



## BRIEF ENCOUNTER

### House sale fell through because of faulty survey

**Q** Buyers for our house withdrew because of a faulty survey. I agreed to pay £650 for a copy of the report, which was half the survey cost. Parts of the report were erroneous, but I was informed that I could not take any action because the surveyor's original contract had not been with me. Is there any action I can take, or have I lost both the house sale and the £650?

**A** A surveyor who prepares a report on a house is under two main obligations. First, he is bound by the terms of his contract to provide his client with an accurate survey. Second, the surveyor owes a duty to his client and to other people not to act negligently under the general common law. Since it is usually pretty clear who the surveyor has a contract with, third parties generally have to bring claims for faulty surveys under the law of negligence.

The rule is that a surveyor owes a duty of care to anyone he knows will actually rely on his report or to anyone he knows has a "high probability" of doing so. This rule applies even if the third person never sees the report itself. For example, in the 1990 case of *Smith v Eric S. Bush*, the House of Lords confirmed that a surveyor who prepares a valuation report for a building society generally knows that the society's borrower will rely on that valuation. Similarly, judges have on at least two occasions accepted that buyers may claim against surveyors for defective dry rot reports — even though the reports were prepared for the sellers.

In your case, it is unlikely that you have a contract with the surveyor or that the surveyor knew or ought to have known that his report would be provided to you before he prepared his report. I am afraid, therefore, that you probably have lost both your sale and the £650.

**Mark Loveday**

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