

Dear Sirs

Claimant:

Property:

1. Instructions.

- 1 I received instructions by a letter dated 23 April 2013 from to inspect to the above property, read the report/documents as listed below in paragraph 2 and consider the allegation of professional negligence made by the claimant more particularly detailed in paragraph 4 below. Specifically I have been asked to prepare a report covering the following points
 - I. My opinion on the alleged defects at both the time of the original survey and now.
 - II. My opinion on the reliance placed by the claimants on the advice given in the Building Survey.
 - III. My opinion on the allegations that failed to identify death watch beetle infestation and wet rot in the timbers.
 - IV. My opinion on any diminution in value of the property caused by the alleged defects.
 - V. My opinion on remedial works and costings of such.
 - VI. My opinion on the retrospective market value of the property with the highlighted defects and without said defects.
 - VII. Any other information I feel is relevant to my instructions in this matter.

2. Qualifications and experience.

- 2.1 My name is Paul David Raine. I hold a BSc degree in Land Management (1980) from Reading University and I am a Fellow of the Royal Institution of Chartered Surveyors (1989). I am a Director of Cole Raine Limited and Paul Raine and Associates Limited Chartered Surveyors 3 Trinity Court Stoke Road Bromsgrove Worcestershire B60 3EQ. My professional work predominately comprises providing residential valuation reports for all purposes and private residential building survey reports throughout the West Midlands, Worcestershire, Herefordshire and Gloucestershire. In addition, I have provided Expert Valuation Reports and given evidence in Court. I am fully conversant with the Civil Procedure Rules and have undertaken specialist training as an Expert.
- 2.2 During my professional career I have carried out many Building Survey Reports and other forms of building survey reports in respect of Grade 2 Listed timber framed houses in Worcestershire and Herefordshire. I have lived in a timber framed property on

the Herefordshire/Worcestershire border and I am familiar with the repair and maintenance issues associated with historic timber frame buildings.

3. Provision of Documents.

- 3.1 I have been provided with the following documents:
- a. Building Survey Report dated 30 April 2010.
 - b. Chartered Surveyors report signed and dated 13 December 2012.
 - c. Solicitors preliminary notice of claim (26 February 2013) and subsequent formal pre action protocol letter of claim (12 March 2013).

4. Background.

- 4.1 were instructed to undertake a building survey by Bank plc on behalf of the purchaser/borrower, Mr & Mrs The proposed purchase price given on instruction from the Bank was £540,000 and the mortgage loan required was £200,000.
- 4.2 An employee of Limited, MRICS, undertook an inspection of the property on 30 April 2010 and completed his report on 8 May 2010 valuing the property at £540,000. The report and colour photographs were printed and despatched by post to Mr & Mrs on 11 May 2010.
- 4.3 Thebuilding survey identified several defects and these are reviewed in further detail later in this report.
- 4.4 In theformal pre action protocol letter of claim, it is advised that Mr & Mrs completed the purchase on 11 June 2010 at £540,000. In late March 2011, the heard a clicking sound in the property. During my site visit, Mr indicated this was first heard in the master bedroom one evening. advise that Mr & Mrs took advice from Mr FRICS and that this has resulted in thereport dated 13 December 2012.
- 4.5 At the date of my site inspection (1 May 2013) some destructive exposure of the timber frame had been made (I assume under the supervision of Mr) and photographs are included at **appendix A**, all taken at my site visit on 1 May 2013.

5. Inspection.

- 5.1 I inspected the property on 1 May 2013. Mr & Mrs.....allowed me full access to the property including the loft space and photographs of relevant matters are included at appendix A.

6. The Property.

- 6.1 The property is located in the village of and occupies a pleasant site set behind a village church and with delightful views over neighbouring farm and woodland. One boundary is defined by a watercourse and other boundaries by the churchyard and adjoining farmland. Access is by way of a narrow shared private track that is being maintained to a fair standard. I assume full rights of access are reserved and there are no adverse legal matters affecting the property.
- 6.2 The property comprises a 2 storey detached house being a Grade 2 Listed building with original construction that probably dates from the late 16th century, set in a pleasant private garden plot with driveway parking. The accommodation is more particularly detailed in the building survey report; save for the fact there is a separate WC at ground floor level off the utility room that is not mentioned in the report. The property is constructed in a combination of timber frame elevations built off a plinth wall and surmounted by a pitched roof clad in stone tiles; also a section formed in brick elevations built at a later date and more particularly shown on the photographs at appendix A.

