



The value of knowledge

Ian Maycock explains why IPs will be at an advantage if they employ qualified valuers.

In most cases, where an insolvency practitioner is engaged, there are assets associated with the business that require valuing. The question then is: does the insolvency practitioner instruct a valuer with the relevant experience who is qualified and competent to provide such advice?

The background

Firstly, would an insolvency practitioner instruct an unqualified solicitor to prepare a sales contract, an unqualified accountant to prepare a statement of affairs or an unqualified surveyor to prepare a valuation of a property? The answer to all is most definitely no!

However, when it comes to requiring a valuation of machinery, chattels and intangible assets, there does not appear to be the same consideration. Many insolvency practitioners choose to use firms to provide valuations and advice, which are not regulated by professional bodies and therefore cannot provide valuation reports and advice that comply with any accepted standards.

With the advent of the Graham Review into pre-pack administration, on the issues concerning valuation, recommendation five states that a valuation should be carried out by a valuer who holds professional indemnity insurance (PII).

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Under SIP16 (V3), effective from 1 November 2015, it states that where a pre-pack administration is concerned and a valuation of the business and assets is prepared, the name and qualifications of any valuer and/or advisor is provided, together with confirmation of their

independence and that they carry adequate PII. SIP16 goes on to be quite explicit in what other information is required. If an insolvency practitioner were to use a valuer and/or an advisor who does not meet the criteria, the reasons for doing so should be explained. Furthermore, when goodwill has been valued, an explanation and basis of the value must be given. It is also a requirement to provide a summary of the basis of valuation adopted by the valuer; the rationale for the basis of valuation adopted and, where a sale of the assets is concluded, an explanation of the realisations and how these compared with the valuations or advice previously provided.

If we were to consider the issue of PII, SIP16 states 'adequate PII for the valuation performed' is required. Within the Graham Review it was considered that those who issue PII place their own stringent checks on those who apply for cover. It was felt that creditors of insolvent companies could be reassured that a valuation had been executed by someone who held such cover and that this would therefore represent a fair value for the business and its assets.

The importance of PII

PII should allow a person or company that has instructed a professional advisor to make a claim against that advisor in the event of the advice given being found to be negligent. An advisor may hold PII, but is it adequate? Does it actually insure their valuation opinions?

If it is found that the advisor was not qualified to provide such valuation advice, it would be very easy for the insurer to avoid liability. The advisor may hold PII but it would be very difficult to pursue a claim when an insurer refuses to satisfy that claim on the grounds that the insured was not qualified to give the advice for which the cover was provided.

The Graham Review suggests that PII should only be adequate; it does not state that it needs to be relevant to the service provided and potentially places the onus for regulating standards onto insurers.

It could therefore be seen that for PII to be valid and robust enough to withstand a claim, the advice given should be provided by a qualified valuation professional.

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Quite often insolvency practitioners will consult with many different firms offering valuation advice. These firms may be experienced and, in some cases, experts in their field, and may include specialist trade dealers or agents. The advice given by such firms may be equal to that given by a qualified valuer for the assets to which their knowledge extends. However, other assets that need to be considered, and that are outside their sphere of experience, are often overlooked and, at worst, ignored. These may include intellectual property such as websites, domain names, trademarks, patents, copyright, the customer database and a host of other intangible considerations. This may also extend to fluctuating assets such as work in progress, contracts, order book and retentions.

Crucially, regardless of the specialist knowledge of such industry experts or dealers, creditors will always be able to question their independence and potential conflict of interest, for which the insolvency practitioner will have little, if any, defence.

Under SIP16 it is a requirement to ensure that appropriate persons are used when preparing advice in respect of valuations, when considering a pre-pack



administration. Should this be the only time an insolvency practitioner has such concerns? I would suggest not! In any insolvency procedure, the same considerations should apply – in the same way that other professional services, such as legal and accounting, are provided by suitably qualified advisors, then the services of the professionally qualified valuer should also be a prerequisite.

The role of the RICS registered valuer

There are a number of professional bodies that are recognised in the area of valuation, the principal body being the Royal Institution of Chartered Surveyors (RICS). To obtain professional membership of the RICS, a rigorous period of study and practical experience is required prior to examinations, dissertations and peer review. Only then can a member carry the designated qualification MRICS. This is not dissimilar to the rigorous qualification processes undertaken by solicitors, accountants and insolvency practitioners.

Under RICS regulations, in order to provide valuation advice in situations such as insolvency and collateralised lending, a further RICS designation of registered valuer is required. Only a RICS registered valuer is able to provide regulated purpose valuations. Valuations provided against real estate or chattel assets for an insolvency practitioner are deemed to be regulated purpose valuations. This ensures that all valuation advice provided is to the highest possible standard.

A valuation report provided by a registered valuer will be prepared using internationally recognised definitions of value such as market value. Other bases of value commonly referred to, which are not recognised under international standards, have been 'liquidation value', 'going concern value', 'realisable amount', 'estimated realisation price' and many other similar descriptions of value. None of these bases are recognised and they have no foundation that underpins them.

Furthermore, where 50 per cent or more of the directors of a firm of surveyors hold RICS membership, it is a requirement

for that firm to be registered with the RICS. This carries with it further regulation, including that the firm, if holding clients' money, holds a designated clients' account. Such accounts and advice provided are regularly audited by the RICS, thus providing clients with an added protection over funds held on their behalf together with the quality, and fundamental impartiality, of their advice. Additionally, clients' accounts are insured, providing further security.

By using a RICS registered valuer, an insolvency practitioner is receiving the same level of impartial professional advice and accountability from their valuers as that provided by their solicitors and accountants, which unqualified advisors are unlikely to be able to provide.

There are requirements for members of the RICS to undertake 20 hours or more of continued professional development per annum. It is therefore likely that your RICS valuer will be up to date with recent developments in the field in which they practice.

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Due to the extensive study and the continuous experience gained by RICS qualified valuers, the level of added-value service provided is also tangible. Such qualified valuers are very often able to provide advice on issues such as distraint, landlords, third-party assets, intellectual property and goodwill, fixed and floating charges, thus providing insolvency practitioners with a holistic view of the assets and the business being valued.

The use of suitably qualified valuation advice provided by a RICS registered firm cannot be underestimated. Firstly, the requirements under SIP16 are covered in full; secondly, any further advice can be relied upon as impartial; and, thirdly, any funds held on behalf of an insolvency practitioner are fully protected. □



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