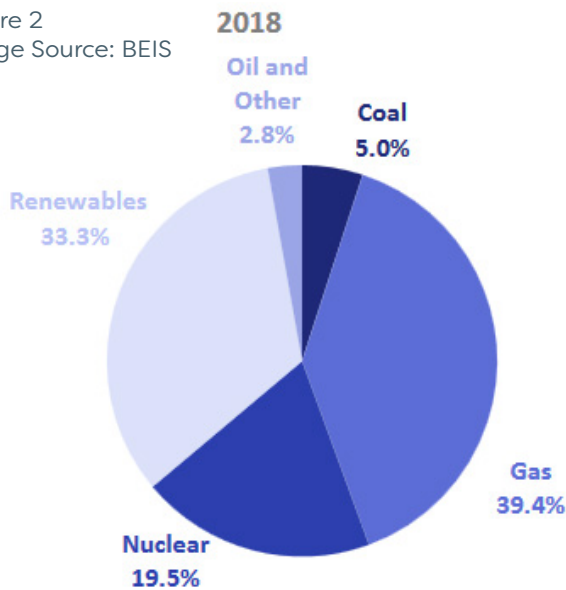
The graph at Figure 1 shows the differences between the average energy demand for an existing home in comparison to new homes. It shows how drastic reductions in energy use and hence carbon emissions are possible in the domestic sector. The data illustrates how the current build standards will not achieve space heating demand of 15 kWh/m<sup>2</sup>, which is the level of energy use the CCC are proposing, although installing air source heat pumps in new homes will reduce the space heating energy requirement. The data also highlights the need for an insulation first approach. It would be ineffective to have an ultra-efficient heating system if the property is not well insulated. What is also interesting is the different proportions of household energy use and how this varies for new and existing homes. For new-build highly efficient properties the appliance use is more than double the combined space and water heating energy. Conversely, for existing build properties the appliance use is less than 25% of the overall energy use. This emphasises the need to address the current housing stock as well as new-builds.

Figure 1  
Image Source: CCC



The below chart is from the Department for Business, Energy & Industrial Strategy’s statistical press release for the 2018 UK Energy Statistics and it shows the percentages of fuels used for electricity generation last year, 33.3% of which was generated from renewables which was a record high, 39.4% was generated from gas and coal produced a record low of just 5%.

Figure 2  
Image Source: BEIS



The report confirms that gross gas production decreased 3.1% compared to 2017 and gas used for electricity production fell by 4.7% as electricity generators made more use of renewable sources.

**Alternatives**

As clearly illustrated by Figure 1, installing air source heat pumps could be one of the suggested alternatives to the traditional gas central heating system.

Air source heat pumps work by absorbing heat from the outside air to produce useful heat. With an average efficiency of 300% this means that for every 1 kWh of electricity input, 3 kWh of useful heat is produced.

However, retrofitting heat pumps to existing homes can be problematic. Heat pumps operate at a lower temperature than most gas boilers and hence need larger radiators to achieve the same internal temperatures. This is why they are usually installed alongside an underfloor heating system. This makes air source heat pumps a very disruptive solution as a retrofit measure, hence the CCC suggestion that it would be sensible to install the correct emitters in new properties at the build stage if we want to future-proof our homes.

It seems as though the CCC report has ruffled feathers. At the Business, Energy, Industrial Strategy (BEIS) Committee meeting in March of this year, during an oral evidence session on Energy Efficiency, Group Planning Director of UK house builder Persimmon, Peter Jordan, referred to the report stating: *“The key issue that came out of the report, for me, is whether or not the solution of air source heat pumps, or rather a gas solution to it, is the correct way to go. The whole industry needs to come together to find the correct solutions to this.”*

And, laudable as the ambition is, as Chief Executive Officer of Barratt Homes, David Thomas pointed out: *“There is not necessarily the supply chain of all the materials in place that you would need to build carbon neutral homes on an industrial scale, so that supply chain needs to be addressed.”*

Will heat pump suppliers keep up with demand? Will gas boiler manufacturers evolve and design more electric boilers? We can only watch this space.

**Incentives**

Because we live in a society that is used to cooking and heating with gas, the recommendation that all homes should give up gas and go all electric has been picked up in several news articles. Some articles have suggested that all-electric new homes will struggle to sell in comparison to homes with gas. This is understandable where estate agents’ particulars always list if a property has gas central heating.

Understandably, there is a degree of concern as to how this will impact on consumers and businesses. That said, we are starting to see more incentives to encourage buyers to choose a more energy efficient home. For example, the Barclays Green Mortgage gives customers a lower mortgage rate if the home has an energy efficiency rating of 81 or above (bands A or B).

The Domestic Renewable Heat Incentive (RHI) is also available. This is a government scheme to promote the use of renewable heat from air and ground source heat pumps, solar thermal and biomass. Those who join and follow the requirements can receive payments based on the amount of clean, renewable heat their system produces.

Other countries are already paving the way and preventing new houses being connected to the gas grid, such as the Netherlands who have already introduced the regulation. This followed a series of earthquakes that occurred due to over extraction from a gas field. They also have rules that ensure banks offer higher mortgages to customers who are improving their home’s energy efficiency.

**Changes to SAP**

The methodology used for assessing the energy efficiency of buildings is the Standard Assessment Procedure (SAP). The latest version, SAP 10, has recently been published, although a date for its commencement has yet to be decided. Amongst other changes, SAP 10 sees a drastic reduction in the carbon emissions factor for electricity, reflecting the decarbonisation of the grid. CCC state that the emissions factors for electricity in SAP 2012 fail to properly value the benefits of low-carbon technologies. Currently, the carbon emissions factor at 0.519kgCO<sub>2</sub> for electricity is more than double the emissions factor for gas. As new-builds use carbon rather than costs for Building Regulations compliance, this makes gas a more attractive heating fuel. With SAP 10, electricity will be a much more viable heating fuel for new-builds as the electricity carbon intensity will be set to 0.233kgCO<sub>2</sub>.

Electricity continues to be more expensive than gas per kWh; however, building homes with excellent thermal insulation will reduce the space heating demand (see Figure 1). This coupled with high efficiency heat pumps will see affordable energy costs for the householder.

**In Conclusion**

We have seen the number of homes with gas central heating increase from 73% twenty years ago to 85% today. This reflects the fact that only 14% of homes in the UK are off the gas network. Will we see a downward shift in this number with a push towards electricity as the main heating fuel? Will householders be happy to give up their gas hobs? These are questions that form part of the ongoing discussion, but one thing we do know is that action needs to be taken so that we reach our emission reduction targets and we must play our part in reducing our carbon footprint.



# LEASEHOLD PROPERTY

## EXPLORING LEASEHOLD PROPERTY

**JOE ARNOLD**, MANAGING DIRECTOR, ARNOLD & BALDWIN

Leasehold properties are coming under increasing scrutiny and a recent report from NAEA PropertyMark found that 94% of leasehold homeowners regret buying a leasehold property. There remain, however, many areas where leasehold properties account for a significant proportion of the housing stock and this is unlikely to change any time soon. So, what do you need to know about leasehold properties?

### **Property law – a quick revision**

The law relating to property in England and Wales has its roots in the medieval period and is a product of the feudal system. The terminology we find in modern leases ('Tenant', 'tenancy' etc.) date back to the 'tenants in chief', those loyal chief supporters of the king who were rewarded for their loyalty with parcels of land in exchange for military service. The Crown was at the top of the food chain and still holds some land, for example the foreshore, as an entitlement dating back this far.

