

Subject to finance timely reminder



Subject to finance clauses have always been a source of claims but attention needs to be paid to them more than ever in this current uncertain economic climate. There are two recurring mistakes we see in claims that are particularly relevant at the moment.

The first is that clients are not adequately advised about how subject to finance clauses work. They assume that if they don't get finance the contract is automatically cancelled so they often don't tell their lawyer the finance has not yet been approved by the due date. The contract then becomes unconditional and the client often struggles to find alternative finance in time for settlement.

The second error is that the client mistakenly assumes finance has been approved when they receive a conditional letter of approval from their financier. As a result, the contract is allowed to become unconditional, and when the conditions are not met the finance falls through. The most common condition is the requirement that the property achieves an appropriate valuation.

In the current climate there is, and will continue to be, some uncertainty as to market value.

With many businesses not actually operating, or operating in a reduced capacity, the conditions on finance approval are likely to be more numerous and more open ended than ever before. It is important to put your clients on notice as early as possible that finance approval may be conditional and, in some cases, may be withdrawn for various reasons outside their control. You should advise your clients to read their letters of offer carefully, and if in any doubt, give you a copy to review before the contract becomes unconditional.

Diarise with reminders the time limit and follow your client up to ensure they can make an informed choice before the contract becomes unconditional.

For more information on mistakes involving conditional contracts see our [Claim Free Conveyancing](#) practice risk guide.