

Housing Improvement Task Force Second Stage

Sub group B *Individuals buying and selling property*

Final report

Section one- Introduction

Our remit

1. We were asked to look at policy options and make policy recommendations to address the issues raised in the first report of the Housing Improvement Task Force relating to the house buying and selling process in Scotland. In particular, we were asked to consider policy options designed to ensure that:

- buyers have comprehensive information on the condition of the property they are purchasing;
- buyers and sellers do not face unnecessary costs or delays in the buying and selling process;
- buyers have good quality information on the running and maintenance costs of the houses they purchase, including their rights and obligations;
- the current high levels of satisfaction with the house buying and selling system in Scotland are sustained and, if possible, improved in the future.

2. In undertaking this work, we were also asked to bear in mind the equalities issues that had been identified in the First Report of Task Force and also the considerable market variations within Scotland.

Our approach

3. The sub-group met on seven occasions and considered a range of papers touching on each of these issues. We were also able to draw on the results of the consultation that was carried out on the first stage report and take account of the discussions at the workshop organised by Communities Scotland which involved a much wider group of participants with interests in the buying and selling process. The Scottish Executive also commissioned from DTZ Piedad Consulting detailed research into the information needs of buyers, how well these are served by the current system and the impact this has on investment in housing quality. The emerging findings of this research informed the first stage of the Task Force's work, and its final conclusions were important to our work in the second stage.

4. In addition to the regular meetings, the sub group Chair and available members met on five occasions with representatives of the Royal Institution of Chartered Surveyors in Scotland (RICS), the Law Society of Scotland and the Council of Mortgage Lenders (CML)

to form a working group to look in detail at the issues raised by the “single survey” concept, and this fed directly into the work of the sub-group. Further meetings were also held separately with the CML and the Law Society.

5. Consistent with the decisions of the Task Force at its meeting in September, our emerging conclusions are to be discussed with equalities groups during January, through a series of focus groups organised by Communities Scotland and an outside consultant.

Key themes

6. In exploring our remit we have identified a number of key themes that underpin the broad approach of the sub group.

7. The first of these key themes is the need to make the housing market work better by improving the information available to house buyers and sellers. Ideally, we would like the relative condition of houses to be clearly reflected in their price so that, other things being equal, there is a market premium for well maintained houses and a market penalty for houses in poor condition. This would create a very clear incentive to sellers and persons thinking of selling in the future to keep their properties in good condition in line with the basic principle agreed by the Task Force as a whole that the primary responsibility for maintaining houses in the private sector must lie with the owners. But a market incentive of this nature is only possible if both buyers and sellers have good information on house condition. It is quite clear from the evidence set out in the first stage report that this is often not the case at present not least because of the reliance on scheme 1 valuations.

8. Linked to this is the need, as a matter of public policy, to encourage house buyers and sellers to be more interested in the condition of their houses. The fact that, for most home owners, the value of their property has increased substantially in excess of the general rate of inflation has encouraged a belief that this is likely to continue indefinitely and that the important priority, particularly for new purchasers, is to get on the “housing ladder” and move up it over time. The priority for expenditure on housing is, therefore, servicing the loan required to purchase the house, rather than subsequent repair and maintenance. But this is not sustainable in the longer term. Without adequate expenditure on repair, maintenance and over time, improvement, all housing will eventually start to fail. Although there are a number of factors at work, the experience in some towns in the North of England and the Midlands, where particular areas have suffered from falling house prices, widespread neglect, negative equity for owners and, in some cases, abandonment, illustrates the problems that can occur.

9. We have also sought to identify ways of improving the home buying and selling process with the aim of reducing delays and unnecessary costs. The factual context to this is set out in detail in the first stage report and we do not wish to repeat it here. But of particular relevance for the work of the Task Force was the conclusion that concerns over the costs of surveys and valuations, particularly concerns about the cost of potentially abortive surveys, may be a factor for some house-buyers in discouraging them from commissioning better quality information on the condition of properties.

10. A further key principle which we have borne in mind has been the desirability of ensuring transparency in the process of house buying and selling. The process of house buying and selling in Scotland was described in some detail in the first report of the Task Force and a number of professionals are involved, with varying levels and types of

regulation. We think it is important for house buyers and sellers to be clear about the role of the various professionals involved in this process and how their services are being paid for.

11. Above all, we have aimed to build on the strengths of the existing house buying and selling system. The first report noted a number of key advantages to the existing arrangements: clear outcomes, relative speed compared to England and Wales, and by international standards, relatively low transaction costs. Our aim has been to ensure that in tackling those problems that do exist we do not undermine these strengths.

The structure of the report

12. The structure of the report and the relative size of the different sections reflects our consideration of the key issues. At a very early stage, we decided that we needed to take a close and detailed look at proposals, which have been floated for some time, for a “single survey” for each house in the market. Our views on the single survey concept are set out in section 2 of the report. This links in closely with our proposals for a purchaser’s information pack and the nature of this pack, how it would work in practice and what advantages might result from this are set out in section 3. Finally in section 4, we consider a number of other issues identified in the first report related to the selling process itself.

Section two - Proposals for a single survey

Introduction

13. For a number of years, there have been periodic debates about the merits of moving from a system whereby individual house buyers commission surveys or, more usually, valuations for houses which they are thinking of buying to an alternative arrangement whereby a single survey is shared amongst all prospective purchasers. This has been known as a “seller’s survey” although this is not a term that we favour. We prefer the term “single survey” and we have looked at both the general merits of this approach and the detail of how this might work in practice.

14. Proposals for a “single survey” linked to any particular house sale and purchase in Scotland are designed to tackle three important weaknesses in the house buying and selling system which were noted in the Task Force’s first report

- The current reliance of most house purchasers on Scheme 1 valuations which provide only limited information on the condition of a property. It is estimated by RICS that approximately 90% of buyers rely on this as their sole source of information on house condition before deciding whether to make an offer to buy. We agree with RICS that Scheme 1 valuations are inadequate to meet the necessary level of information that should be made available to the purchaser and note that many solicitors do try to suggest to their clients that they commission a Scheme 2 survey.
- The encouragement which the existing system gives to multiple surveys and valuations, particularly in buoyant housing markets such as Edinburgh and the West End of Glasgow, which can result in abortive costs for house buyers and a disinclination to commission the more detailed, but more costly, surveys in advance of a purchase.

- The setting of upset prices at an artificially low level by sellers in order to stimulate interest in the property, which can result in prospective buyers spending money on an unnecessary survey or valuation report for a property outside of their price range.

The single survey concept

15. The “single survey” solution seeks to resolve these problems by providing a single house condition report which is potentially available to all those involved in the house buying and selling process. This survey report would provide a comprehensive guide to the condition of the property, together with a valuation. In principle, therefore, it would provide much more detailed information to both house buyers and sellers than is usually the case at present and avoid the need for competing house purchasers to commission separate surveys and valuations. It also ensures that there is an independent valuation of the property available so that potential buyers do not have to rely on the upset price to decide if it is likely to be affordable.

16. This would represent a considerable departure from the existing arrangements which have been in existence for some time. For it to work successfully, it would need to be integrated into the house buying and selling system in a way which is both practical and reasonably straightforward and commands the support and confidence of house buyers and sellers.

17. There are a number of possible variants to the detailed design of any single survey. We have taken account of a particular approach which has been developed and tested to a limited degree in the West of Scotland, but we believe that most of the conclusions set out below would apply to other possible approaches.

Commissioning single surveys

18. Under the current arrangements, any surveys or valuations are usually commissioned by the buyer or buyer’s agent. The single survey approach considered by the sub-group would require that the survey should be commissioned by the seller or seller’s agent and then made available to prospective purchasers. This fundamental change raises a whole raft of issues which need to be addressed. These include:

- Is it possible for prospective buyers and lending institutions to have confidence in a survey which is commissioned by a seller or seller’s agent and undertaken by a surveyor who might be thought to have a conflict of interest?
- Will there be implications for the surveyors’ duty of care and, if so, will this have knock on implications for their professional indemnity insurance?
- Will the seller have to meet the cost of a survey and, if so, can some or all of this cost be recouped from the purchaser?
- Will the single survey include a valuation and, if not, how will valuations be obtained?
- Are there sufficient surveyors in Scotland to make the “single survey” concept work?

Ensuring confidence in the single survey

19. To be accepted by all parties, the single survey must meet the needs of both sellers and prospective buyers by providing objective, reliable and reasonably comprehensive information on the condition of the house. Sellers may wish to use the survey to identify defects which need to be rectified before the house is put on the market; prospective buyers will want to use the information in the survey to decide whether to offer for the property and at what price; and the eventual buyer will want to be able to use the survey to decide priorities for improvement and repair work.