This medieval system also gave rise to the principle of classifying an entitlement to land in terms of a period of time during which it could be 'enjoyed'. Where land might have been granted as a reward for personal services it might have only been granted for the lifetime of that

person and on their death, it would revert back to the ownership of the original grantor. Thus, it was a 'life estate'. But the transaction could be more complicated, and the grant might include the lifetime of the children or even grandchildren of the original grantee. If the grant could be passed on indefinitely then it became a fee simple – 'fee' denoting that it was inheritable and 'Simple' denoting that it was not limited in any way.

Leases grew up outside the feudal system but followed the useful concept of classifying the interest in land for a period of time. So, land might have been let to a farmer on a yearly farming lease.

The concept of 'estates' rather than 'ownership' also emerged since a number of parties could have had an

'interest' in the same bit of land. Imagine the following:

- A has a yearly farming lease from B
- B has a life interest in the land granted to him by C
- In the event of B's death the land reverts to C
- C has a lineal interest in the land for as long as he has direct descendants – a fee tail – granted by D. When his lineage dies out it reverts to D.

Each of these 'interests in the land' or 'estates' could co-exist and could be treated as the object of property since they could be sold, mortgaged, reached by creditors etc.

All of this was tidied up by the Law of Property Act 1925 which determined that only estates 'fee simple absolute in possession' and 'a term of years absolute' were capable of subsisting or of being conveyed or created at law.

It is worth noting that when you buy a house you are registered as the proprietor of the 'fee simple absolute in possession' if it is freehold or 'legal term absolute' if it is leasehold.

### Freehold Estates

Today we use the term freehold as the common ownership of 'real property' or land and all immovable structures attached to that land. For an estate to be a freehold, it must possess two qualities, namely:

1. immobility (property must be land or some interest issuing out of or annexed to land)
2. ownership of it must be of an indeterminate duration. If the time of ownership can be fixed and determined it follows that it cannot be a freehold.

### Other Interests in Land

A wide range of additional legal and 'equitable' interests in land is recognised today. Leases and mortgages are legal interests and restrictive covenants are an example of an equitable interest.

### Definitions of a Lease

A lease is a way of granting a person rights to the 'enjoyment' of land for a specified period. The practical point about leases is that they have always been thought of along commercial lines – such as a farm or shop where a business can be carried out. As such they were recognised in the Law of Property Act 1925.

There are arrangements where tenancies can exist where either party can terminate them at any time. These are tenancies at will but are not covered here.

The fundamental components of a lease are:

- the interest is transferable
- they should have a certain beginning and end
- the tenant enjoys 'exclusive possession'
- while a regular payment of rent is normally associated with a tenancy this is not essential for a lease to be valid. Leases can be granted in return for a capital sum, though in such circumstances a nominal 'peppercorn' rent is usually included.

### Residential Leases

Residential leases are commonly 'ground leases' where

the interest in the property is granted for a long period of time usually at a very secure, low 'ground rent' because the tenant has paid a significant premium for the lease in the first place. Of course, the issue with leases is that time ticks down on them!

The important issue that valuers need to be aware of is the length of the term remaining on any ground lease and lenders' attitudes to that term. Some lenders, within their criteria, state they are able to lend on properties where the remaining period on the lease stretches to 30 or even 25 years beyond the end of the mortgage term. So, for example, on a mortgage with a 25-year term, a lender's criteria might only require a leasehold property to have 50 years remaining on the lease.

But valuers also need to be aware that there can be a disparity between the appetite that lenders express for leasehold properties with short leases in their lending criteria, and the actual guidance notes they provide for surveyors.

Usually, within their guidance notes, lenders will also stipulate to surveyors valuing a property that the property should be readily resaleable and this effectively increases the minimum period remaining on a lease to at least 80 years, because of something known as marriage value.

Normally a lease would come to an end at the stated end of the tenancy, but Parliament has intervened on a number of occasions to amend the ways leases work for 'the greater good.'

The landmark legislation for changing residential leases was the Leasehold Reform Act 1967. For the first time in English law, a qualifying leaseholder of a house was given the right to purchase the freehold (through a process that is now commonly known as 'enfranchisement') and also the right to an extended lease 50 years longer than the current term. That original legislation has since been amended on a number of subsequent occasions.

The effects of the subsequent reforms have amended the original 67 Act as follows:

- (a) originally there were exclusions to the 67 Act of higher value properties but now all houses held on qualifying leases can enfranchise,
- (b) the original qualifying rules have been amended.

It is very important to note that as more house leases became enfranchisable, the valuation bases changed in a way that favoured landlords, notably the inclusion of 'marriage value'.

A flat with a long lease is worth more than a flat with a short lease and the marriage value is the increase in the total value of the property after a lease extension. Under the Leasehold Reform, Housing and Urban Development Act 1993 (one of the pieces of legislation amending the original 67 Act) a leaseholder has to effectively pay compensation to a freeholder if the lease drops below 80 years and so when the lease is extended, the leaseholder has to share 50% of the increase in value with the freeholder, which could run



into many thousands of pounds.

Another amendment to the 67 Act was in Part 2 of the Commonhold and Leasehold Reform Act 2002. This act served to simplify the marriage value so in all cases any marriage value is shared 50:50 except where the term of the current lease exceeds 80 years, in which case the marriage value is treated as nil. But the right to an extended lease only applies if the original qualifying conditions apply (e.g. rateable value, low rent test and so on). In other words, the reforms that have allowed more houses to qualify for enfranchisement have not included the right to an extended lease.

This means that a surveyor who is valuing a property with a short lease approaching 80 years remaining, needs to factor in the potential impact on the value of the property should it fall below 80 years. In fact, a leaseholder has to own the property for at least two years before they are able to extend the lease, which effectively shifts this deadline to 82 years and so many lenders will start to ask more questions if a lease drops below 85 years.

This means that it can be harder to get a mortgage on a property with a lease of less than 85 years and so developing a specialist knowledge in lease extensions can help surveyors to help their clients by creating an asset that will meet the criteria required to make a property readily resaleable.

### Further Amendments?

The Law Commission has recently closed a consultation on its proposals for the reform of leasehold enfranchisement and is aiming to publish its final report and assist with the implementation of its recommendations later this year. So, what changes can we expect?

The consultation makes provisional proposals for reform that are designed to further simplify and reduce the costs of acquiring a freehold or extended lease, provide a better deal for leaseholders by making enfranchisement easier, quicker and more cost effective, as well as reforming the existing rights of leaseholders. Here's a summary of some of the key proposals for the different groups that will be impacted by the reforms:

### Leaseholders of flats

- One regime for both houses and flats, reducing complexity and costs.
- Prescribed forms for making and responding to any enfranchisement claim, making mistakes less likely to occur, preventing unnecessary costs and landlords taking advantage of leaseholders' mistakes.
- The use of Tribunal to settle disputes and process claims in the case of missing landlords.
- Leaseholders no longer required to pay their landlord's non-litigation costs or the introduction of controlled costs.
- No minimum period of lease ownership before the leaseholder of a flat can bring a claim, reducing delay and costs for leaseholders.
- A new right to participate in an earlier collective freehold acquisition, stopping leaseholders from being

locked out of ownership.

