

# **Stewardship and Responsibility: A Policy Framework for Private Housing in Scotland**

## **Response by the Council of Mortgage Lenders**

### **to the final report of the Housing Improvement Task force**

**17 June 2003**

#### **Introduction**

1. CML Scotland welcomes the opportunity to respond the final report of the Housing Improvement Task Force (HITF): *Stewardship and Responsibility: A Policy Framework for Private Housing in Scotland*.
2. The Council of Mortgage Lenders is the representative trade body for the residential mortgage lending industry. Its 144 members currently hold of 98% of the assets of the UK mortgage market. CML Scotland represents those members lending in Scotland to the private housing market or for new-build repair and improvement to social housing.
3. This response has been prepared following consultation with the CML Scotland Committee of lenders.

#### **General remarks**

4. CML Scotland has been pleased to play a full part in the work of the Task force over the past two years. It was encouraging to see a constructive interest being taken in the private housing market so early in the life of the Scottish Parliament.
5. CML Scotland broadly welcomes the conclusions of HITF as expressed in the report. The underlying belief that the primary responsibility for repair and maintenance in the private sector lies with owners themselves is a sound one. Home ownership is about choice. It is attractive precisely because it allows owners the freedom to decide on the main features of their domestic environment. In the last resort, owner-occupiers have the right to determine their own repair and maintenance priorities. The state can recommend certain courses of action and can offer incentives, but over prescriptive action would risk undermining a fundamental incentive of home ownership, and HITF have, in the main, avoided this course.
6. It is also pleasing to note that HITF has made recommendations that, in the main, work alongside the housing and mortgage markets, rather than attempting to direct them. Both markets are highly competitive. In the case of the mortgage market, this is evidenced by the very wide range of mortgage products now on offer, the high rate of remortgaging, and the existence of the lowest mortgage rates for many years, reflecting the degree to which the benefits of a low interest rate environment have been passed on to customers.
7. As with the first report of HITF, it is unfortunate that the alleged issue of poor property condition is given prominence at the front of the report. As CML Scotland has already pointed out, according to successive editions of the *Scottish House Condition Survey* stock condition is steadily improving (c.f. the figures for homes below the Tolerable Standard). Repair costs are not disproportionate to the value of properties, and should be seen in the context of the Scottish housing market which delivers homes that are more affordable than for the UK in general. It is important that the problems of disrepair that do exist are dealt

with in a way that reflects the responsible attitude of most homeowners. The higher incidence of problems in the private rented sector should be tackled in the context of the prevalence of small landlords who are not equipped to handle a large increase in bureaucracy, and may not be able to absorb major increases in costs. These landlords, nevertheless, perform a valuable housing service. The sector has, in recent years, been enhanced by the expanding buy to let market. It is believed that buy to let properties are generally in good condition and have significantly expanded the range of choice available to those choosing to rent their home; it is important that incentives to enter the buy to let market are not eroded by measures that would increase landlord costs or necessitate complicated or time consuming administrative procedures.

### **Specific comments**

8. References to Chapters are to the HITF report. This response focuses on those recommendations where lenders have particular concerns, or can offer particular experience or information.

## **Chapter 2: Quality standards for private housing in the 21<sup>st</sup> century**

### **Background**

9. CML Scotland welcomes the clear recognition in the report that responsibility for the upkeep of houses in the private sector lies first and foremost with their owners. One of the major benefits of home ownership perceived by most owners is the ability to exercise choice. A homeowner is, and should be, free to make choices that others might not make and caution needs to be exercised in introducing measures that could erode that freedom and distort the operation of the housing market. This is particularly the case given that, unlike other sectors of the market, there is little state support for owners and no incentives in the tax and benefit system to save for major repairs (savings held by low income owners may count against any benefit entitlement). Most expenditure on repair and maintenance by owners is taxed in the same way as other consumption expenditure.

10. CML Scotland agrees that “well-defined, relevant standards help to shape policies, inform investment decisions, target intervention and monitor progress in improving housing quality”. We, therefore, support the introduction of standards. However, we believe that, unless there are compelling reasons for different standards being adopted in different parts of the UK, there is a strong case for consistency. We believe that developing a consistent set of standards in a UK context will help achieve the objectives of the Scottish Executive.

11. We would emphasize that implementing the necessary work to achieve the standards has a cost, and this needs to be fully taken into account in adopting and implementing the new set of standards. The recent Communities Scotland report *The Future of Owner Occupation in Scotland* (2001) suggests that some 38% of the lowest income decile households in Scotland live in owner occupation. What the report does not go on to state, but which is equally important, is research (Burrows and Wilcox 2001) that suggests that low-income homeowners are significantly disadvantaged in their access to public housing assistance, compared to social housing tenants. UK wide the 57% of households in owner occupation receive less than 10% of public housing expenditure.

12. The first report of the Housing Improvement Task Force recognised that the tax and benefit system has become increasingly unsympathetic towards homeowners. (Paragraph 65).

The abolition of MIRAS and cuts in income support for mortgage interest has both contributed to this situation in recent years. CML has campaigned for the introduction of tenure neutral Housing Credit that would improve the position of low-income homeowners in work and would begin to rectify the imbalance in the provision of public housing assistance between tenants receiving housing benefit and owners.