The form and context of the single survey report

20. We considered whether any single survey should be based on the existing RICS Scottish Homebuyer's Survey (HSV) or on the House Condition Report (HCR) being developed by ODPM as part of the proposed seller's pack for England and Wales. A third alternative might be an earlier version of the HSV which we were told is still used by certain firms of surveyors in Dundee. On balance, we believe that the starting point should be the current version of the Scottish Homebuyer's Survey because:

- it includes information that would allow for a valuation to be made;
- it provides for the interpretation of defects not just a list of defects;
- it is flexible, well known in the market and familiar to surveyors, the courts and some house buyers, as well as the lenders.

21. However, we consider that some amendments are desirable and make it more suitable for use as a single survey. Our suggested changes are:

- the inclusion of some standard information/guidance on likely future maintenance requirements tailored not to the individual property but to the type of house;
- some improvements in the formatting of the information to make it more accessible to the non-specialist reader;
- some additional information on the form of an energy efficiency report (which is likely to be required to meet the terms of the EU Directive on Energy Audits), a summary disability access report (to help buyers with disabilities who wish to identify a suitable house) and, as a possible optional extra, a security report.

22. The cost of a Homebuyer's Survey and valuation currently varies according to the price of the house sold and information supplied by RICS suggests that a Homebuyer's Survey and valuation for a house selling at the 2002 Scottish average price of approximately £80,000 might be in the range of £320 to £350 (excluding the cost of an optional hidden defects guarantee estimated at around £100 as per paragraph 26 below), although the actual price would be dependent on the market. The RICS figures are indicative only, and variations currently exist depending on factors such as the local market or the particular circumstances or strategy of the surveying firm. We are aware, for example, that some firms in Dundee currently charge lower fees for a local variation of the Scheme 2; and that a surveying firm that is a part of a national lending, estate agency and surveying business is able to offer its Scheme 2 equivalent survey for £280 (based on an £80,000 value), including a defects guarantee.

23. RICS have advised that each of the further energy efficiency, access and security reports mentioned above might cost a further £45 (plus VAT), i.e. around an additional £160 for all three.

24. Annex A sets out the views of RICS on the scope and format of a Homebuyer's Survey that might be used for a single survey including details of the additional items. It also gives details of the exclusions that currently apply to the Homebuyer's Survey and possible ways that these might be modified for the single survey. We believe that these need to be reviewed carefully, since frequent reference to exclusions in survey reports can undermine their credibility with house buyers and sellers. Annex B gives more detail as provided by RICS on estimated approximate costs.

25. In principle, we think that the approach of building on the existing HSV is the right one but there are concerns about cost, particularly in relation to the lower end of the market where the expense of the survey might be seen as disproportionate to the price of the property. We therefore recommend that prior to the proposed pilot, further consideration should be given to the detailed content of the survey, and possible alternatives, with the aim of achieving the best balance of content and cost that will nevertheless achieve the primary aim of significantly improving the level of information supplied to the great majority of house buyers.

Hidden/latent defects guarantees

26. We consider that it would be highly desirable for the single survey to include a hidden/latent defects guarantee. Where these have been offered in the past, for example by Allied Surveyors in their sellers' survey scheme that has been used in Glasgow and Hamilton, the evidence suggests they have been very popular with homebuyers. Although the level of claims on these policies has been low, the existence of such a guarantee would help to increase the confidence of buyers in the survey. However, the necessary insurance which would underpin such guarantees could add considerably to the overall cost. One insurance broker's estimate was that this might currently increase the average price by £100 per survey although the cost itself is likely to vary according to the uptake of the insurance and the extent to which it is a standard feature of the scheme. We are aware, as noted at paragraph 22, that at least one firm is currently offering a defects guarantee at what appears to be no extra cost to the consumer. Although we recognise that there are particular promotional benefits in providing something that consumers recognise as a "guarantee", because we have concerns that its inclusion might make the overall cost so high as to render the survey unattractive to many of them, we have concluded that this should ideally be available as an option or addition to the ultimate purchaser.

The shelf life of the single survey

27. We have also given consideration to how long the report, once it had been prepared, might continue to provide a reliable guide to the condition of the property – sometimes known as the "shelf life" of the report. It is unusual for the condition of individual houses to change quickly and, in most circumstances, the survey should remain valid for at least 3 months. Nevertheless as in the case for any survey, the surveyor can only be expected to assess the condition at the date at which the survey is carried out and that, therefore, there can be no question of an undertaking that the condition of the house had not changed over a specified period. It follows from this that buyers would not have the right to claim against a

survey for not identifying defects which had arisen after the survey was carried out. This is no different from the current position when surveys are commissioned by buyers. We concluded, therefore, that there should be no prescribed “shelf life” for the survey.

Rectifying defects

28. Some sellers may wish to use the survey report to rectify defects before the house is put on the market, so there will need to be arrangements to allow for the report to be modified after work of this nature has been carried out. Sellers could expect to be charged a modest re-inspection fee for this. We are aware of a concern that in these circumstances surveyors could be mistakenly seen to be “warranting” any work that had been carried out, so that it will be necessary for the re-inspection report to clearly indicate that this is not in fact the case. Similarly, if a significant retention of part of the loan was required by the lender because of the need to rectify defects brought out in the single survey, then the purchaser might also be required to commission and pay for a re-inspection fee once the work had been completed.

Qualifications for surveyors

29. The existence of a survey along these lines should go a long way to reassure buyers and sellers that the single survey can be used by all parties. There may still, however, be a fear that some surveyors could produce a report, at the behest of the seller, which overlooked or under-stated particular condition problems. To provide further reassurance, particularly to prospective buyers, that the results of the survey had not been influenced by the seller, only suitably qualified surveyors should be used to produce single surveys. Our view is that surveyors/valuers should be appropriately qualified valuation surveyors experienced in residential property work in a particular locality; whilst currently these will almost always be RICS members, we would want to leave open the possibility that others with appropriate qualifications should also be able to carry out surveys in the future.

30. We also considered whether there should be arrangements for on-going monitoring of single surveys. It was noted that in England, the ODPM proposal for a statutory seller’s pack was linked to an industry-run certification board which would be recognised by the Secretary of State and which would have fairly comprehensive responsibilities for accrediting surveyors and monitoring their work as well as other duties such as approving the form and content of the House Condition report itself. The work of the certification board would be funded by charges paid by accredited inspectors.

31. It has been suggested to us that the cost and bureaucracy of a system of a comparable quality control monitoring system for any single survey in Scotland could be prohibitive and unnecessary, bearing in mind that RICS has a compulsory arbitration scheme and that their proposals to appoint an ombudsman for Scotland should substantially improve the means of redress for dissatisfied consumers. RICS has, however, proposed that a “light touch” system of monitoring should be included in any pilot of the single survey. This would be based on the establishment of a review panel which would undertake quality control checks on a percentage of surveys with all surveys being registered with the panel. The panel would operate according to an agreed set of guidelines to be approved by the Scottish Executive and an industry wide Steering Group. The quality control checks would cover:

- Checks on terms of engagements (for example, to ensure that they have been signed, were understandable and refer to complaints procedures);
- Completeness and legibility of reports;
- Delivery times;
- Communication with prospective purchasers (for example, to ensure that surveyors were not selectively providing information to certain prospective purchasers).

32. We also accept that, as a means of reassuring buyers and sellers, there could be advantage in continuing quality control checks on a permanent basis for all single surveys. However, we believe that any decisions on arrangements for continuous monitoring beyond the pilot phase should be taken in light of the experience of the pilot itself.

The surveyor's duty of care

33. Surveyors have a duty of care to the buyer and the lender (if the survey is used to support a valuation for mortgage purposes) and they are required by RICS to carry professional indemnity insurance in case of successful action on the grounds of professional negligence arising from breaches of this duty of care. There is a concern in the surveying profession that single surveys would extend their duty of care further, i.e. to the seller who instructs the survey, as well as to the purchaser and any lender, and that this would require additional professional indemnity insurance at a cost that would have to be passed on to the consumer. There is a fear, given the current difficulties with professional indemnity insurance generally, that adequate cover might be unobtainable or prohibitively expensive.