### Leaseholders of houses

- One regime for both houses and flats, reducing complexity and costs.
- No minimum period of lease ownership before a leaseholder of a house can bring a claim, reducing delay and costs for leaseholders.
- Leaseholders of houses able to extend their lease for a longer period, at a nominal rent and no limit on the number of extensions.
- A right for all leaseholders on an estate (whether they own a flat or house) to join together to acquire the freehold to the whole estate.
- Common procedure for dealing with missing landlords, ensuring leaseholders can exercise rights and save costs.
- The use of Tribunal to settle disputes.
- Leaseholders no longer required to pay their landlord's non-litigation costs or the introduction of controlled costs.

### Landlords

- One regime for both houses and flats, reducing complexity and costs.
- A 25% limit to apply to all freehold acquisition claims, allowing landlords to retain buildings with substantial commercial use.
- A power to require contributions to be made after the freehold is acquired, allowing estates to continue to be maintained.
- A single procedure to apply to any enfranchisement claim, reducing complexity, confusion and costs for all parties.
- Prescribed forms for making and responding to any enfranchisement claim, making mistakes less likely to occur.

It is anticipated that many of these proposals will be implemented, so stay alert to changes to leasehold enfranchisement that could impact your clients. And, if you think this is something that could have a significant impact on your business, it might be worth considering partnering with a chartered surveyor that specialises in lease extensions so that you can make the most of the opportunity presented by the new rules.

At Arnold & Baldwin, we provide a free online calculator that estimates the cost of extending a lease at:

[www.arnoldandbaldwin.co.uk/lease-extensions/calculator/](http://www.arnoldandbaldwin.co.uk/lease-extensions/calculator/)

Comments from Fiona Haggett BSc (Hons) FRICS:  
*"From a lender perspective, leasehold properties are becoming an increasing concern. Whether it is the impact of the diminishing term on value, the cost to the customer of extending this term, or the increasingly diverse and imaginative range of onerous lease clauses that are emerging, leasehold properties are steadily becoming a specialist valuation area. As an industry, we need to develop our knowledge and skills around leasehold valuation if we are to advise our clients correctly and prevent huge future losses."*

## Sava go Online with their new Certificate in Residential Valuation

Residential valuations in the UK are required for mortgage lending, as well as for probate, investment decisions, tax, and matrimonial disputes and of course private clients. Until now there has been no vocational qualification available for existing surveyors and others who have deep understanding of residential building construction and pathology but have limited valuation skills.

Sava have launched the Certificate in Residential Valuation which allows existing RICS members who qualified via a different pathway to upskill and offer residential valuations. Members of other professions with rights of direct entry to RICS may also be interested (e.g. CIOB, CABE etc.).

This certificate is a mix of both training and assessment delivered entirely online through a new Virtual Online Learning Environment – Sava Learn. Candidates carry out valuations on a variety of real properties employing a range of valuation techniques to demonstrate that as well as having the requisite valuation knowledge, they can consistently apply that knowledge. In this way, the Certification in Valuation is different from just doing CPD in valuation.

The qualification is designed to help bring the existing residential surveying profession right up to speed in terms of providing and delivering residential valuation services. It has been certificated by ABBE (Awarding Body for the Built Environment) in partnership with Birmingham City University and the training delivery is also mapped against the RICS Valuation Registration Scheme (VRS). This ensures that any individual attending the course can be assured that it meets all the pre-requisite elements of the RICS.

Andy Flook, Business Development Director said “Talking to industry and listening to our customers always sits at the forefront of how we continually develop our organisation to ensure we are constantly improving the products and services we provide to the Surveying sector and we are very proud of what we are able to offer the Residential Surveying Industry. The Certificate in Valuation is a milestone for us, as it’s the first qualification we have created as a completely online and app-based learning experience using our newly developed educational platform ‘Sava Learn’. Modern learning culture is changing dramatically, and we feel that starting to utilise technology to not only enhance the overall learning experience but to also enable complete freedom of movement when it



comes to when or where people choose to consume their learning time is going to be vital to any busy professional so we are delighted to be looking at how more of our training offerings can be delivered this way in the future, but in the meantime, the Certificate in Residential Valuation makes for a great start”.

Early uptake for the qualification has been very high and has consisted mainly of existing RICS surveyors whom may already have a good level of knowledge in and around Building pathology and construction and are looking to extend their existing repertoire of services to incorporate valuation activity. Early indications show that the fact that the course is delivered online has proven to be hugely beneficial to Surveyors whom often struggle to perhaps attend regular fixed classroom days but are able to slot in time around busy schedules to get back into the learning environment.



# THINKING ABOUT NUISANCE

## A RECAP AND SOME RECENT EXAMPLES

**HILARY GRAYSON BSC EST MAN (HONS)** DIRECTOR OF SURVEYING SERVICES, SAVA  
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Recently the RICS commissioned legal opinion as to whether the presence of combustible cladding on a building may be sufficient basis for a cause of action in nuisance against the owner of a neighbouring building.

The [full opinion is published on the RICS website](#), but as it comes hot on the heels of *Williams v Network Rail* we thought this might be a useful prompt to revisit the tort of nuisance.

### **What is nuisance?**

Nuisance is an established tort that evolved principally during the 19th Century with the development of the Industrial Revolution and the need to protect neighbours as land usage became more sophisticated with the expansion of manufacturing.

There are two types of common law nuisance – private and public.

### **Private nuisance**

Private nuisance is actionable in tort and gives a person the rights to protection from ‘interference’ of their use or enjoyment of land. The most common acts associated with private nuisance are the physical encroachment on land,

physical damage or undue interference thus affecting the neighbouring landowner’s comfortable and convenient enjoyment of his land.

Nuisance may be something physical (trees encroaching on land, for example) but can also be intangible, such as smells or noise.

### **Public nuisance**

Public nuisance is traditionally a criminal offence often defined as an unreasonable, unwarranted or unlawful interference, which can be either an ‘act’ or an ‘omission’, which endangers or interferes with the lives, comfort, property or common rights of the general public. A public nuisance can give rise to a civil claim for damages. An example might be where a landlord is in breach of a state’s

housing codes; this could be both a public nuisance as well as a private nuisance to the individual tenants.

Another example is environmental legislation, which comes under public nuisance and gives authorities the ability to act quickly where a 'nuisance' might endanger the health of the public.

Private nuisance is more often encountered than public nuisance and this article focuses on private nuisance.

### The essence of nuisance

The main purpose of private nuisance cases is to balance the competing interests of neighbouring owners and occupiers and to decide at what point interference from one of the parties becomes intolerable and therefore actionable in law. Or, to put it another way, the tort of nuisance is an action against unreasonable behaviour. This can be challenging in itself – what may constitute a nuisance in one locality, may not necessarily be so in another. Or, as Lord Justice Thesiger said in the case *Sturges v Bridgman* (1879), “What would be a nuisance in Belgrave Square would not necessarily be so in Bermondsey.”

However, not every interference will constitute a nuisance. As a rule of thumb, the longer the interference lasts and the greater the extent, then the more an action in nuisance is likely to succeed (although, if a single activity results in a dangerous situation this may be sufficient for a successful action).

Another consideration is how 'sensitive' is the use of the land affected by a potential nuisance? Again, a general rule is that a claim in nuisance is unlikely to succeed if the use would not be unreasonable in other circumstances. This is well summarised by Lord Justice Lopes in the case *Robinson v Kilvert* (1889) where he said, “A man who carries on an exceptionally delicate trade cannot complain because it is injured by his neighbour doing something lawful on his property, if it is something which would not injure anything but an exceptionally delicate trade.”