7. Tenure.

- 7.1 I am advised and therefore assume the property is freehold.

8. My site inspection – 1 May 2013.

- 8.1 Mr & Mrs allowed me full access to the property including the roof space.
- 8.2 Photographs showing visual evidence of condition at the date of my inspection are included at appendix A. This includes evidence of some localised destructive exposure

of the timber frame that has been carried out recently and post dates the building survey inspection on 30 April 2010.

- 8.3 Exposed areas of the timber frame do indicate significant damage to the timbers. The presence and extent of that damage would not have been visible without the destructive exposure. That exposure post dates the survey inspection in April 2010 and the original Surveyor would not have been permitted to open up the timber frame in the way that has now been done. Also, this type of destructive exposure is specifically excluded in the paragraph 16 of the conditions of engagement that state: “ *The Surveyor will make a surface level examination of those parts of the property which are visible and readily available for examination from ground and first floor levels without risk of causing damage to the property or injury to the Surveyor.*”
- 8.4 Disregarding areas of the frame that have been opened up for further examination, the remainder of the frame appears to be in fair condition based on a surface level visual inspection without invasive tests being carried out. There is some evidence of previous beetle infestation and localised points of rot to exposed timbers. However, in my opinion this is not excessive and is consistent with the ongoing requirement to maintain a property of this type. There is evidence of past repairs to the frame that would give a reasonable level of confidence that the structure of the building had been subject to appropriate maintenance.
- 8.5 In those areas that have been opened up, I have no means of establishing the surface level visual appearance prior to that work being carried out.
- 8.6 Internally part of the timber frame is exposed but part is concealed behind wall coverings. In particular, the frame is concealed in the master bedroom in the area where Mr & Mrs advised they first heard the “clicking” that they now (based on Mr further investigation and destructive exposure of the frame) attribute to the Death Watch Beetle.
- 8.7 Due to the age of this building, it is reasonable to assume that the visual evidence of condition at the date of my inspection (May 2013) was materially the same as that at the date of the building survey inspection (April 2010) except for the areas of destructive exposure carried out by Mr

8.8 Given the age of this timber frame, it is inevitable that it will show some signs of past damage, weathering and piecemeal maintenance over its lifespan of more than 400 years and such is the evidence with this frame. There is no evidence of any structural damage to the frame insofar as the normal bowing and lateral displacement associated with historic frames is clearly evident but within normal margins. Nor is there any sign of fundamental building defect to the frame that is properly constructed off a stone plinth wall and the framing itself in all components is fit for purpose. Therefore, notwithstanding the beetle infestation, based on a visual inspection of the frame only, it appears fit for purpose and in reasonable condition subject to normal maintenance.

9. Discussion of the Building Survey Report – 30 April 2010.

9.1 Most of the content of the report is not relevant to the matter at hand. Certain condition statements are relevant as discussed below. Also “comments on condition and value”.

- I. **Valuation - £540,000.** In my opinion this was a reasonable opinion of value at the date of the report taking into account the general visual appearance of the timber frame (and other matters) but specifically excluding the effect on market value of Death Watch Beetle infestation. My understanding is that this price was paid by Mr and Mrs as willing buyers negotiating with willing sellers in an arm's length transaction.
- II. **Areas requiring further investigation (point 4).** *“The roof covering is extremely dated and defects are apparent. You are advised to consult with a competent roofing contractor as to what the ongoing costs per annum will be to maintain the roof is reasonable order.”* I concur with this opinion and the advice given. The advice is clear, appropriate and proportionate.
- III. **Areas requiring further investigation (point 5).** *“The External timber frame requires some repair. It would be advisable to have the frame inspected in more detail by a suitably qualified contractor.”* I agree that the frame does require some maintenance and repair. However, the wording of the advice is vague and does not convey the importance of the matter. It does not specify testing for death watch beetle and reads as a general maintenance item. It does not specify who is a ‘suitably qualified contractor’ as it does not specify the repair that needs inspecting.