34. To avoid this difficulty, we consider that a style of contract should be prepared which would effectively limit the contractual liability of the surveyor to the eventual purchaser and any lender. The Law Society of Scotland's Conveyancing Committee has expressed a view on the validity of such a contract and has suggested that certain key principles should be included. The key points they make are as follows:

- Providing the contract for the commission of the survey between the seller and surveyor contains an explicit provision to that effect, the surveyor would have a duty of care to the purchaser and any lender notwithstanding that the seller instructed and paid for the survey;
- In addition, there is an overriding liability in delict to the seller for any manifestly negligent act or omission on the part of the surveyor irrespective of the terms of any contract;
- Detailed legal drafting of the terms of the contract would be required prior to the introduction of the proposed single survey.

35. We have, however, noted RICS concerns that the continuing delictual liability to the seller, although remote, might nevertheless have an impact on professional indemnity insurance and we have sought advice from insurance underwriters in Scotland. One firm advised specifically that professional indemnity insurance should not create any particular obstacle to the introduction of a single survey and this is consistent with the experience of those surveyors who have already provided surveys along these lines. However, the position on indemnity insurance would need to be kept under review if and when single surveys were promoted.

Meeting the costs of the survey

36. At present the costs of commissioning surveys and valuations fall to prospective buyers. Since single surveys will be commissioned by sellers or their agents, the initial liability for meeting this cost must inevitably fall on the seller. Sellers may well, however, think that this is unreasonable since the main likely beneficiaries will be prospective buyers, particularly the successful buyer. We believe, therefore, that sellers or their agents should only release the survey to prospective buyers if they agree, in the event of successfully purchasing the property, to meet the cost of the survey. Recovery of that cost would be dealt with in the contract between the seller and purchaser and this would be consistent with the proposal for a model contract which would transfer the contractual duty of care to the eventual purchaser. If the seller or seller's agent were to be given a statutory duty to provide prospective buyers with a copy of the survey then it would be more difficult to ensure that the cost is eventually transferred to the successful purchaser.

37. One possibility is that surveyors might agree to postpone submitting their bills until the house has been sold so that the bill could be sent directly to the successful purchaser. However, we agree that it would be unreasonable to create an expectation that this should be the normal arrangement, since it could lead to long delays for surveyors in getting paid for their work.

38. It is also possible that the single survey could lead to changes in the way in which surveys are provided. For example, the single survey (and any associated Purchaser's Information Pack) might become part of a package of services that lenders, solicitors and estate agents could offer to clients. It is difficult, at this stage, to predict with any certainty what changes might take place in the provision of surveys and, in particular, how extensive such changes might be. At present the precise basis on which a surveyor is selected may not always be apparent to the client, e.g. the surveyor might be appointed by their agent and an "arrangement fee" added to the cost. Because there is a concern that further packaging of services could make the position less clear for the consumer we would emphasise that it is important that the commissioning process for single surveys is transparent to clients. By this we mean that the basis on which any surveyor is appointed to undertake the single survey is understood by the client and that the commissioning fees charged are clearly disclosed (including any indirect charges).

Valuations

39. In the Scottish house buying and selling process, valuations provided by a professional valuer are used for 2 main purposes:

- to help prospective buyers in consultation with his or her agent to decide how much to offer for the property;
- to meet the requirements of lenders providing mortgage finance who may want to be reassured that the value of the property exceeds the amount of the loan.

40. In some cases, sellers may also commission a valuation from a professional valuer to help decide the upset price but it is more common for them to base this on advice from their selling agent. Similarly, prospective buyers are likely to take advice from their agent in deciding how much to offer having seen the value determined by the professional valuer.

Formal valuations provided by professional valuers are particularly important for first time buyers and others wishing to obtain a loan to cover a high percentage of the costs, since lenders depend on this valuation to determine the maximum loan available.

41. Unless the single survey can be used as a basis for a valuation, then prospective buyers are likely to be faced with having to commission a separate valuation and the current problem of multiple valuations would be perpetuated. It is conceivable that many prospective buyers could rely on advice from their agents (who are normally very knowledgeable about house prices in their areas) to determine their bids. It is also possible that, increasingly, lenders will be happy to accept “desk based” or “drive by” valuations in certain cases where the loan to price ratio is low. Nevertheless, valuations provided by professional valuers will be a continuing necessity for many buyers for the foreseeable future and Building Societies are in fact legally required to obtain a valuation before lending on a dwelling house for mortgage.

42. We have examined two possible ways of avoiding the need for buyers to commission a separate valuation whilst recognising that they should always be free to opt for this if they so wish. The two alternatives are:

- For the single survey to come with a valuation (as is the case, at present, for Homebuyers’ Surveys commissioned by purchasers). There are a number of potential difficulties with this. Valuations are inherently more subjective than condition assessments and must take account of market evidence as well as the characteristics and condition of the property. There is a possible danger that a valuation issued directly to the seller’s agent would be perceived by others as seeking to support the price the seller wishes to achieve, i.e. to lead and influence the market. In buoyant markets, it is also possible that market circumstances may change between the survey being carried out and the sale taking place. The valuation may subsequently become “out of date” and although for most buyers this should not be a problem, it could create difficulties for those wishing to borrow a large percentage of the cost as is the case for many first time buyers;
- For prospective buyers to be able to require a valuation from the surveyor who carried out the house condition report. It is envisaged that the cost of providing valuations on this basis would be included in the initial cost of the house condition survey. All potential purchasers would receive the same valuation. The surveyor undertaking the survey would determine a valuation the first time this was requested by a prospective purchaser and the same valuation would be handed over, on request, to other prospective purchasers either in hard copy or by way of e-mail.

43. In our view, the first option is to be preferred. It is more simple and straightforward and although a valuation might become dated quickly in a buoyant market, it is in markets of this sort that, in practice, houses sell relatively quickly. The extra time available to the surveyor undertaking a single survey (as opposed to simply a valuation) would also allow him/her to obtain more extensive evidence on comparable sales and therefore assess the likely level of interest. This should help to avoid any suggestion that the valuation might lead rather than reflect the value.

44. For either of these options to work, the valuation has to be acceptable to the lender providing mortgage finance to the buyer. CML representatives have explained to the sub

group that, in their view, a valuation provided by a professional valuer and based on a single survey of the type described above would be acceptable in all but a limited number of cases. They would, however, want to reserve the right to require a separate valuation if, for any reason, the surveyor/valuer in question was not acceptable to them.

Follow up information and queries

45. When a survey is commissioned by an individual purchaser or seller, then the surveyor would normally be available to answer any points of clarification arising out of his survey report. Where, as in the case of a single survey, the intention is that a number of parties could have access to the survey report, then RICS rules would require responses to any points of clarification to be circulated equally to all those who have an interest. In practice, this might be rather difficult to arrange since the surveyor might not be aware of all the prospective purchasers who have access to the report. At best it would require additional trouble and effort if and when follow-up queries were raised. To avoid this problem there should be a clear understanding that follow up queries would not be possible in connection with the single survey, except where there are glaring issues of clarity that require to be addressed for all interested parties.

46. Rather different considerations apply where one of the parties wishes to commission a further separate report on a specific topic either from the surveyor or from some other specialist, for example, a report from a structural engineer or wood rot specialist firm. Any specialist or follow up reports of this nature would simply be available to the person that commissioned them.

Capacity constraints

47. It is estimated that there are currently approximately 135,000 house sales per annum and, in most cases, some form of valuation or survey will be instructed. However since, at present, most houses are bought on the basis of valuations only, a general shift to a single survey based on the Homebuyer's Survey could lead to a substantial extra demand on the surveying profession in Scotland. This would be offset, in part, by a reduction in the need for separate valuations and, in particular, by cutting down in the duplication of effort which currently arises as a result of multiple valuations and surveys.

48. RICS advise that there are approximately 8600 members in Scotland, of whom 6500 are corporate members. Of these, there are around 1200 members of the residential property faculty but after subtracting trainee and technician members and those surveyors who are mainly interested in housing management, construction or maintenance the number of residential valuers is relatively small. They have also advised that a surveyor could reasonably be expected to complete two Scheme 2 surveys per day. In practice, there are probably many surveyors with relevant qualifications who, in practice, do little or no survey or valuation work. However, assuming that there are 600 surveyors actively involved in residential work each would have to complete around 225 surveys a year or 5 a week (assuming a 45 week working year). These very broad brush figures suggest that there are unlikely to be serious capacity constraints, but the proposed pilot or pilots would be helpful in checking this conclusion.

Single surveys – statutory requirement or market-led?

49. If single surveys are to be introduced and taken up then this could either be a voluntary basis in response to market pressures or as a result of a statutory requirement. In England and Wales, the Government introduced a Homes Bill into the UK Parliament which included a statutory obligation on sellers' agents to provide a seller's pack to potential purchasers which included a house condition survey report. Although this Bill fell when the General Election was called in 2001, the expectation is that similar provisions will form part of the Housing Bill that is currently being prepared following the Queen's Speech last autumn.