The courts will also consider foreseeability of harm, utility of the activity being carried out that is causing the potential nuisance and any maliciousness involved in the activity (while the latter is not on its own sufficient for a nuisance claim to succeed, it may contribute to recognition of the nuisance).

### A recent recap on main principles

The most recent high-profile nuisance case is probably *Williams v Network Rail Infrastructure Ltd* (2018). In this case Stephen Williams and Robin Waistell made claims in private nuisance for the effects of Japanese knotweed on their properties which Network Rail had allowed to grow on its adjacent land. You may recall that Messrs Williams and Waistell owned two adjoining semi-detached bungalows in South Wales. Network Rail owns the land immediately behind the claimants' properties. On the Network Rail land was a stand of Japanese knotweed.

Of course, we are familiar with this case. The nuisance of loss of amenity was determined when it was agreed that actual physical damage was not required, and that the mere presence of Japanese knotweed rhizomes was sufficient in itself to cause an interference with Mr Williams' quiet enjoyment of his property. As a result, Mr Williams was entitled to damages for the diminution in the amenity value of his property which was the result of the presence of Japanese knotweed. (Interestingly, the claim of nuisance from encroachment did not succeed as the knotweed had not actually damaged Mr Williams' property.)

In his judgement, Sir Terence Etherton, the Master of the Rolls, provides a very useful summary of the current principles of private nuisance.

- A private nuisance is a violation of real property rights. These include the rights of the owner of the land but also include a legal interest in the land (for example an easement) or interference with the right to use and enjoy the land.
- The categories of such violation can be summarised as:
  - Nuisance by encroachment
  - Nuisance by direct physical injury
  - Nuisance by interference with a neighbour's quiet enjoyment or amenity.
- But Sir Terence Etherton MR observed that rigid categorisation of nuisance is not always helpful where new social conditions could emerge and there needs to be careful consideration of factual situations on a case by case basis.
- Although an established principle of nuisance is that the claimant is entitled to damages where the defendant is found liable, in some instances, in particular interference with an easement or profit a prendre (where a person is entitled to take some items from the land of another, for example a right to catch fish) then it is not necessary to prove a specific damage.
- Nuisance may be caused by inaction or omission as well as by some form of positive activity – so an owner may be liable if they fail to act reasonably to remove a hazard of which they are aware and where it was foreseeable that this hazard could risk damaging the neighbour's land.

### Other practical examples

#### Tree roots

In the case of *Delaware v Westminster City Council* (2001), two plaintiffs claimed damages and interest from the Westminster City Council in its capacity as the highway's authority. Westminster, as the highways authority, owned a plane tree growing in the footpath some 4 metres from the front boundary of the property.

The first plaintiff was Delaware Mansions Ltd, a management company owned by the tenants of the flats. The second plaintiff was Flecksun Ltd, a wholly-owned subsidiary of Delaware. Flecksun had acquired the freehold of Delaware Mansions from the original owners

and developers, the Church Commissioners, in 1990. The tree in question was probably present when the flats were originally built.

In 1989, before Flecksun owned the freehold, the occupants noticed cracks in the building and this was reported to Westminster by the original freeholders. The council had refused to remove a mature plane tree that was causing damage to the building, despite being on notice from the owners of that building of the damage being caused. The new owners spent over £570,000 carrying out underpinning works and claimed the cost from the council.

Lord Cooke noted, “Having regard to the proximity of the plane tree to Delaware Mansions, a real risk of damage to the land and the foundations was foreseeable on the part of Westminster...” He went on to say, “It is arguable that the cost of repairs to the cracking could have been recovered as soon as it became manifest. That point need not be decided, although I am disposed to think that a reasonable landowner would notify the controlling local authority or neighbour as soon as tree root damage was suspected. It is agreed that if the plane tree had been removed, the need to underpin would have been avoided and the total cost of repair to the building would have been only £14,000 (joint statement of facts and issues, paragraph 23). On the other hand the judge has found that, once the council declined to remove the tree, the underpinning and piling costs were reasonably incurred...”

The House of Lords held the council liable for that sum. The claimant was not merely entitled to damages for the damage to the property that had occurred during its period of ownership but also for the continued nuisance. If the tree had been removed the need to underpin would have been avoided and the total cost of repair to the building would have been only about £14,000.

### **Dangerous structures**

In the case of Birmingham Development Company v Tyler (2008), BDC owned a site that had formerly been a wharf and factory. It commenced demolition works on the site in June 2006, intending to start piling works in November 2006.

Mr Tyler owned a factory on land adjoining BDC’s site. This was a three-storey building with workshops, offices and a basement. It had been built in the 1930s.

The demolition operations carried out by BDC revealed a “section of brickwork 6 metres wide x 1 metre high at the top of Mr Tyler’s flank wall that appeared haphazard, unbonded, loose and dislodged.” Further work revealed two further areas of concern on the factory wall. The state of the original section of the wall was such that the demolition contractor felt their employees were at risk of harm from potential collapse of the wall. However, the demolition work continued.

BDC sued Mr Tyler alleging that the defective wall

constituted a nuisance and that Mr Tyler should act to remedy the nuisance. The claim was for an injunction restraining an alleged nuisance and for damages on the basis that these defects presented a danger and so interfered with BDC’s enjoyment of its property.

The court determined that it was not sufficient by merely proving fear of something for a person to claim that a neighbour’s property or activities are dangerous. What is required is for the proof to be well-founded i.e. that the property is actually dangerous. But in the judgement Lord Justice Rimer did record the following:

“In addition, there is in my judgment no doubt that, whilst the existence on the neighbouring property of what the old reports used to refer to as a tumbledown house may not in itself be tortious, a claimant will or may have a complaint in nuisance if that house borders his own property and its state of dilapidation is such that it presents a real danger of collapsing on to his property. For the claimant to live in the shadow of such a danger will obviously be to interfere with his enjoyment of his property. It may prevent him from using part of it for fear of what will happen if there is a collapse. It may require him to vacate it altogether. In such a case the claimant may well, subject to all the issues of reasonableness discussed in the authorities, have a claim in nuisance against the neighbour requiring him to make his house safe from the risk of collapse onto his property.”

### **In conclusion**

The problem with nuisance, as with torts generally, is that it is difficult to glean many consistent rules from the extensive body of case law. Cases in this area tend to turn on their own facts and no two circumstances are likely to be identical. (Birmingham Development Company v Tyler might have taken a very different turn had the demolition contractors actually left the site.)

The RICS obtained legal opinion from a leading QC in commercial property law as to whether a legal liability in nuisance could be created by a neighbouring building with known ACM combustible cladding. The view of the QC was that the presence of a combustible cladding alone was not sufficient to give rise to a claim in nuisance, but it will be interesting to see if and how this might change over time, particularly if the value of neighbouring properties is affected, if lenders get very nervous or perhaps if people actually vacate so great is their fear of fire emanating from a neighbour.



# SAP 10

## CHANGES TO THE WATER HEATING CALCULATIONS

DR LISA BLAKE, TECHNICAL MANAGER, SAVA

In this article, Dr Lisa Blake looks at the changes to the calculations for the hot water demand in SAP 10.