- IV. **Areas requiring further investigation (point 6).** *“Internally to the property there are some areas of damp. These are not causing disturbance to decoration etc however as a precautionary matter you may wish to have a specialist contractor registered with the Property Care Association to provide further advice.”* Damp in historic timber framed buildings is quite common but also potentially significant. The recommended action to obtain further specialist advice is given as being optional. A clear recommendation should have been given. However for the purposes of this report we are not considering a damp related matter.
- V. **Areas requiring further investigation (point 7).** *“Possible wood boring insect infestation, consideration to request a specialist attend site and provide report.”* The recommendation to “consider” this further specialist report is insufficient advice given the potential cost implications of this type of defect if found. There was either sufficient visual evidence based on a surface level inspection to recommend further destructive exposure of the timber frame prior to exchanging contracts or not and that advice should have been given either way. As stated above, in my opinion the frame at the time of my inspection (excluding the areas that had been opened up for further investigation) appears to be in reasonable condition and would not have warranted the advice to expose the frame. The practical effects of such a recommendation on a normal purchase transaction needs to be taken into account in considering this matter. In my experience, it is highly unlikely that a seller would allow the level of exposure that has now been undertaken by Mr to their property prior to exchange of contracts and therefore a Surveyor must be mindful that by giving advice to open up and test the frame, in many cases this may result in the transaction. There is a balance to be struck in these matters and advice to open up and test the historic timber frame of a grade 2 Listed building should only be given if there is significant evidence of potential hidden defects.
- VI. **External Walls.** *“Externally to the property it can be seen that the main timber frame has been redecorated fairly recently thus to a certain extent hiding defects. However when the property is examined from a distance it can be seen that flash band has been used to cover presumably areas of rot and close examination reveals that there are soft sections and sections that are fairly significant mainly to joints that have been infilled with various materials and over painted. To the front elevation it can be seen that the main sole plate has rotted fairly significantly at the end and repairs are required. Also this section states there are a small number of areas where wood boring insect*

infestation was noted externally to the timber frame mainly to the front elevation. In 1 or 2 holes it appears that frass (appearance of sawdust) from the flight holes was present, indicating possible activity. This was localised only. You may wish to simply monitor this or have a specialist undertake a more detailed inspection” It will be clear from my comments in section 8 that this describes the condition of the frame as being materially worse than my inspection indicated. Most particularly for the matter under review, reference to active infestation suggests that this was evident in the areas that have now been opened up by Mr for further examination. In my opinion, given the observations of condition in this section, it was insufficient to give optional advice – that being “*you may wish to simply monitor this or have a specialist undertake a more detailed inspection*”. The surveyor should have provided clear advice and this overrides any generalised advice with regard to the need to carry out further investigation before exchange of contracts. I am not clear based on this report who the surveyor would have thought the claimant would have approached to “consider” this matter. If the evidence of beetle infestation was sufficient to mention within the report and to conclude that it was potentially active, it follows that specific advice in respect of obtaining a further specialist report before exchanging contracts should have been given, together with an indication of the potentially serious consequences of this matter.

10. Mr report dated December 2012.

- 10.1 The paragraph numbers referred to below relate to those in Mr report (LA report).
- 10.2 LA report 1.3. This refers to 9 headings of diminution included within his instruction most of which are legal matters and do not relate to the scope of my instruction.
- 10.3 LA report 2.4. LA was instructed to carry out a Building Survey of the property “*as if acting (for the claimant) as prospective purchasers*”. In my opinion this is a contrived exercise of no merit in terms of understanding the claimants’ position and at 2.5. it is stated that “*to prepare this report I carried out invasive investigations in excess of those which I would expect to be carried out by a reasonably competent Chartered Surveyor acting for a prospective purchaser.*” Therefore, it is not even prepared on the same basis as original report. As such, I have disregarded Part 2 of Mr report, that being his ‘survey’ – set out in his report at pages 7 – 45 (38 pages) and the section

dealing with the main walls is at pages 18 – 28 (10 pages). In my experience it is unusual for 25% of the content of a Building Survey to relate to just one element of a complex building; in this case the one element that is the subject of the allegation of professional negligence.