50. We take the view that it would be advantageous for single surveys to be developed as a market-led, voluntary initiative if at all possible. This would probably be more flexible and less bureaucratic. In particular, it would avoid the need to impose the single survey approach in situations where there might be relatively few benefits, for example, for purchases within the family, for purchases from a landlord by a resident tenant or in other cases where for some reason the seller did not wish to use it. It would also avoid the need for civil or criminal sanctions for non-compliance. However, it is unlikely that a market-led approach will take off in Scotland unless there is very positive support and endorsement from the key players, i.e. the professional or other bodies representing surveyors, lenders, solicitors and estate agents and auctioneers, together with a willingness of some of the key firms in the market to actively promote the concept to house buyers and sellers. Even with a market led approach, the Scottish Executive would need to play a key role in facilitating the development of this new approach.

51. Representatives of the Scottish Executive advised the working group that if legislation was required to establish a mandatory system, then this might need to include the following broad provisions:

- a duty on sellers, or more likely sellers' agents, to commission a specified house condition survey (and other pieces of information required for the Purchaser's Information Pack if these are to be taken on board) before a house is placed on the market;
- powers for Scottish Ministers to specify the format of the house condition survey and the content of any associated Purchaser's Information Pack;
- powers for Scottish Ministers to specify any exceptions from the duty to provide a house condition survey and Purchaser's Information Pack;
- powers for Scottish Ministers to establish arrangements for accrediting surveyors and ensuring quality control;
- sanctions for non-compliance.

52. There is also the question as to whether any legislation should include a duty on lenders to accept valuations based on house condition surveys produced according to the specified format and provided by accredited surveyors. In our view, the feasibility and desirability of any such duty would require very careful consideration and discussion. This would include consideration of whether this duty could be in conflict with prudential lending policies as required by the lenders' regulator, the Financial Services Authority, and whether legislation of this nature would be within the competence of the Scottish Parliament;

53. We noted this advice and consider that, ideally, the scheme should be market-led. However, we believe that the single survey approach has considerable advantages and it is always possible that the market-led approach may, despite the considerable support offered so far by the professional bodies involved, be hindered for reasons that are unconnected with its intrinsic merits, for example because of deliberate lack of co-operation by some firms. It follows that there may ultimately be reasons why a legislative approach is considered desirable to provide consistency across the market, and we believe that this option should be held in reserve.

Piloting the Single Survey

54. It was agreed that, irrespective of whether the single survey was to be introduced on a voluntary “market-led” basis or made a statutory requirement through legislation, then it would be important to pilot the single survey in the first instance. We propose that such a pilot should:

- robustly test the single survey in a range of market conditions (high and low demand areas; areas where both solicitors and estate agents were active as agents) and locations, preferably both urban and rural;
- last for at least 6 months between spring and autumn or, better, a year;
- focus primarily on testing the technical adequacy of the single survey approach (the content and format of the revised survey, the quality control checks, the time and resources required to prepare surveys), the acceptability to clients of single surveys, and, for those that did use them, the extent to which they are satisfied;
- in order to properly test the market for the single survey, subsidise its cost to the consumer only to the extent of underwriting the potential loss to the seller of being unable to recoup the survey fee either because the property was not sold or because the purchaser had declined to use it;
- be developed and managed in co-operation with the relevant professional and consumer interests and, independently monitored and evaluated.

55. It is essential for there to be a high level of interest and support for the aims and objectives of the pilot amongst the relevant professionals advising buyers and sellers on the proposed pilot area or areas. We have been advised by the Law Society, RICS and CML that the pilot will receive the highest level of co-operation from all the professional bodies involved.

Summary of conclusions and recommendations

56. Our conclusion is that there is a very strong case, in principle, for the introduction of a single survey approach in Scotland and that our detailed examination of the practicalities has not identified any fundamental problems that cannot be resolved.

- *Therefore, we recommend that the Scottish Executive should take forward our proposals for a single survey on the following basis:*

- *There should be an initial pilot or pilots and these should be carefully planned and monitored.*
- *Any subsequent extension to cover Scotland as a whole should take account of the experience and lessons learnt from the pilot or pilots;*
- *Whilst we see considerable merit in building upon the existing Homebuyer's Survey, we recommend that prior to the proposed pilot, the detailed content of the survey, and alternative approaches, be examined independently but with the co-operation of RICS, to achieve the best balance of content and cost;*
- *An energy efficiency report and a summary disability access report should be included as standard and a security report might be provided as an optional extra;*
- *Consideration should be given to the possibility of modifying, for the single survey, the exclusions that currently apply to the Homebuyer's Survey;*
- *A hidden/latent defects guarantee should ideally be available as an option or addition to the ultimate purchaser;*
- *There should be no prescribed "shelf life" for the survey;*
- *Surveyors suitably qualified in valuation should carry out the surveys;*
- *Decisions on arrangements for continuous monitoring beyond the pilot phase should be taken in light of the experience of it;*
- *A style of contract should be prepared which would effectively limit the contractual liability of the surveyor to the eventual purchaser and any lender;*
- *Sellers or their agents should only release the survey to a prospective buyer if the latter agrees, in the event of successfully purchasing the property, to meet the cost of the survey;*
- *The commissioning process and the commissioning fees for single surveys are fully disclosed to clients;*
- *The single survey should include a valuation available to all prospective purchasers who opt to use the survey;*
- *There should be a clear understanding that follow up queries would not be possible in connection with the single survey, except where there are glaring issues of clarity that require to be addressed for all interested parties;*
- *The scheme should be market-led and should be piloted as such. However, we are aware that there may ultimately be reasons why a legislative approach is considered desirable to provide consistency across the market, and we believe that this option should be held in reserve.*

Section three - Proposals for a Purchaser's Information Pack

Introduction

57. We have also given consideration to whether it would be desirable for other types of information, i.e. apart from any physical survey or valuation, to be available to prospective purchasers when the house is put on the market by the sellers agent. We concluded that there would be considerable advantages in the context of the Scottish house buying and selling process, in agents for sellers of residential properties, including Right to Buy and new build properties, putting together a standard "Purchaser's Information Pack" that would include specified documents and information for prospective buyers. This would be done before the property is put on the market, although in order to avoid unnecessary production costs the complete pack might only be offered to prospective buyers who express a serious interest.

58. Under the present home buying process, the buyer obtains certain information about the property only after an offer has been accepted. This in itself can lead to delay while the information is being assembled but it can also mean that problems with transactions may come to light only after several weeks, by which time the buyer and seller may have incurred significant costs in legal fees, surveys, etc. This can delay the conclusion of contracts and, in the most extreme cases, result in sales falling through altogether.

59. By providing certain information at the outset, we believe that the process can be made faster, more transparent and consumer friendly. This means less risk of transactions being held up or collapsing, less wasted expenditure and earlier certainty for everyone. It should also help highlight common and shared obligations, including liability for property management and repair costs. It will, however, require a considerable change in approach since sellers' agents will need to undertake the necessary work before a house is put on the market and sellers will need to recognise that this will inevitably take a certain amount of time.

The content of the proposed Purchasers Information Pack

60. We have given careful consideration to the desirable, minimum contents of any such pack in the Scottish context. Our view is that it should contain:

- copies of any planning, listed building consent and building warrants relevant to work carried out on the property. Where building warrants may have to be required and are not available, it has been the common practice in the past to ask for a "letter of comfort" from the local authority. We understand that these may not be available in future as a result of the provisions of the Buildings Bill currently before Parliament and that a building standards inspection report (which will assess the building against the current building standards) will be offered as an alternative;
- any guarantees for work carried out on the property (e.g. damp proofing or rot eradication) as appropriate and, for new properties, copies of relevant warranties and guarantees, for example, any NHBC guarantee;
- a copy of the land certificate or, where a certificate is not available, at least a summary of common repair and maintenance burdens attached to flatted properties;

- a summary note of any relevant property management arrangements which would include details of any property manager (name, contact address, fees) and if applicable, any owners' association (role and contribution);
- a Coal Authority Report if applicable.

61. One possible additional item that we considered in the context of the Pack was a "log book" recording work carried out on the property. This approach is quite commonly suggested and the analogy is often drawn with a log book for a car, which is accepted as the norm and which car buyers are generally advised to examine carefully before buying a second hand vehicle. However, this analogy is not entirely apposite, because whereas most vehicles currently on the road will have had a manufacturers' log book and maintenance schedule provided when new, no such documentation will be available for the great majority of second hand homes.