### A bit of background

SAP is the Standard Assessment Procedure developed and maintained by BRE. SAP is used as the methodology to assess the energy performance of domestic buildings for both Building Regulations and Energy Performance certificates. The current version of SAP is SAP 2012<sup>1</sup>.

SAP 10<sup>2</sup> was published by BRE in July 2018 alongside iSAP<sup>3</sup> which is their SAP software that can be used to assess the impact of the changes in the methodology. SAP 10 will not be adopted until there is an update to the Building Regulations, the consultation for which is due spring 2019. Following the Building Regulations consultation, SAP is likely to be refined. SAP 10 will first be used for new-build properties for around 6 months, after which it will be used for existing building assessment and the production of Energy Performance Certificates (Reduced Data SAP [RdSAP]).

The SAP methodology uses the heat loss characteristics of the building together with the heating/hot water system efficiency to calculate the energy requirements of the dwelling. This is then used with fuel costs to produce the SAP rating and with Carbon Emissions factors to produce the Dwelling Emissions Rate (DER) for Building Regulations compliance.

### Hot water demand calculations in SAP

Hot water calculations become a more significant part

of the energy requirement of a dwelling as the dwelling becomes more energy efficient. Therefore, the accuracy and sophistication of the hot water requirement methodology becomes more important. Figure 1 shows how the proportion of the energy requirement of the dwelling for hot water increases as the energy efficiency (SAP rating) increases.

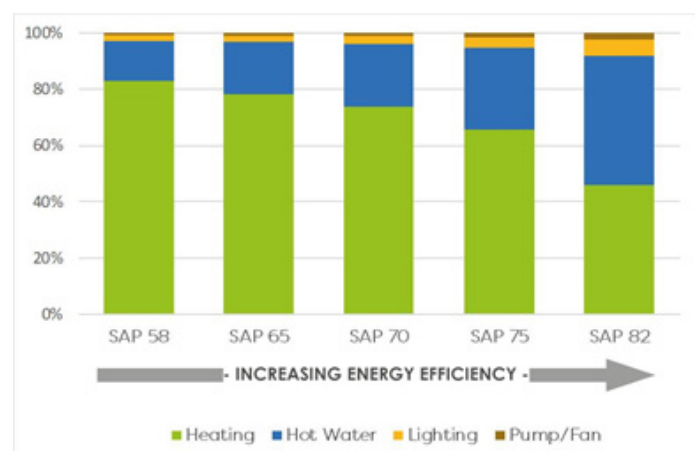


Figure 1 - chart showing the increasing proportion of energy for hot water as the energy efficiency increases

1 <https://www.bre.co.uk/sap2012>

2 <https://www.bregroup.com/sap/sap10/>

3 <https://www.isap.org.uk/>

As well as the rising importance of energy for hot water, the popularity of solar water heating (SWH) and waste water heat recovery systems (WWHRS) means it isn't just occupancy that needs to be taken into account for hot water calculations. The volume of hot water used for both SWH and WWHRS has a significant impact on the energy yields. So, for an accurate calculation, the shower types in the dwelling and their flow rates are required.

**Hot water calculations**

**SAP 2012**

The schematic below shows how the SAP methodology processes the calculation, beginning with the floor area of the dwelling through to the energy required for hot water.

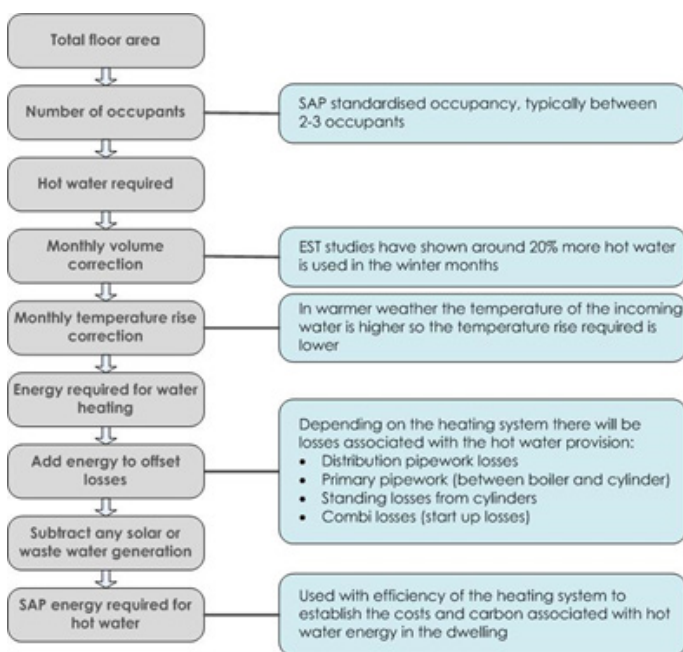


Figure 2 - The SAP 2012 process for calculating hot water requirement

We can see from the flow chart that the base water requirement is simply a function of the floor area of the dwelling. However, hot water use for baths and showers makes up around two thirds of all hot water use, so the energy for hot water should consider the type of shower and its flow rate, as well as whether there is a bath present.

**SAP 10: Showers**

SAP 10 introduces the flow rate and number of showers into the calculations.

The flow rate of a standard mixer shower depends on the system feeding it. A combi boiler providing mains pressure hot water will have a higher flow rate than a shower feed from a regular boiler with a hot water tank. Of course, some showers feed from a hot water tank and have an additional pump (power shower), and these have an even higher flow rate. There is no evidence to suggest that someone using a high flow rate shower would spend less time in the shower, so the flow rate of the showers present will have an impact

on the energy required for hot water.

In SAP 10, the number of showers will be included in the calculation, as well as the number of baths. The volume of water used for showers where a bath is present is lower than when there is no bath. Using the standard number of occupants, the number of showers per day is calculated using the following equations:

With bath: Showers per day = 0.45N + 0.65  
 With outbath: Showers per day = 0.58N + 0.83

For example, a house hold with 2 occupants and a bath would be assumed to have 1.5 showers per day, having less than one shower per day each, taking account of the likelihood of having a bath on some days. If there was no bath present the 2 occupants would be assumed to shower once per day.

Each shower within the property is assumed to be used equally and so the number of showers per day is divided by the number of showers to get the use for each shower.

As well as the number of showers, the flow rate (volume of hot water produced per minute) is also a factor in determining the energy use for showers. The flow rate of a shower varies depending on the type of shower and the system feeding it. When SAP is used for assessing new build properties, the actual flow rate can be used in the calculations, bearing in mind that for Part G of the Building Regulations a maximum of 8 litres/minute for showers is required for compliance. For existing dwellings or when the flow rate is not known the following defaults would be used:

Hot water system	Flow rate (litres/minute)
Vented (gravity) hot water system <i>A system with a hot water cylinder that is fed from a cold water tank in the loft space</i>	7
Vented (gravity) hot water system + pump <i>A vented system that has either a pump specifically for the shower (power shower) or a pump that increases the pressure across the whole house</i>	12
Unvented hot water system <i>This could be a combination boiler with mains pressure hot water or a system with a pressurised hot water cylinder fed directly from the mains</i>	11
Instantaneous electric shower (vented or unvented) <i>An electric shower heats cold water itself, so uses no hot water</i>	0

As each shower is assumed to last for 6 minutes, the volume of hot water for each shower can be determined from the duration, showers per day and flow rate.

EST field trials in 2008<sup>4</sup> provide the cold water feed for each month ranging from 10.8°C in February to 21.3°C in July, together with the average temperature of domestic hot water of 52°C. Using the requirement of a shower to be at 41°C, this data can be used to determine the proportion of the volume of water from the shower that needs to be heated.