- 10.6 The LA report Part 2 is described as being a survey report carried out by Mr over 4 days between October 2011 and January 2012; another significant variation of the normal practice of undertaking a pre-purchase Building Survey where it is most unusual for the inspection to take more than one day.
- 10.7 In Part 3 of the LA report, para 1.1. states that the original survey was carried out on the 30 April 2010 and that the report was issued on the same day. The remark is made that *“This is an extraordinarily short timescale for reporting on, and valuing, such a complex building.* I deduce that this assumption is made on the basis that the inspection and report date are both 30th April 2010. However, I am advised by that in fact the inspection was carried out on 30th April and the Building Survey report was issued on 11th May 2010 and that this is a matter of record.
- 10.8 In part 3 at para 1.14 Mr turns to the matter of market value and I refer to his paras 1.14 – 1.25. Prior to considering these paragraphs it should be noted that the valuation at £540,000 was the same as price that Mr and Mrs..... had agreed to pay for the property as willing buyers negotiating with willing sellers in what I assume was an arm's length transaction. At the valuation date the definition of Market Value was defined as *“The estimated amount for which a property should exchange on the date of valuation between a willing buyer and a willing seller in an arm’s-length transaction after proper marketing wherein the parties had each acted knowledgeably, prudently and without compulsion.”*
- 10.9 Given the facts of this matter and the definition of Market Value, I refer to the RICS Information Paper (26/2012) and in particular section 4.4 – A Hierarchy of Evidence and a copy is attached at **Appendix B**. It is noted that evidence of the actual agreed sale price (subject to contract) of the subject property is top of that hierarchy of evidence. I take from that ranking in an RICS Information paper that any variation of opinion in respect of value by an RICS valuer must be based on substantial and compelling evidence that indicates the agreed sale price SSTC was (for reasons to be specified) not a true reflection of market value.

10.10 I turn to Mr report and in particular para 1.15 that states “ *Despite my having extensive experience of the property market in the area I have found it extremely difficult to find comparable evidence to support the valuation which I give below*” . Mr then proceeds to cite certain sales evidence and concludes that the true market value of the property in the condition as set down in the Building Survey Report was only £500,000 and not the £540,000 that Mr and Mrs had agreed to pay. I entirely agree with Mr that it is extremely difficult to find comparable evidence and in my opinion the evidence he provides no more supports his assessment at £500,000 than the valuation at £540,000

10.11 Taking account of recent Court Judgements in respect of the margin of error in valuing residential property, it is clear to me that a margin of +/- 10% is appropriate for a highly individual property of this type. Therefore, even if Mr was correct in respect of his opinion of value (which for the avoidance of any doubt I do not believe is the case) a valuation of £540,000 would fall within the acceptable range if the market value were assumed to be £500,000.

10.12 I refer to LA 1.26. I do not agree that diminution is calculated by applying a simple percentage deduction to market value and I do not recognise that as being the basis on which Courts make their Judgements. Self evidently, the final assessment of diminution can always be expressed as a percentage of market value but this belies the true methodology behind the calculation.

10.13 I refer to LA 1.29. I am not aware that Mr is a cost expert nor have I seen any detailed schedule of repairs and costings. Moreover, as will be seen from the photographs at **appendix A**, the extent of exposure to the timber frame is limited and in my opinion any estimate (including £200,000) is entirely speculative. The first paragraph of part 4 on page 59 of his report confirms this to be the case.

11. Discussion and Opinion.

11.1 **My opinion of the alleged defects at both the time of the original survey and now.** The alleged defects (then and now) relate to Death Watch Beetle infestation that by its character affects the core of timbers and in most cases is only visible externally by exit

holes on the surface of the timber. Therefore, the issue is whether there was sufficient evidence of exit holes or other damage to the frame based on an external visual inspection of the frame without destructive exposure to warrant a firm recommendation to carry out further specialist investigation works. Based on my inspection of the property and excluding the areas that have been opened up for further investigation, the load bearing timber frame as seen does not exhibit any signs of abnormal disrepair or structural defect that would warrant full scale invasive examination of the frame taking into account the costs and disruption of obtaining such reports and the prejudicial effect it would also have on the sale. There is a balance to be struck by surveyors recommending further investigation – at the time and without the benefit of hindsight. However, it may be the case that the most affected areas are those that have now been opened up for examination and the Building Survey Report does specifically refer to some active flight holes.