62. Whilst we support the principles behind the log book idea, we concluded that it should not be treated as a necessary part of the Pack, largely because of difficulties in prescribing what should be contained within it for a variety of different properties and verifying that the stated work had in fact been carried out to an acceptable standard. These difficulties appeared to conflict with our desire to promote a Pack that can be compiled relatively easily, containing standard information upon which the buyer can rely.

63. We nevertheless believe that the log book does have merit in its own right, and that its use should be encouraged by the professionals advising home buyers. Homepointer 26 *How fit is your house?*, published by Communities Scotland, contains a guide to house maintenance that incorporates a log book. We believe that this would be a very useful guide for home buyers and could act as an incentive to plan for future maintenance, to carry out regular checks and routine work, and to keep details and supporting evidence of any major repairs. We recommend that solicitors should issue copies of *How fit is your house?* to buyers and that Homepoint should ensure that this document can be downloaded from the internet as well as purchased in printed form.

64. It would be particularly advantageous if purchasers of new houses were encouraged to keep log books from the outset. We also, therefore, recommend that developers supply buyers of new build homes with a maintenance log book for that particular property, together with copies of the plans and architectural drawings if available.

Introducing the Pack

65. Where a Pack is provided, it should be the seller who is responsible and liable for the accuracy of its contents; this could be written into the missives. Agents would, of course, offer advice and assistance and, in practice, normally be responsible for assembling the Pack.

66. We believe that because preparation of the Pack largely involves the same transaction matters as at present, only earlier in the process, there should be no particular difficulty in compiling the necessary information. There will be, however, the additional limited administrative cost of putting the information together as a pack and providing sufficient copies for all prospective purchasers. However, we do not believe that any such additional costs need be significant.

67. Sellers would not necessarily have to pay for a Purchaser's Information Pack at the outset if the agent agreed to defer any production charges (but not the outlays, which would be billed as incurred, as at present) until the property is sold. That is already the current arrangement for estate agents' and solicitors' fees in most cases.

68. We considered whether legislative provision should be introduced to ensure that the pack was provided. Because the Pack will involve some increased outlay by the seller, with a voluntary scheme there would be a temptation for a seller to attempt to save money by declining to provide it. Whilst we believe that a Pack would in fact provide a market advantage to a seller, if it was considered that all buyers benefit from them, Packs may need to be made compulsory. However, this clearly raises issues similar to those outlined in our earlier consideration of a legislative approach to the single survey.

69. On balance, we believe that a Purchaser's Information Pack should ideally be marketed and should be piloted as such with the co-operation of The Law Society of Scotland. This should be undertaken in a similar way to, but not directly in conjunction with, the proposed single survey pilot. As well as testing the composition and value of the contents, market reaction and customer satisfaction, it should aim to analyse the administrative and production costs of supplying sufficient copies of the Pack to prospective buyers.

70. However, as in the case of the single survey, we consider that the Purchaser's Information Pack has considerable merit and there may ultimately be good reasons why a legislative approach, underpinned by a civil penalty regime, is necessary to ensure consistency across the market. We would therefore wish the option of legislation to be held in reserve in case it proves necessary and we think that local authorities and RSLs should be encouraged and, if necessary required by law, to provide copies of packs when selling under the right to buy.

Summary of conclusions and recommendations

- ***We recommend that sellers of residential properties, including Right to Buy and new build homes, provide a "Purchaser's Information Pack" that would include standard documents and information for prospective buyers. Sellers would do this before they put their property on the market. The Pack should contain:***
 - *copies of any planning, listed building and building regulations consents and approvals, or a building standards inspection report if the relevant consents cannot be provided;*
 - *any guarantees for work carried out on the property (e.g. damp proofing or rot eradication) and for new properties, copies of warranties and guarantees;*
 - *a copy of the land certificate or, where a certificate is not available, at least a summary of common repair and maintenance burdens attached to flatted properties;*
 - *a summary of any property management arrangements;*
 - *a Coal Authority Report if applicable .*
- ***We recommend that where a Pack is provided, it is the seller who is responsible and liable for the accuracy of its contents.***

- *We recommend that the Pack should be piloted as a, voluntary, market-led scheme. This should be undertaken in a similar way to, but not directly in conjunction with, the proposed single survey pilot, and one of its aims should be to analyse the administrative and production costs involved.*
- *However, as in the case of the single survey, we consider that there may ultimately be good reasons why a legislative approach is necessary to ensure consistency across the market. We would therefore wish the option of legislation to be held in reserve in case it proves necessary and we think that local authorities and RSLs should be encouraged, and if necessary required by law, to provide copies of packs when selling under the right to buy. The experience of the pilot should be assessed with a view to deciding whether a legislative approach is necessary.*
- *Whilst we do not believe that a “log book” should necessarily be included as part of the Purchaser’s Information Pack as outlined, we recommend that solicitors should issue copies of Homepointer 26 How fit is your house? to buyers and that Homepoint should ensure that this document can be downloaded from the internet as well as purchased in printed form.*
- *We also recommend that developers supply buyers of new build homes with a maintenance log book for that particular property, together with copies of the plans and architectural drawings if available.*

Section four – Other issues

71. As well as examining the core issue of information to the buyer on the condition and maintenance of a property, through consideration of the options for single surveys, purchasers' information packs and log books, we looked at a number of other areas where there might be changes to the buying and selling process.

The Selling process

Closing dates

72. We considered whether sellers and their agents should be encouraged to give prospective buyers a reasonable period to consider whether they wish to offer for a property. This would require legislation to specify that sellers should allow for setting a minimum notice period before the setting of closing dates for offers or for a minimum period between marketing and acceptance of an offer. This would allow potential buyers to have more time to consider the outcome of a valuation or survey before making an offer for a property. It might encourage a more measured approach generally, with buyers more inclined to commission a more extensive survey report if they felt they would have time to study it properly and, if necessary, ask more questions.

73. However, there will always be people who will instruct late valuations, and who will still not have sufficient time to fully consider the outcome before the closing date.

74. Solicitors normally recommend reasonable notice of closing dates anyway, because it is generally in the seller's interest to allow interested parties sufficient opportunity to commission a valuation or survey and decide if they want to bid.

75. Also, this option would positively disadvantage a seller who had good reason to seek a quick sale or had received a good offer that might not remain on the table if there was an enforced notice period.

76. We concluded that changes along these lines would be heavy-handed, bureaucratic and out of proportion to the problem. They could have the unwelcome effect of prolonging the overall process at least as far as the most desirable properties are concerned and any legislation would be very difficult to enforce. We concluded that the underlying problem of lack of awareness of property condition information is better addressed through our single survey proposals.

Blind bidding

77. We also considered the arguments for altering the existing blind bidding system. "Blind bidding" is only a convention that has developed in the Scottish house buying system although some houses are sold by public auction. To abolish "blind bidding" would necessitate legislation to require the use of certain prescribed method or methods of selling, for example, an auction.

78. Abolition of blind bidding would enable prospective buyers to judge whether they are actually able to afford the property in light of other bids tabled and allow them, if they desired, to bid a slightly higher sum rather than risk losing the sale because of a small margin.

They would also be able to avoid paying “well over the odds” simply to try to ensure that they have outbid other competitors.

79. From a property condition point of view, there might be less concern about incurring lost survey fees if a prospective buyer was aware of existing bids and believed there was a realistic chance of securing the property. Also, in some cases buyers might need to spend less on securing the property and would then have more funds available to pay for repairs and maintenance.

80. Whilst blind bidding is generally considered to be to the seller’s advantage, it might be argued that knowledge of bids “on the table” would actually encourage competition for the property and thus still be beneficial to the seller. On the other hand, open bidding of this kind would remove the integrity of a system that currently treats an individual’s offer in the strictest of confidence.

81. Property auctions are sometimes cited as being successful in other countries, but there would, aside from practical issues of where, when, and how they would be held, be some “cultural” inhibitions to overcome, since property auctions here have historically been seen as a way of selling only repossessed or hard-to-sell homes. Views have changed quite considerably in recent years, however. It is also not clear that the auction approach would present any solution to the problem of multiple surveys, since there would still be uncertainty for prospective buyers about whether they would ultimately be successful.

82. We concluded that a compulsory move away from blind bidding should not be recommended because:

- it is a convention that is well established and understood;
- other approaches are in any case available and there is nothing to prevent use of these alternatives if there is a market demand for them, for example, as a result of changes in technology which make remote auctions using IT feasible;
- a universal move to an another system would require legislation to make it mandatory, a solution that we believe to be out of proportion to the problem identified, particularly since many homes in Scotland are not sold with a closing date;
- one of the stated intentions of our single survey proposals is to counter the multiple survey problem, which we believe will in turn tackle the major cause of the dissatisfaction with the blind bidding process;
- our proposal that the single survey should include a valuation is in part aimed to counter the practice of setting artificially low upset prices, which we believe is an important factor in buyer dissatisfaction with blind bidding.