For example, the proportion of hot water in March:  
 Cold water feed = 11.8°C  
 Hot water temperature = 52°C  
 Shower temperature = 41°C

Proportion of hot water required for showers in March =  $(41-11.8) / (52 - 11.8) = 0.726$

Thus, in March 72% of the volume for the shower needs to be hot water.

**SAP 10: Hot water usage**

We are now able to calculate the volume of hot water required for the shower use in the dwelling (under standard occupancy). Where there is a bath present a similar process is used to establish the volume of hot water for baths. The average volume of water used in a bath is 73l (almost the same amount of water as a 12l/min shower running for 6 mins). The number of baths per day uses the following equations, with more baths where a shower is not present.

With shower: Baths per day =  $0.13N + 0.19$   
 With shower: Baths per day =  $0.35N + 0.50$

For our 2 occupant household this would be 0.45 baths per day where there is at least one shower, and 1.2 baths per day if there is no shower.

Figure 3 illustrates the need for new hot water use calculations. When showers, flow rates and baths are taken into account, the hot water usage increases for most scenarios.

The red line is the current SAP 2012 daily hot water use. The floor area is used by both SAP 2012 and SAP 10 to arrive at the dwelling occupancy. We can see that for both SAP 2012 and SAP 10 the daily hot water usage rises quickly until around 100m<sup>2</sup> and then has a gentler incline as the floor area increases.

The current SAP 2012 calculations have the lowest daily hot water usage, very close to the SAP 10 model where there are only low flow rate showers and no bath. When the dwelling has high flow rate showers and a bath, the increase is around 50%. The line for the low flow rate shower and bath illustrates the impact of the flow rate on the hot water energy, the difference in flow rate producing a 20% difference in the hot water usage.

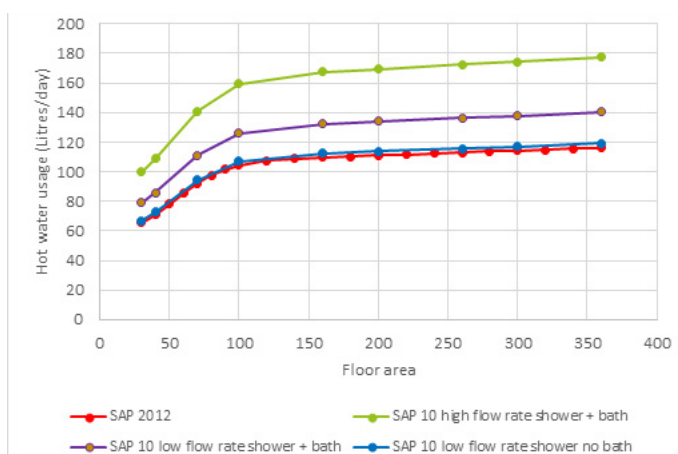


Figure 3 - SAP 2012 and SAP 10 hot water use variation by floor area

**SAP 10: Electric showers**

Electric showers which heat cold water instantaneously are also not considered in the current version of SAP. Using an electric shower will reduce the hot water demand but will increase the electricity used in the dwelling. Data from the Market Transformation Programme<sup>5</sup> indicates that around 45% of homes in the UK have instantaneous electric showers.

Do electric showers contribute much to the energy bill?

A 10 kW electric shower running for one hours used 10kWh of electricity, so a 6 minute shower equates to 1 kWh of electricity. If 2 people use that show once per day for a year, they will use 730 kWh of electricity per year, at 15p/kWh that would be £110 per year

In SAP 10, along with including mixer shower data, electric showers are also considered. This will be particularly important when SAP 10 comes into force, as the carbon emissions factor for electricity has been halved, making electricity an attractive fuel to use in new-build housing.

**Summary**

Whilst some of the content of SAP 10 might be ‘tweaked’ following the consultation on Part L Building Regulations, it is clear the calculations for hot water will be more sophisticated. The inclusion of showers, both mixer and electric, will increase the accuracy of the hot water demand. As electric showers are becoming more popular, it is important that SAP takes the energy for these showers into account when calculating the running costs, especially as the proportion of energy for hot water starts to overtake space heating. Electric showers can be considered a hot water back-up for households with a combi boiler. Having at least one electric shower in the house means that if there is a problem with the boiler you can still have a shower, similar to the back-up electric immersion with regular boilers.

4 <https://www.gov.uk/government/publications/measurement-of-domestic-hot-water-consumption-in-dwellings>  
 5 <http://efficient-products.ghkint.eu/>



## HCS Scheme – Free Trial For New Members

The HCS Scheme is Sava's own scheme for residential surveyors who would like to offer our customer-friendly Home Condition Survey (HCS) to their clients. The HCS is comparable to the RICS HomeBuyer report and provides the same level of detail, with the added benefit of photographs. This means your client can clearly understand any issues described.

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# COMPLAINTS AND CLAIMS

## HOW YOUR EVIDENCE AND ROBUST PROCESSES CAN HELP YOU

**HILARY GRAYSON BSC EST MAN (HONS)** DIRECTOR OF SURVEYING SERVICES, SAVA  
**HAYLEY BOWKETT** TECHNICAL TEAM, SAVA

Prior to 2019, when Sava had a scheme Professional Indemnity (PI) policy in place, we were able to handle many complaints and claims on behalf of our members who produced the Home Condition Survey (HCS).

In doing so, we have truly learnt the importance of having an excellent set of site notes and evidence from an inspection. In this article, we discuss how your evidence and processes can help defend you in the event you receive a complaint or claim.

Complaints and claims can arise some years after the survey was undertaken and the report prepared and sent to the client. It is unreasonable to expect you to remember an inspection in great detail, therefore the main reliable source of information about the inspection, and proof that what was quoted in the report was in fact the case on the date of the inspection, will be the comprehensive record of the inspection you made while on site. This includes any annotated photographs, measurements, moisture meter readings etc., together with any notes relating to the research undertaken before and after the inspection as well as any conversation or other communication you might

have had with your client. If the client challenges your report it will be down to you to prove that what you reported to your client was appropriate for the service provided and correct at the date of inspection, and that you were not negligent. Therefore, even if an issue wasn't apparent on the date of the inspection, if you do not have evidence to prove that, then you will already be on the back foot. When Sava has handled complaints on behalf of an HCS user it would probably be fair to say that 'on the date of inspection' was the most commonly used phrase in complaint responses because it is important to emphasise that the surveyor can only report on what was present on the date of inspection

or what would have been reasonable to detect. Properties can deteriorate over time and, of course, there are often limitations to the inspection, meaning it was not possible for the surveyor to 'see' something on the day of the survey.

Our analysis shows that complaints and claims are on the rise, likely due to the litigious society we live in. We know from experience that you are more likely to refute a claim where there is robust evidence available. It is therefore beneficial for you to implement best practice as soon as possible, to protect yourself even in years to come.

Here are some tips to help you manage complaints smoothly and keep stress to a minimum.

### Complaints procedure

Firstly, you must have a complaints procedure in place, and we recommend you review it annually to ensure it is still compliant with both the rules of your insurer and your professional body, where appropriate.

It is very important that you are familiar with the process of notifying your insurer when a new complaint is received. If you do not follow the exact requirements of your policy, then you may inadvertently put yourself in a position whereby your insurers will not honour any claim made against you. If in any doubt, check this with your broker. In our experience, different insurers have a slightly different approach.

