

To: Senior Valuers [Rating]  
Rating Managers

From: Alan Hanna

Dated: 29<sup>th</sup> November

## **VLA INSPECTION PROCEDURES**

You will recall that further Legal advice was to be obtained on the “cold calling” issue. This has now been received.

The advice is that at common law a person has an implied licence to proceed to the front door of a house and to inquire whether he may be admitted to conduct his lawful business (*Robson -v- Hallett [1967] 2 All ER 407*). A person has no implied licence, however, to conduct an external survey of premises if the householder or his representative is not at home.

Under Article 58(2) of the Rates (NI) Order 1977, a power of entry for the purpose of a survey etc is not exercisable except -

- (a) with consent; or
- (b) after at least twenty-four hours notice of the intended entry has been served on the occupier or owner.

Because of security and other considerations we have rarely used (b), and in any event there is now a real doubt as to whether entry into premises in the absence of the owner, occupier or his representative for the purpose of a survey, would be compatible with human rights law without the occupier or owner’s consent.

If we proceed without consent the probably legal consequences are possible claims for-

- (a) trespass;
- (b) misfeasance in a public office;
- (c) a breach of human rights under Article 8 of the ECHR i.e. the right to privacy etc.

As regards (a) above, compensation, in the absence of physical damage, is likely to be nominal.

As regards (b) if we continue to survey without permission in full knowledge that we have no legal authority then a claim may lie in misfeasance in a public office. For present purposes the essence of misfeasance in a public office is that the public body knows that it has no legal power to do what is proposing to do and is reckless as to the damage that this may cause the householder. This could well lead to a successful damages claim against the VLA.

A claim under section 7 of the Human Rights Act 1998, which deals with damages for any breach e.g. a breach of Article 8, may also lead to a damages award.

We need also to realise that the political and administrative risks of not implementing legal advice are, in reality, more dangerous. One can imagine the public criticism which would ensue if it became known that the VLA had embarked on a course of action which it knew it had no legal authority for. More dangerous still is the exposed position the VLA would be in as regards a complaint to the Ombudsman.

To my mind the above is really the end of the debate. Staff should be given a copy of this note and it should be made clear to them that our former practice of surveying property without specific consent should cease.

You will appreciate that this causes more of a practical difficulty for colleagues on the domestic side of the business but on occasion it will crop up on the non-domestic side. If staff cannot gain access to a property or are refused permission the first port of call should be building control of the planning service with a request for copies of the plans for the property in question. Surveys should be prepared on the basis of those plans and survey noted accordingly.

In the hopefully rare case where we have been refused access and plans are not available then such cases should be drawn to the attention of the District Valuer who will decide on the appropriate course of action.