Low upset prices

83. We have considered whether other measures (over and above the single survey) might be adopted to prevent the setting of unrealistically low “offers over” prices, which we believe to be unfair to buyers and damaging to the credibility of the buying and selling system generally. Setting the upset price closer to the true value (expected selling price) of a property is fairer to prospective buyers because it will help them avoid spending time and money on considering properties that they subsequently discover they were never going to be

able to afford. In hot markets especially, the upset price sometimes gives no guidance to the buyer as to what the true sale value of a property is.

84. We recognise that a substantial number of homes are purchased at a “fixed price” (37% of all transactions, based on our research) or are subject of a single offer, and also that setting deliberately misleading upset prices is not practised by reputable agents. However, we believe that there is a general public perception that it regularly occurs, even if in reality it affects only a minority of house sales.

85. Our conclusion is that the problem of low upset prices is best tackled through putting in place an effective system of single surveys which would allow prospective purchasers to obtain an independent valuation (as discussed in Section 2). Before coming to this conclusion, we did, however, consider whether other approaches might be used as an alternative to or in support of single surveys. The possibilities we explored are:

- Introducing some form of “best practice” or professional code for setting upset prices. The main difficulty here is whilst it might be feasible for the Law Society of Scotland to oversee a code for solicitors, this would only affect part of the market and might even put their own members at a disadvantage compared to estate agents. Even if the National Association of Estate Agents were persuaded to promote a similar code in Scotland, because they are not a regulatory body as such there would be no way of making it effective, so solicitors would find themselves subject to structures that did not apply to estate agents doing exactly the same thing.
- Legislation to specify how upset prices should be set. In practice, this would require sellers to set upset prices in relation to some independent valuation, for example, not less than 80% or 90% of the valuation. Apart from the apparent curtailment of the sellers’ right to accept a lower price if they so wish, such a system would also require sellers to pay for independent valuations which would lead to further multiple valuations and, in our view, be quite disproportionate to the problem.
- Taking action under other regulation. Relevant legislation could include the Property Misdescriptions Act 1991, the Estate Agency Act 1979, the Control of Misleading Advertisement Regulations and the Fair Trading Act 1973. The advice available to us from Trading Standards Officers suggested that this legislation is potentially relevant but, largely untested.

86. While our seller’s survey proposals are considered and hopefully progressed, we recommend that the Scottish Executive and local authorities should meantime encourage the Office of Fair Trading and local Trading Standards officers to examine and test this issue in the context of existing legislation.

Concluding the contract and reducing delays

Standard missives

87. Despite a tendency to more complicated missives, the Scottish system is still generally considered comparatively quick and efficient, and we believe that although the introduction of standard missives might reduce the time taken to conclude a sale, it is unlikely to do so substantially.

88. The fact remains that buyers and sellers will want to specify particular issues and that standard missives would not be able to take account of all circumstances. Also, the best interests of clients may not always be served by solicitors taking the simplest and quickest option. Delays in the process will still result, as both parties will – quite legitimately – wish to achieve the best outcome for themselves.

89. Further, the system would still fail to eradicate delays caused by either party deliberately obstructing the process to suit their own purposes or, on occasion, by buyers having failed to secure the necessary funds.

90. That said, a continued lengthening of the process may reduce the perceived positive element of “certainty” in the Scottish system, because the longer the contract remains “open”, the more susceptible it is to a situation developing whereby either party may decide to withdraw from the agreement.

91. We are aware that various initiatives in this respect already have been tried. In particular, the Law Society of Scotland attempted to introduce standard missive clauses to solicitors firms in 1991. The Society’s intention was that the standard clauses should be incorporated into offers to purchase houses, but in practice they were little used, solicitors preferring to stick to their own styles. However, some firms do already routinely use certain standard terms and conditions.

92. We also note that the Law Society of Scotland’s Conveyancing Committee is now looking at the scope for using *pro forma* offers to sell, incorporating standard conditions of contract, and we strongly support this approach. We hope that these will eventually become part of the proposed Purchaser’s Information Pack.

Builders’ missives

93. During the course of our considerations, representatives of the Law Society of Scotland raised a number of concerns relating to a range of practices that developers have adopted both in the marketing of properties and in the terms of contract of sale frequently used. We believe that these leave the consumer in an unacceptably weak position, particularly if buyers are persuaded to sign the contract on the developer’s premises, without having an opportunity to take legal advice first

94. The Law Society’s Conveyancing Committee has identified seven main issues. Its concerns as reported to us are as follows:

- Deeds of Condition including important conditions relating to common maintenance obligations are often not prepared at the point of conclusion of missives and there is a concern that purchasers do not have all the information that should be available to them at the point of purchase.
- Deposits are required without prior agreement to refund to the purchaser the amount of the deposit paid in excess of the actual loss to the builder in the event that the transaction does not proceed. There is also a need for arrangements to ensure the refund of the deposit to the purchaser in the event of failure/liquidation of the builder.

- Some developers are using missives which in effect, require buyers to pay over the purchase price notwithstanding that no title is available to be delivered and what is being proffered is merely a personal undertaking by a firm of builders.
- Some builders' missives ask for payment of the price to be made to the builders directly and not to the builders' solicitors, which, it is argued, does not provide adequate protection for the purchaser in the event of there being a difficulty at settlement.
- Some builders' missives indicate that the builder will give an assurance that any necessary Licences and Permissions have been obtained for the development but that the solicitors purchasing cannot demand exhibition of these.
- Some missives provide that the development will be completed and that the plans of the development will be varied in such a manner at the sole discretion of the developer and give no warranty whatsoever with regard to the completion of the remainder of the development. This, it is suggested, can leave the purchaser in a very weak position in the hands of a less than scrupulous builder
- In some cases, purchasers may not be given details of the factor and factoring arrangements, including the scope of service to be provided during the missive negotiations.

95. Discussions with Trading Standards officers at Fife Council identified a range of additional issues that had been raised with them in relation to housing developments in their area. These included:

- *Delays in completion* - Missives may provide for an entry date but will usually make provision for this to be varied at the discretion of the builder. Whilst it is accepted that there will often be legitimate reasons for these delays it is not clear that initial completion dates are based on firm programme expectations. In addition poor communications with buyers may cause further problems. This may be particularly the case for those who have already sold their existing home.
- *Snagging and defects*- Whilst the NHBC insurance backed 10 year guarantee provides cover for major failures within the cover period as a result of caveat emptor there is little or no protection for within the missives for buyers in relation to less substantial defects. Such problems can, however, be significant so far as the purchaser is concerned.
- *Retentions*- Whilst it is established practice in almost all building contracts to retain part of the contract price against completion of the defects period (usually one year) new build housing developers routinely exclude any right to make a retention under any circumstances in the missives.

96. We think that these are important issues which require to give more detailed and thorough consideration than has been possible in the context of our remit and timescale. We therefore recommend that the Scottish Executive should undertake a specific review of this matter with the aim, if possible, of brokering an agreement between the various parties that might be required.

97. We further recommend that if it proves impossible to broker such an agreement that adequately addresses the interests of consumers, then consideration should be given to

introducing legislation (either in the Scottish or the UK Parliaments, whichever is appropriate) that would put in place minimum safeguards for buyers.

Clarifying the costs of the process

98. Transaction costs in Scotland appear to be relatively low by international standards. However, there is some evidence of inconsistent practice in respect of advising on costs on the part of some professionals acting for buyers and sellers, and we have considered whether this aspect can be improved.

99. There is a strong argument that cost information is available if consumers ask for it and that cost comparisons can be made if they “shop around”. Nevertheless, a uniform and clear presentation of all the likely costs is to the benefit of consumers and will presumably also increase customer satisfaction, which is good for the providers.

100. However, an expectation that a single all-encompassing estimate could be provided is unrealistic, given that several service providers may be involved and the actual services will vary according to a customer’s requirements.

101. It may also be that most problems with what consumers see as ‘hidden’ costs tend only to occur when particular complications arise, but it is impossible to know at the outset if this will be the case. It follows that although they should be able to provide a reliable estimate, service providers will generally always need to reserve the right to charge according to the particular circumstances that may arise .