- 11.2 **My opinion on the reliance placed by the claimants on the advice given in the Building Survey.** The surveyor was fully aware that the claimant would rely on the advice given in this pre purchase survey report in consideration of their proposed purchase of the property. This is subject to the agreed limitations of inspection and also subject to the reasonable expectation that a client (including not limited to the claimant) would seek further clarification in respect of advice within the report that may be vague or imprecise but clear in its intent, before committing to exchange of contracts. This is a relatively high value and complex property and it is to be expected that a purchaser would make all necessary further enquiries with the surveyor . This point is significant given my opinions at 11-3 – 11.6 below.
- 11.3 **My opinion on the allegations that failed to identify Death Watch Beetle infestation and wet rot in the timbers.** The building survey report did identify potential evidence of Death Watch Beetle infestation by reference to the potentially active flight holes. However, the report did not provide clear advice in relation to the further investigation that would be necessary to ascertain the full extent of this problem prior to exchanging contracts.
- 11.4 *“The External timber frame requires some repair. It would be advisable to have the frame inspected in more detail by a suitably qualified contractor.”* I agree that the frame does require some maintenance and repair. However, the wording of the advice is vague and does not convey the importance of the matter. It does not specify testing for

death watch beetle and reads as a general maintenance item. It does not specify who is a 'suitably qualified contractor' as it does not specify the repair that needs inspecting. Based on my own inspection, there was no evidence of significant disrepair or evidence of death watch beetle, however the latter is specifically referred to in the Building Survey Report, self evidently was therefore apparent and I can only assume that it was evident in the areas that have now been opened up.

11.5 *“Possible wood boring insect infestation, consideration to request a specialist attend site and provide report.”* The recommendation to “consider” this further specialist report is insufficient advice given the potential cost implications of this type of defect if found. There was either sufficient visual evidence based on a surface level inspection to recommend further destructive exposure of the timber frame prior to exchanging contracts or not and that advice should have been given either way. As stated above, in my opinion the frame at the time of my inspection (excluding the areas that had been opened up for further investigation) appears to be in reasonable condition and would not have warranted the advice to expose the frame. The practical effects of such a recommendation on a normal purchase transaction needs to be taken into account in considering this matter. In my experience, it is highly unlikely that a seller would allow the level of exposure that has now been undertaken by Mr to their property prior to exchange of contracts and therefore a Surveyor must be mindful that by giving advice to open up and test the frame, in many cases this may result in the transaction. There is a balance to be struck in these matters and advice to open up and test the historic timber frame of a grade 2 Listed building should only be given if there is significant evidence of potential hidden defects.

11.6 **External Walls.** *“Externally to the property it can be seen that the main timber frame has been redecorated fairly recently thus to a certain extent hiding defects. However when the property is examined from a distance it can be seen that flash band has been used to cover presumably areas of rot and close examination reveals that there are soft sections and sections that are fairly significant mainly to joints that have been infilled with various materials and over painted. To the front elevation it can be seen that the main sole plate has rotted fairly significantly at the end and repairs are required. Also this section states there are a small number of areas where wood boring insect infestation was noted externally to the timber frame mainly to the front elevation. In 1 or 2 holes it appears that frass (appearance of sawdust) from the flight holes was present, indicating possible activity. This was localised only. You may wish to simply*

monitor this or have a specialist undertake a more detailed inspection” It will be clear from my comments in section 8 that this describes the condition of the frame as being materially worse than my inspection indicated. Most particularly for the matter under review, reference to active flight holes suggests that these were evident in the areas that have now been opened up by Mr for further examination. In my opinion, given the observations of condition in this section, it was insufficient to give optional advice – that being “you may wish to simply monitor this or have a specialist undertake a more detailed inspection”. The surveyor should have provided clear advice and this overrides any generalised advice with regard to the need to carry out further investigation before exchange of contracts. I am not clear based on this report who the surveyor would have thought the claimant would have approached to “consider” this matter. If the evidence of beetle infestation was sufficient to mention within the report and to conclude that it was potentially active, it follows that specific advice in respect of obtaining a further specialist report before exchanging contracts should have been given, together with an indication of the potentially serious consequences of this matter.