### Notifying your insurer

For one PI policy held by Sava the rule was that we should notify the insurer of a 'complaint' in the event that there was a more than 50% chance that the complaint would turn into a claim. Over time we built a good relationship with that insurer and they were happy for us to deal with the customer initially on the basis that we were 'clarifying the level of service provided' and happy for us to notify them only after we had had this initial conversation.

Another insurer was far less happy for us to work like this, wanting us to notify them of any potential complaint. Over a period of time they trusted us to determine if the initial enquiry was indeed a complaint or merely required clarification on the level of service.

When you deal with customers directly you should never admit liability or offer to refund a fee unless you have approval from your insurers. Such an action can be inadvertently taken by a client as an admission of liability.

### Managing the client's expectations

It is inevitable that you will receive a complaint. No matter how competent and experienced a surveyor you are, in our

experience life is full of unpredictable events. Some of the largest claims we have ever had to deal with have been the culmination of very unfortunate circumstances.

If you receive a complaint, we suggest you take the following approach:

- Acknowledge it politely but do not immediately attempt to refute the complaint. Instead, tell the complainant that you "will review your file" and will respond when you have done so.
  - To manage their expectations, give them an estimated date by which time you will have responded.
  - Notify your broker (who in turn will notify the insurer) that you have received a potential complaint and that you are looking into it.
  - Be aware that even though you should carry insurance, many insurers do not like you admitting to your client that you are insured as they believe it makes clients more inclined to litigation. Do not tell the complainant that you will refer to the insurance company.
  - Investigate the file and be honest and open with yourself – could you have missed something? At Sava we have always created a summary document setting out a timeline of what happened etc. (more detail on this later).
  - If it is taking longer than expected, perhaps because your insurer is still to come back to you, send a holding email or letter to confirm you are still investigating. This is very important because clients are much more likely to be antagonised if they think you have forgotten them. You are in a much better position if you contact them regularly even if it is only to say that you have nothing to report. (You may have to think carefully about the wording you use for this to make the delay credible.)
- NOTE: If the first you hear of a complaint is a letter from a solicitor acting for a client and threatening legal action, immediately inform your insurers.** Ignoring such letters will not make the matter go away.

### Investigation process

When we handle a complaint through our PI policy, we investigate the complaint as follows:

- Carefully and dispassionately review all the evidence. (This can be difficult if you are a sole trader because the criticism is 'personal'. If you are in a practice, finding a colleague to do the review will probably be more palatable.)
- We document the whole complaint journey considering all the evidence available including: photos, site notes, pre-inspection checks, terms of engagement and any other documents relating to the survey. (We make a separate word document describing the whole journey – this makes it much easier for the insurers to digest the facts.)
- We determine if the claimant has a case and we are quite open and honest about this with the insurer. It helps them determine the strategy to defend the claim.

(For example, if there is an asbestos-containing material that the surveyor simply ‘missed’ – we will say so. Our approach is always to ask, ‘could we defend this if it were to go to court?’ We are honest with our insurers and if we think that an element could have been reported differently or we will struggle to defend due to lack of evidence, we will always report this to the insurers.)

- Working with the broker/insurer, we draft an initial response to the client. We obtain the insurer’s consent to send the response.
- We liaise with the broker/insurer again when the response has been received from the claimant (it can be a very lengthy process, especially if we are strongly refuting a claim or the client does not understand the exact nature of the service that they bought. In these circumstances there can be many rounds of communication between the parties).

## Evidence

As a minimum, a robust folder of evidence would include:

- Terms and conditions of engagement, signed and dated by the client
- Clear, legible site notes with page numbers and a reference to the property on each page and sufficient information on the condition of each element. If you are using the HCS, you should also demonstrate use of the ‘Sava Protocol’ so that a third person can follow your reasoning. (This has proven to be very helpful when determining how to defend a claim.)
- Enough annotated photographs to show all elements of the property. Remember, you may need to prove a defect was not present or visible on the date of inspection, so contextual photos of the rooms are vital. This can mean you take hundreds of photos for each inspection.
- Copies/screenshots of your desktop research (these should be saved at the point you undertake the inspection as search results can change).
- Copies of any correspondence between you and your client (including simple emails confirming inspection etc.).

## Case Study: Freeborn and Another -v- Marcal

In February 2019, a judgement was handed down against an award-winning architect (Marcal) and the claimants (Freeborn & Another) have secured £500,000 for professional negligence.

The architect was commissioned to design and project manage a conversion of the swimming pool hall and installation of a ‘floating’ glass box cinema. As works progressed, the claimants were unsatisfied and claimed it was not what they agreed. There were also a number of defects with the works that the defendant was unable to rectify. The architect subsequently abandoned

the project and the claimants instructed solicitors to commence pre-action correspondence. Over two years later, the matter was tried, and the judge found both the claimants to be impressive witnesses as their evidence was clear, concise and they avoided exaggeration and speculation. However, the defendant’s recollection of events was confusing, unconvincing and suggested his approach to the job was unorganised. Marcal claimed that he was instructed on an ad hoc basis and, to support his argument that an agreement was made to reduce his responsibilities in the project, he produced a meeting note dated 9 July 2015. However, after a cross-examination from the Counsel of the claimants, he later admitted that this note was not written on 9 July 2015, but much later.

Nik Carle, Partner at Browne Jacobson LLP advises: *“The Freeborn and Another -v- Marcal case highlights that it is essential to keep detailed records of instructions received, email exchanges, notes from meetings with the clients or telephone conversations, as well as a written retainer. The lack of a clear written retainer almost always proves fatal for defendants in professional negligence cases, unfortunately. (Arguably, the failure to set out the engagement in writing is in itself a breach of professional duty!)”*

Remember, Terms and Conditions of Engagement **must** be signed by the client **before** work is undertaken as this ensures the client has a clear understanding of the service to be provided.

## Organisation is key

Receiving a complaint is stressful. While it is not going to completely alleviate the stress, having an organised system for storing all the information relating to an inspection will undoubtedly save you time and not build on that stress. Handling a complaint or claim can involve a LOT of emails. We have found it best to save all the emails and other communications relating to the complaint in a separate folder and number them in order, so you can easily review the trail. A complaint can ‘go quiet’, then rear its head again after a long time (months or even years). Therefore, having it all organised in one place will mean you can jump straight back in without delay. It’s also a good idea to set calendar reminders if a response is due by a certain date.

## Back it up

There have been several complaints we have handled where the surveyor’s evidence has become corrupt or lost. This can result in problems defending the report, so it is best to back up your files so if one set is missing, you have a backup. We hear horror stories of files stored in damp garages. Consider carefully how you store documents, and ensure you can retrieve them easily in the event that a complaint does arise.

**Case Study**

We handled a claim last year and our surveyor was first made aware there was an issue when he received a letter pursuant to the professional negligence pre-action protocol for failing to detect Japanese knotweed. The surveyor sent us all evidence along with his comments. Having reviewed the evidence, we were confident that he was not negligent. His evidence included notes to confirm there was no evidence of Japanese knotweed, enough clear photographs to show the garden in question, as well as the surrounding grounds and even showing the river bank which shows he walked along the river to check for signs of Japanese knotweed nearby. None of the photos showed any visible signs of Japanese knotweed. He included screenshots to show he had checked on the plant tracker website and there were no recorded incidents of Japanese knotweed nearby. He also had signed terms of engagement which confirms the surveyor is not able to trespass on adjacent property (which is where the Japanese knotweed is thought to have originated from).