102. It is also the case that some form of best practice for the various professions already exists, and it is application that may be the problem. The Law Society of Scotland, which already encourages its members to provide clear and unequivocal information in the form of Terms of Engagement letters, is considering whether to promulgate a Professional Practice Rule making such letters mandatory in domestic conveyancing matters for private clients. The Law Society advises that it will take this proposal forward to its Annual General Meeting in May 2003.

103. We welcome the Law Society’s approach and encourage all the service providers involved in the house buying and selling process to provide their clients with suitably clear estimates of costs as early in the process as possible.

The role of lenders

104. It has been suggested that an incentive for buyers to look after their homes has been diminished by the lessening in recent years of the extent to which lenders apply loan retentions to take account of necessary works identified in valuations or surveys. In practice, it was always difficult for lenders to administer retentions and verify that specified works had been carried out. In recent years, lenders have, in general, tended to focus more on a borrower’s ability to maintain payments rather than on the condition of the property, particularly where there is a comparatively low level of borrowing in comparison with the initial capital value of the asset.

105. One of the suggested proposals arising from Task Force-commissioned research into options for tax and benefits changes generally, was that lenders should be required to assess

the capital requirement for a mortgaged property depending on its condition. Broadly, the “safer” the loan is judged to be, the less of its own funds the lender needs to hold in reserve to cover the loan and the lower the interest rate the lender needs to charge the borrower to maintain the overall return on its working capital. Conversely, assuming that a property in a poor state of repair is a greater risk than a similar property that is well-maintained, because the lender would be required to maintain a greater reserve to cover the loan (the loan would have a higher “capital weighting”), it would need to charge a higher rate of interest. It was further proposed that the lender re-assess that capital requirement by commissioning a survey of the property every five years; and increase the capital weighting and thus apply higher interest rates if the property is not maintained in good condition. It was suggested that this would act as an incentive to both lenders and owners to ensure that properties were maintained to a good standard.

106. We examined this proposal but concluded that it was not an approach that we wished to endorse. Amongst the reasons for its rejection are that it goes against the policy and market preference noted above of focusing on affordability rather than security assessment; that enforcement measures would be necessary in the event of an owner refusing to allow access or pay for the survey; that there would be a huge logistical task in organising and carrying out the number of surveys required, many of which would not in any case be necessary if responsible owners were looking after their properties anyway; and that complex mechanisms would need to be put in place to assess each survey, apply the correct capital weighting and establish the correct interest rate.

107. More generally, we believe that this approach would run against the recurring theme of the Task Force’s work that owners should have the primary responsibility for the condition of their own homes, supported by measures to intervene where there is a failure or inability to meet that responsibility. The impact of this proposal would be to transfer that responsibility very largely on to the lenders, at least for those properties subject to mortgage.

108. We believe that lenders do have a part to play, but that beyond generally advising borrowers of the importance of maintaining their homes, any specific responsibility will be closely related to the interest in condition that they might reasonably be expected to have in order to minimise their risk. We believe that, from a public policy point of view, it would be helpful for lenders to continue to use retentions where there are major repairs to be carried out. We also believe that, in these circumstances, retentions are also likely to be in the interests of the lenders themselves. At present, practice on retentions does vary between lenders and we therefore recommend that the Council of Mortgage Lenders should produce guidance on this to assist its members in achieving a consistent approach, with a view to ensuring that retentions are used in appropriate cases.

Redress

Caveat Emptor

109. The essence of caveat emptor is that it absolves the seller of any responsibility for the condition of the property being sold or for providing information on the condition of the property. The buyer is wholly responsible for satisfying him/her self as to the condition of the property and has no grounds for redress in the event of the discovery of undisclosed defects after the sale has been completed.

110. Arguments for changing this principle are that the seller should have some responsibility for informing buyers about disrepair, that sellers would be less inclined to conceal defects if they knew that they could ultimately be held responsible for them in any case, and that increased protection would be afforded to the purchaser in the event that defects later came to light.

111. We are unconvinced, however, that modifications are appropriate to safeguard the interests of the buyer in what is in most cases a private transaction between individuals. In such circumstances we do not believe that the interest of the buyer should be unduly weighted against that of the seller: it is up to the seller how the property is offered and the buyer freely enters into the contract. We are not aware, in any case, that *caveat emptor* is widely exploited by sellers to the detriment of buyers.

112. In addition there would be a range of practical problems in defining the limits to be placed on *caveat emptor*, such as prescribing the types of defect that would be covered, the extent to which the seller could have been expected to know about a given defect, how long the seller would remain responsible and how it could be established that it was the fault of the seller and not of the new occupier.

113. In practice, the purchasing solicitor often includes clauses about the condition of certain aspects of the property in the missives, and we consider that this is beneficial to both parties in terms of contractual clarity.

114. Also, if *caveat emptor* is modified, it may well impact negatively on buyers because prudent sellers will market their properties at a higher price to cover any costs for repairs that they may be obliged to carry out. The alternative of insurance for sellers is likely to be prohibitively expensive.

115. We are not, therefore, in favour of recommending a general change to the principle of *caveat emptor* in respect of second hand homes, believing that the answer lies in providing better information to buyers in the first instance. A pre-sale single survey approach such as we have suggested means that sellers can be apprised of defects that they may not have been aware of, so that they can choose whether to rectify them before they market the property or to adjust their selling price expectations to reflect defects that the buyer will know about. Buyers will be able to offer for the property with the benefit of a survey upon which they can rely.

116. However, as outlined earlier, we do not believe that *caveat emptor* works in respect of new build developments, where the sale is not between two private individuals and where the builder is in a similar position to other commercial providers of goods and services who are expected to comply with consumer protection legislation. Further consideration of this particular aspect is necessary, as recommended at paragraphs 96 and 97 above.

Complaints about professional advice

117. We believe that consumers must have access to adequate, fair and affordable means of redress if they have a complaint about any of the professionals involved in the buying and selling process. The Task Force's first stage report concluded that there is not a significant use of the avenues of redress open to consumers, where they face difficulties due to poor advice from professionals. This may be the result of failings in the existing avenues of

redress, or a lack of advice on how to make a complaint. Equally, it could be because most consumers are generally happy with the service they receive. Indeed there is evidence, not least from the Task Force's own research, that the latter is the case.

118. All the main service providers believe that consumers are well provided for by the complaint mechanisms built in by e.g. the Law Society of Scotland and RICS, although some consumer dissatisfaction remains and there have been recent developments towards improvement, as outlined below. Aside from these provisions, they can, of course, raise an action in the courts, although it is accepted that consumers are generally wary of court processes and the costs involved, and that the preference is generally for a less expensive, more informal and quicker process.

119. We are also aware of a number of recent developments in this area. As regards the handling of complaints about services provided by solicitors, the Scottish Parliament Justice 1 Committee published a report on 27 November 2002 on its enquiry into the Regulation of the Legal Profession.

120. The Committee concluded that self-regulation was the most effective regulatory system as, unlike a completely independent system, it involves the legal profession taking direct responsibility for setting its standards, monitoring compliance, and having primary responsibility for providing consumer redress. The Committee recommended, however, that the present system of self-regulation should be reformed to make it more acceptable to consumers and more representative of the public interest, and to provide for greater independent oversight. To that end, the Committee recommended increased lay involvement and a range of changes to improve the way in which the professional bodies themselves handled complaints and to augment the powers of the Scottish Legal Services Ombudsman.

121. In the light of the very thorough review of this issue and the extensive consultation undertaken by the Committee, we see no value in making further recommendations on this issue.

122. We are also aware that RICS intends to further enhance the service to its members' clients by introducing an Ombudsman service to deal with matters that remain unresolved even after the existing complaints mechanism has been invoked. We welcome this development, and suggest that some of the findings of the Justice 1 Committee's report into legal services might be taken into account when developing the RICS Ombudsman scheme. We also recommend that RICS take account of the British and Irish Ombudsman Association recommendations and guidelines on developing and operating such services.

123. The National Association of Estate Agents (NAEA) has a complaints and mediation mechanism covering its members, and there is also an Ombudsman for Estate Agents. However, the accessibility of these schemes to consumers is limited because membership of both the NAEA and of the Ombudsman scheme is voluntary, so that not all estate agents are covered. We recommend that the Scottish Executive examine, with the two bodies concerned, whether there are ways in which an adequate complaints mechanism can be accessed by consumers regardless of which estate agent is used.