- 11.4 **My opinion on any diminution in value of the property caused by the alleged defects.** At this stage the full extent of damage to the timber frame has not been ascertained as only limited areas of frame have been opened up to allow proper inspection. The scope and cost of remediation works is uncertain and therefore it is not possible to provide an opinion on potential diminution in value. My recommendation is that you appoint a Chartered Building Surveyor to inspect the property with the claimants; building surveyor (presumably Mr) and suitable contractors to open up the frame for further investigation, sufficient to identify the scope of remediation works and provide costs of repair.
- 11.5 **My opinion on remedial works and costings of such.** I refer to LA 1.29. I am not aware that Mr is a cost expert nor have I seen any detailed schedule of repairs and costings. Moreover, as will be seen from the photographs at **appendix A**, the extent of exposure to the timber frame is limited and in my opinion any estimate (including £200,000) is entirely speculative. The first paragraph of part 4 on page 59 of his report confirms this to be the case.
- 11.6 **My opinion on the retrospective market value of the property with the highlighted defects and without defects.** The retrospective value with the defects will depend on the extent of those defects – see above. The retrospective value without said defects (i.e. in

the condition as stated in the Building Survey Report) is considered to be £540,000. I note Mr opines that the true value was £500,000 but acknowledges there is a lack of directly comparable evidence and fails to acknowledge that the claimant purchased the property in an open market arm's length transaction. Furthermore, Mr has not provided a range of value (a margin of error) and in my opinion based on Court decisions, a range of +/- 10% for a property of this individuality and character is entirely reasonable. Therefore, even if Mr 's opinion that the true value was £500,000 (that I do not agree with), it would be the case that a valuation of £540,000 would fall within the non negligent range of value.

12. Summary and Conclusion.

- 12.1 Based on my inspection the general condition of the timber frame to this property is reasonable taking into account its age and normal repair and maintenance requirements.
- 12.2 Given the age of the property the condition of the timber frame as seen at the date of my inspection would have been similar to that as seen in April 2010 at the date of the building survey inspection.
- 12.3 I have disregarded areas of the frame that have been opened up subsequently by Mr for further investigation as this would not have been the view afforded to the original surveyor.
- 12.4 During my inspection I saw no signs of any active flight holes in the timber frame but note the original building survey does refer to some localised areas of potentially active infestation. I must assume, therefore, that these were in the areas that have now been opened up for examination.
- 12.5 Assuming active infestation was evident, the advice in the Building Survey Report was not adequate to protect the interests of the claimant insofar as a firm recommendation should have been made for specific further investigation prior to exchanging contracts and not that this was optional.

- 12.6 Based on the evidence that is now visible, it is likely to be the case that further investigation of the timber frame would have revealed sufficient evidence of Death Watch Beetle infestation to trigger a full investigation of the frame and that would have led to more or less the same outcome as the current investigations that have been commenced (but not completed).
- 12.7 The client had a certain obligation to take steps to understand advice that was provided in the summary sections of the report. Specifically I would have expected them to clarify the apparently optional advice to carry out further investigation on the timber frame. In my opinion, a potential buyer commissioning a building survey on this type of property would prioritise the condition of the timber frame as being the matter most important to them. Whilst the advice provided in the Building Survey Report may have been unduly vague, it was prominent and sufficient to raise the need to seek further clarification.. Most surveyors are available to discuss the findings of their report with their client and I assume this was the case with this report.
- 12.8 I disagree with Mr A..... that the market value of the property as stated in the Building Survey Report was only £500,000 for reasons highlighted above. In my opinion the true market value on that assumption was £540,000 and in my opinion an appropriate margin of error is +/- 10%.
- 12.9 Further works are required to open up the timber frame and assess the scope of remediation works and necessary costs. This needs to be supervised by a Chartered Building Surveyor. Once the reasonable costs of repair are agreed, it will be possible to make an assessment of any potential diminution in value.

Declaration and Statement of Truth

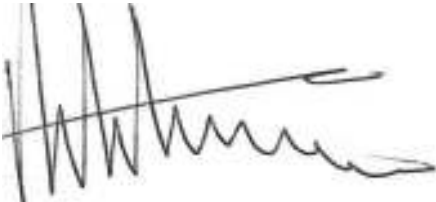
I, **PAUL D RAINE**, DECLARE THAT:

- 1. I understand my duty to the court and I have complied with that duty; and**
- 2. I am aware of the requirements of Part 35, the Practice Direction and the Protocol for instruction of experts to give evidence in civil claims; and**
- 3. I confirm that I have made clear which facts and matters referred to in this**

report are within my knowledge and which are not. Those that are within my own knowledge I confirm to be true. The opinions I have expressed represent my true and complete professional opinions on the matters to which they refer.

I conclude my report.

Yours faithfully

A handwritten signature in black ink, appearing to read 'P.D. Raine', with a horizontal line drawn across the middle of the signature.

P.D. Raine BSc FRICS MEWI