With the evidence alone, we were confident we could refute the claim but what was also interesting is the client's solicitors included a report stating there was evidence of previous growth from the year before. At the time of the inspection, the garden appeared to have been landscaped recently and was well-kept. We highlighted that if there was evidence of previous growth, which was only established by the specialist moving the plum slate in the garden, then it was likely the previous vendor was aware of the issue and it had been concealed. We referred to section 5.3.2 of the RICS information paper 'Japanese Knotweed and residential property' where it states, "...Concealment: Japanese Knotweed can often be hidden among other dense foliage or - as is more likely - owners may deliberately conceal growth. Typical examples include: the physical removal of the plant prior to inspection; covering over with turf and mowing the lawns before inspection; covering the garden with landscape fabric and ornamental gravel or bark chippings, and so on...". Based on the information we had, we felt the client ought to look to the previous vendor.

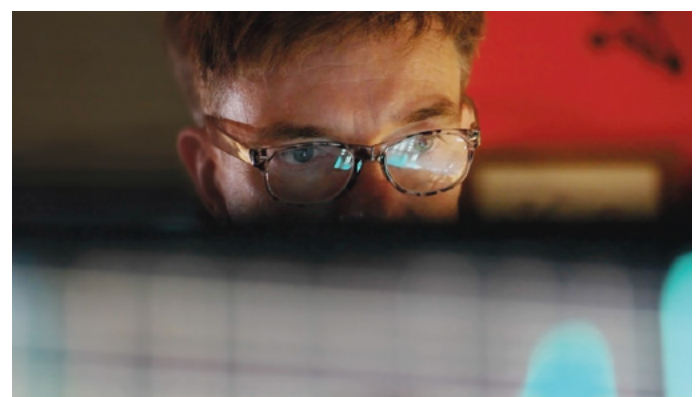
At the time of preparing our response, research from ecologists at global infrastructure services AECOM and the University of Leeds found that there was nothing to suggest that Japanese knotweed causes significant damage to buildings and our solicitor referenced this in our letter of response.

In comparison to other cases where evidence is not as robust, our letter of response was rather straight forward to prepare as we were able to refer to the points mentioned above and deny any liability or negligence in the matter. To date, this matter has not escalated following our letter of response.

It should also be noted that at the time of writing this article, the RICS 'Japanese Knotweed and Residential Property, 1st edition' information paper is no longer current but can be referred to for information.

It is our opinion that the surveyor is often seen as the easy target when something goes wrong with a property and sometimes clients are spurred on by another party who advises them "your surveyor should have picked up on this", perhaps without understanding a surveyor's limitations properly.

Remember, any surveyor can receive a complaint and it is not necessarily a reflection on their ability. It could be that the client has misunderstood the limits of the survey; sometimes the client has not even read the report (we have handled incidences where the client has not revisited the report before complaining and it turns out the surveyor clearly pointed out the issue and the client did not act on the information prior to purchase). We also find that clients are going straight to law more often these days, meaning solicitors must be instructed on the opposite side automatically. It is unfortunate, but if this occurs you can rest easy knowing you have a full set of excellent evidence to support you should a complaint or claim occur.



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# MENTORING A SAVA LEARNER

**HILARY GRAYSON BSC EST MAN (HONS) DIRECTOR OF SURVEYING SERVICES, SAVA**

We are seeing an increasing number of learners starting the qualification with mentoring already organised from the outset. This might be because they are already employed by a surveying firm or have used existing industry contacts to arrange ‘help’.

But we still need firms or individuals to step forward to help learners without those contacts.

This article explains what mentoring is, what it isn’t and how you can get involved.

## **What is Mentoring?**

In many ways it is easier to explain what mentoring is by explaining what it isn’t. First of all, mentoring isn’t formal training. Sava provides the training. Rather, mentoring allows a learner to ‘get under the skin’ of a surveyor and see some of the theory put into practice first hand.

Mentoring is not assessment. Sava has a team of trained assessors able to provide formal feedback to the learner in a structured way that meets the quality assurance and standardised requirements of the awarding body we work with. Any feedback a mentor gives is informal and about sharing experience. A mentor might say ‘you might want to try it this way’ or ‘watch what I am doing. I am doing this because...’ whereas an assessor is not allowed to coach in this way.

Mentoring does not have to be formal. It could be as simple as letting a learner go out with you on site or even meeting for a coffee and looking at their site notes and reports, their comparables and valuation analysis and explaining how you might do it differently and where you agree with what they have done. This depends on what is right for you and the individual learner.

But it could also be formal. You might agree with a learner that they can go on site with you on a regular basis or, if you are part of a larger organisation, you might establish internal study groups where learners join a program of timetabled study groups perhaps discussing a variety of case studies.

Mentoring could even involve employing the learner. This

will depend on the range of professional work you might undertake and the previous experience of a learner. For example, if a learner has a construction background and you have a design or construction consultancy as part of your practice that could justify their salary while you provide coaching in, say, valuation.

There are no hard and fast rules around mentoring – it is flexible and depends on your availability. One thing, there is no paperwork. You do not have to fill in any forms or report back to us.

**So why mentor?**

Mentoring isn't a one way street. Of course, there is the warm feeling that you get when you support someone entering the profession but there are some real, tangible benefits as well.

- Mentoring is recognised as informal CPD
- Learners can be of real assistance – another pair of

hands on site, someone to do the desk research for you or to collate comparables

- If you are considering building your team, mentoring is an excellent way to 'try before you buy'. It's a great way of getting to know a learner without any long-term commitment, but it may present you with a genuine recruitment opportunity
- Sava covers the Public Liability through our own insurance – just let us know that you are working with one of our learners

**What to do now?**

Just get in touch with us. If you want to have a chat about mentoring you can speak to one of the training team, but if you are sold on the idea then we need your contact details so that we can pass them on to one of the learners on our mentoring list.

Contact [training@sava.co.uk](mailto:training@sava.co.uk) or ring us on 01908 442240

# KEY DATES



## DIPLOMA IN RESIDENTIAL SURVEYING AND VALUATION

The Diploma in Residential Surveying and Valuation provides an innovative way to train residential surveyors. Part-time learning is delivered over 24 months and offers direct entry into RICS at Associate level. Both small independent firms and the larger corporate employers are supportive of the Diploma and have been extremely impressed at the level of training offered and resulting qualified surveyors.

### COURSE START DATES 2019

**BRISTOL**

17th July 2019

**BIRMINGHAM**

4th September 2019

**YORK**

23rd October 2019

**MILTON KEYNES**

21st November 2019

### DIPLOMA BRIEFINGS

Find out more about the Diploma at a briefing. You can book your free place here: [www.sava.co.uk/find-out-more](http://www.sava.co.uk/find-out-more).

**Birmingham,**

**Wednesday 5th June, 11am-1.30pm**

etc.venues, 150 Corporation Street, Birmingham, B4 6TB

**Bristol, Wednesday 19th June, 11am-1.30pm**

DoubleTree by Hilton Bristol North, Woodlands Lane, Bristol, BS32 4JFZ

**York, Wednesday 17th July, 11am-1.30pm**

The National Agri-Food Innovation Campus, York, YO41 1LZ

