

SHOOSMITHS

Shoosmiths Lender Review

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MATTERS**



Initial Triage Review

Our team is experienced in early evaluations of claims based on a handful of core documents. The Triage review is a review of key core documents. It is a high-level sensecheck to establish on a Red/Amber/Green system to identify if there is a potential claim and recovery route. This can be carried out proactively, as standard, when we are instructed in the sale of the property, or can be instructed by you either individually or on a bulk/portfolio basis.

Key documents considered in the Triage Review are:

1. Lender file
2. Relevant professional adviser file (solicitor/valuer)
3. Land Registry documents for the relevant transaction
4. Desk Top Valuation Survey (if appropriate)
5. Arrears statement of account

The resulting report will be a one-page headline summary with the key case facts and a recommendation as to whether the case warrants further investigation.

All that is required is a proforma instruction, and the key documents and we will provide the Triage Review within a set agreed timescale upon receipt of the key documents for each case. If we conclude that there is no further investigation required, no fee is charged (other than disbursements such as Land Registry Fees). If we conclude that a Merits Review is required (below) then a charge will only be applied if a claim is subsequently pursued.

Professional Negligence Investigation Report (Merits Review)

A more in-depth review and analysis of a case which provides a summary of the background facts and recommendation as to whether a claim should be pursued with a cost and time estimate for potential recovery. The review is based on an assessment on key case documents and will identify the issues that have been discovered and recommend whether further action is required. If we do not recommend further investigation there is no charge for our review (other than disbursements costs such as Land Registry Fees). The Merits Review will adopt a Red/Amber/Green report conclusion and if a claim is recommended, a fixed fee will be charged for the review.

This review will involve an investigation and analysis of

- Lender Underwriting and Arrears Files
- Solicitor File/ Valuer File
- Land Registry Documentation
- Insurance status of potential defendants
- Time limitation concerns

The Merits Review is a concise report which will advise on

- The key facts upon which the claim is based,
- The key evidence required to pursue the claim
- The merits of the claim
- Estimated time scale for recovery
- Recommended settlement parameters
- Costs estimate of pursuing the claim.

All that is required is a proforma instruction and the key documents and we will produce a Merits Review within 10 working days of receipt of the key documents.





Audit Assessments

Our experienced team can assist in audits of arrears cases to identify potential claims. This audit can be done remotely, or on site by way of secondee appointment. They will assist in identifying claims on current and historic arrears cases. This assessment can be a useful tool when considering any larger scale recovery project. We work closely with your in-house teams to help identify potential discrepancies and irregularities in cases where arrears exist as part of a stand-alone project, or an adjunct to the Triage or Merits Review process. These types of investigations and audits are a pro-active step to try and identify potential claims at an early stage, before arrears profiles become worse and before any potential time limitation issues arise.

“Looking beyond the obvious can be a more efficient and ultimately more effective way of reducing shortfalls on secured lending. With Shoosmiths Lender Review we will support you to pro-actively interrogate your distressed lending book for potential claims in negligence against the professionals involved in the transactions identifying alternate routes to recover losses on accounts, minimising the risk, saving time and reducing costs.”

Grouped Claims

We have particular skills in identifying and running groups of claims against professionals, which enables economies of scale to be incorporated in actions. This can mean one set of proceedings for multiple transactions. It also enables cases with perhaps more modest shortfalls to be considered, rather than a one size fits all loss threshold below which claims are not considered to be economic to pursue.

Each case will be reviewed and assessed on its merits, but the Shoosmiths funding model offers flexibility and share of risk and reward. Grouped claims can be deployed in conjunction with and as an outcome of audit assessments

Additional services

Solicitor and Firm Disciplinary Bulletin Report

We provide a free monthly report on findings of the relevant solicitor regulatory authorities in England and Wales, Scotland and Northern Ireland who investigate breaches of conduct of solicitors and solicitor practices. This can be a useful flag to identify breaches of duties by solicitors which may have relevance to your borrower transactions. Often if findings of dishonesty have been made against solicitors, or practices have been intervened, it is a useful prompt to review whether that solicitor or that practice has acted for you on your mortgage transactions. If those transactions are in arrears or show signs of distress, it might support a decision to undertake an Audit or Triage Review to assess if there is a potential claim.

Precedent Archive Vault for Client Documents

Delay can be incurred when lenders need to locate and retrieve key historical documents relating to lending decisions in the past and which are the subject of investigation and litigation. Ready access to these documents enable an early evaluation of potential claims and a swift decision about whether there is a route to recovery of arrears through claims against professional advisers. Our online multi-user portal can host all contemporaneous key documents making them readily accessible to your teams wherever they are and whenever required.

The documents hosted would include:

- Historic and current lending criteria, and products
- Historic and current terms and conditions of lending
- Historic and current copies of standard form instructions to solicitors/valuers
- Green Card Warnings from Law Society in England & Wales and/or reports from SDT/SSDT or equivalents documenting solicitor regulatory obligations and duties of care in relation to property transactions

In House Training

Our team is very happy to provide practical training and updates to your in-house teams so that they are up to date with relevant case law and court rules to ensure that your teams are up to date with the latest authorities and precedents. The training can be bespoke on specific issues, or a more general update on current authorities.

Pursuing Claims – Shoosmiths Funding

We believe in sharing the risk and rewards with our clients. If we believe that there is a case that has merit, we are prepared to back our judgment and agree a contingent fee arrangement. That could mean acting for you on a conditional fee arrangement – that means, in principle if we lose the case, we would not get paid, and you will not pay us. If we win the case, and secure recoveries, then we get paid, and we recover an uplift on those fees. Conditional Fee Agreements are commonplace in the English jurisdiction, but there are more restrictions placed upon funding arrangements in Scotland and Northern Ireland and we are happy to discuss alternative funding options for clients with claims in these jurisdictions.

We have access to funding markets which open up the possibility of Third Party Funding – this removes the cost of funding litigation and limits the risks of adverse costs when coupled with After The Event Insurance to protect against adverse costs orders. The benefit of third-party funding means that there is no outlay of costs as the case is progressed, and in the event of a recovery, then a proportion of that will be shared with the Funders.

Third Party Funding works particularly well when looking at portfolios of claims. In essence, a funder would fund multiple claims and share the risk and rewards across the portfolio. Claims can be cross collateralised which allows for multiple claims to be run and the risks to be shared across the claims within the portfolio.



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