Summary of conclusions and recommendations

- *We concluded that action to set a minimum notice period before the setting of a closing date for offers or for a minimum period between marketing and acceptance of an offer would be heavy-handed, bureaucratic and out of proportion to the problem. We consider that the underlying problem of lack of awareness of property condition information is better addressed through our single survey proposals.*
- *We concluded that a compulsory move away from blind bidding should not be recommended because:*
 - *it is a convention that is well established and understood;*
 - *other approaches are in any case available and there is nothing to prevent use of these alternatives if there is a market demand for them, for example, as a result of changes in technology which make remote auctions using IT feasible;*
 - *a universal move to an another system would require legislation to make it mandatory, a solution that we believe to be out of proportion to the problem identified;*
 - *one of the stated intentions of our single survey proposals is to counter the multiple survey problem, which we believe will in turn tackle the major cause of the dissatisfaction with the blind bidding process;*
 - *our proposal that the single survey should include a valuation is in part aimed to counter the practice of setting artificially low upset prices, which we believe is an important factor in buyer dissatisfaction with blind bidding.*
- *Our conclusion is that the problem of low upset prices is best tackled through putting in place an effective system of single surveys which would allow prospective purchasers to obtain an independent valuation.*
- *In the meantime we recommend that the Scottish Executive and local authorities should encourage the Office of Fair Trading and local Trading Standards officers to examine and test this issue in the context of existing legislation.*
- *With regard to the use of “standard missives”, we note that The Law Society of Scotland’s Conveyancing Committee is now looking at the scope for using pro forma offers to sell, incorporating standard conditions of contract, and we strongly support this approach.*
- *We believe that there are important consumer interest issues around the practices that some developers have adopted in the marketing of properties and in the terms of contract of sale frequently used. Because these require more detailed and thorough consideration that has been possible in the context of our remit and timescale, we recommend that the Scottish Executive should undertake a specific review of this matter with the aim, if possible, of brokering an agreement that might be required between the various parties.*

- *We further recommend that if it proves impossible to broker such an agreement that adequately addresses the interests of consumers, then consideration should be given to legislation that would put in place minimum safeguards for buyers.*
- *With regard to clarifying the costs of buying and selling process we welcome the Council of The Law Society's proposal that there should be a Professional Practice Rule requiring its members to provide Terms of Engagement letters in domestic conveyancing matters for private clients.*
- *We also encourage all the service providers involved in the house buying and selling process to provide their clients with suitably clear estimates of costs as early in the process as possible.*
- *We recommend that lenders should continue to use retentions where there are major repairs to be carried out and that the Council of Mortgage Lenders should produce guidance to assist its members in achieving a consistent approach to ensure that retentions are used in appropriate cases.*
- *We do not recommend a general change to the principle of caveat emptor in respect of second hand homes, believing that the answer lies in providing better information to buyers in the first instance.*
- *We welcome the Scottish Parliament Justice 1 Committee's report on its enquiry into the Regulation of the Legal Profession and the planned RICS development of an Ombudsman scheme for complaints against its members. We recommend that the Scottish Executive examine, with the National Association of Estate Agents and the Ombudsman for Estate Agents, whether there are ways in which an adequate complaints mechanism can be accessed by consumers regardless of which estate agent is used.*

ANNEX A: RICS VIEWS ON THIS CONTENT AND FORMAT OF THE PROPOSED SINGLE SURVEY

THE PROPERTY & LOCATION	
The Property	Type and Age Construction Accommodation Garage and Grounds
The Location	
Circumstances of the Inspection	Weather Limits to Inspection
THE BUILDING	
Movement	
Timber Defects	
Dampness	Damp-proof course Rising and penetrating damp Condensation
Insulation	
The Exterior	Roof structure and covering Chimneys Rainwater fittings Main walls External joinery External decoration
The Interior	Roof space Ceilings Floors Internal walls and partitions Fireplaces etc Internal joinery Internal decoration
THE SERVICES	
The Services (ideally these will have been tested by qualified personnel and relevant certificates included as part of the Buyer's Information Pack and available to the surveyor in advance).	Electricity Gas Water Heating
Drainage	
LEGAL AND OTHER MATTERS	
Ideally this information should be available to the surveyor in advance as part of the Buyer's Information Pack.	Building Standards Assessment Building Warrants Guarantees Planning Consents
VALUATION	
Open Market Value	
Insurance Cover (Reinstatement Cost)	

In addition to the above information, we suggest that the following information could be added to the single survey at a cost of £45 for each item (this is an indicative cost and could well be subject to change depending on the level of detail required).

ENERGY EFFICIENCY SURVEY	
Based on the Government's Standard Assessment Procedure	<p>Home Energy Rating</p> <p>Existing Home Energy Efficiency Features (i.e. a list of features already installed).</p> <p>Improvement Options (i.e. a list of suggested improvements, together with an approximate cost, annual savings and an approximate payback period).</p>
DISABLED ACCESS ADAPTATIONS	
A very limited report on accessibility should be included. This cannot be detailed as the surveyor will be unaware of the needs of any potential purchasers and cannot therefore tailor the report to the circumstances of a particular disability.	<p>A note of corridor widths, width of doorways etc.</p> <p>A report on the external environment, e.g. number of steps, whether a ramp could be installed.</p> <p>A list of visible adaptations, e.g. hand rails, lowered light switches, lowered worktops, wet room, etc.</p>
SECURITY REPORT	
	<p>External –surrounding area, surrounding properties, external boundaries and lighting.</p> <p>Outbuildings –garages, sheds or outbuildings, types of locks.</p> <p>Building Openings – types of locks used, both on doors and on windows.</p> <p>Alarm Systems – information on alarm systems or existence of alarm boxes.</p>
MAINTENANCE REPORT	
A non-exhaustive list of general maintenance advice, not property specific.	

Exclusions

Current limitations to the Homebuyer are as follows:

The inspection is a general surface examination of those parts of the property which are accessible, i.e. visible and readily available for examination from ground and floor levels, without risk of causing damage to the property or injury to the surveyor – this includes examination from staircases and within accessible roof voids and sub-floor areas; individual timbers are not examined. Due care is therefore exercised throughout the Inspection regarding safety, practicality and the constraints of being a visitor to the property (which may be occupied). So, furniture, floor coverings and other contents are not moved or lifted, although loose corners or carpets which can be lifted without use of tools may of course be lifted. No part is forced or laid open to make it accessible.

Services are inspected but the surveyor would not test or assess the efficiency of electrical, gas, plumbing, heating or drainage installations, or compliance with current regulations, or the internal condition of any

chimney, boiler or other flue. In addition, the surveyor does not research the presence (or possible consequence) of contamination by any harmful substance, although if a problem is suspected in any of these areas, advice would be given on what action should be taken.

A ladder is used for hatches and also for flat roofs not more than three metres above ground level. Any further extent to which a ladder is used is at the discretion of the surveyor.

Leisure facilities and non-permanent outbuildings (such as pools and timber sheds) are noted but not examined.

In the case of flats, exterior surfaces of the building containing the property, as well as the communal areas within the building, are examined in order to assess their general condition; accessible roof spaces are inspected (i.e. those roof spaces which are not accessible from the stairwell are not inspected).

With regard to the single survey, RICS Scotland considers that some of these limitations could be overcome given the extra time a surveyor would have to carry out the single survey, e.g. carpets could be lifted if there were sufficient time; or where access to a roof space is from another property, the surveyor should have sufficient time to contact the owner of the neighbouring property to request access. Further consideration will be required in this respect.

Annex B: RICS ADVICE ON POSSIBLE CHARGES FOR THE PROPOSED SINGLE SURVEY

Purchase Price/Valuation Not exceeding (£'s)	Single Survey (£'s) (including valuation)	
50,000	250.00 + 43.75 VAT	293.75
75,000	280.00 + 49.00 VAT	329.00
100,000	305.00 + 53.38 VAT	358.38
125,000	335.00 + 58.63 VAT	393.63
150,000	365.00 + 63.88 VAT	428.88
175,000	385.00 + 67.38 VAT	452.38
200,000	425.00 + 74.38 VAT	499.38
225,000	450.00 + 78.75 VAT	528.75
250,000	490.00 + 85.75 VAT	575.75
275,000	515.00 + 90.13 VAT	605.13
300,000	550.00 + 96.25 VAT	646.25
350,000	525.00 + 97.87 VAT	616.87
400,000	550.00 + 96.25 VAT	646.25
450,000	575.00 + 100.62 VAT	675.62
500,000	600.00 + 105.00 VAT	705.00
Exceeding 500,000	By arrangement	

Costs of additional features/information

Energy Efficiency Report	45.00 + 7.87 VAT	52.87
Disability Access Report	45.00 + 7.87 VAT	52.87
Security Report	45.00 + 7.87 VAT	52.87
Hidden Defects Guarantee	100.00	