### **Updating the Tolerable Standard**

13. CML Scotland agrees that the Tolerable Standard is too low by modern standards and that there is a need to consider a new higher measure of housing condition more appropriate to modern expectations. However, we would re-affirm our view that the Scottish Executive should consider the merits of adopting a UK wide standard. There are distinct benefits in the adoption of an agreed standard across the UK, including the ability of CML members to be able to compare the position in Scotland with the Unfitness standard used in England, Wales and Northern Ireland. This is a more testing standard than the Tolerable Standard, and its use in Scotland would allow data on stock condition and progress in improving that condition to be compared on a UK wide basis.

### **Scottish Housing Quality Standard**

14. CML Scotland is preparing its response to the Scottish Executive's consultation paper on Modernising Scotland's Social Housing (responses due by 30 June 2003). Certain of the issues raised in that paper are relevant in respect of the Scottish Housing Quality Standard.

15. CML Scotland wishes to highlight the need for consistency between the Scottish Social Housing Standard, the Scottish Housing Quality Standard and other standards operating in the UK; in particular, the Decency Standard in England and Welsh Housing Standard. CML members provide funding to support housing projects across the whole of the UK. While recognising the Scottish Executive's desire to provide Scottish solutions to Scottish problems, we would urge that, unless there are compelling reasons for major variations in the standards used between Scotland and the rest of the UK, there are distinct benefits in having a level of consistency between the standards.

16. Lenders take full account of house condition and standards in making decisions on funding of individual projects. Assessing house condition and determining value are complex issues, and the Executive is looking to streamline elements of these processes. The introduction of an agreed and authoritative standard, including the use of shared/agreed definitions, has the potential to make a positive contribution. However, if there are variations in the standards in different parts of the UK, or different terminology is used, this introduces an unnecessary complication for lenders who operate on a UK wide basis. In effect, the Executive has already recognised the problem caused *within Scotland* of different local authorities using different standards. We would ask the Executive to extend the logic of that approach, and consider the benefits of an alignment of standards *across the UK*. We believe this will provide benefits in securing funding for social housing projects in Scotland and potentially contribute to streamlining existing processes.

17. At present, there are a number of differences. These include terminology (e.g., the use of "primary" and "key" to define building elements in Scotland, compared with "key" and "other" in England), the inclusion/exclusion of certain criteria elements (e.g., flashings and rainwater goods are included in the proposals for Scotland but not in England).

## **The repairing standard for private landlords**

18. The recommendations concerning the Repairing Standard for private landlords are a sensible modernisation of the legal obligations of landlords and there are no specific issues we would wish to highlight. We would, however, stress the diverse nature of the letting market, and ask the Scottish Executive to take account of this in determining the impact of cost and the timescale for implementation.

## **Chapter 3: Improving the operation of the housing market**

### **Background**

19. The operation of the Scottish housing market has much to recommend it. The process of buying and selling a house is quicker than in the rest of the UK, and transaction costs have been estimated as among the lowest in Europe. The process is less prone to failure at the post offer stage, and gazumping is not the difficulty that it is south of the Scottish border. These are all benefits that should be kept in mind when reform is proposed; all reforms bring disadvantages as well as advantages, and it is important that the overall process is improved and that key advantages of the existing position are not sacrificed unjustifiably.

20. That said, there are disadvantages to the present home buying and selling system. The problem of "wasted valuations" has been overrated. Not all multiple valuations are wasted; they contribute to a decision not to purchase a property and, in any case, only a minority of properties are surveyed more than once as the first HITF report conceded. Nevertheless, a problem does exist. A related problem is the low number of surveys (as opposed to valuations) commissioned by buyers, arguably leading to a situation where buyers are less well informed about a property condition than they could be. An additional difficulty is the existence of unrealistically low upset prices in volatile housing markets areas, which can compound the problem of "wasted" valuations.

21. Clearly, if the above problems can be tackled without sacrifice of the key positive characteristics of the Scottish home buying and selling system, it would be desirable to do so. HITF have made a number of proposals that are worth piloting across Scotland, if certain prior conditions can be met.

22. The proposals of HITF are market led. This is sensible; attempts to prescribe the housing market are likely to lead to distortion. If an idea is sound and receives proper backing from Government and responsible bodies, the market is likely to take it up. If the market does not do so, there must be a strong presumption that the idea is flawed. For this reason, attempts to use legislation to compel the adoption of a particular system would be opposed by CML and its members. Similarly lenders would resist any attempt by government to change established and justifiable lending practices (such as those in relation to the commissioning of valuations) by legislation. This matter will be dealt with in more detail below.

23. In choosing to pursue reforms to the home buying and selling system such as the single survey for sellers packs, the Scottish Executive should not lose sight of the changes to the system that are taking place, or will take place due to developments within the market itself. Such developments include innovations in Information and Communications Technology (ICT), moves towards instant credit referencing, developments towards electronic Conveyancing and greater system integration of different businesses using their own IT

systems. These will all have their impact, notably on ease of access to information and on the speed of the overall buying process. The potential interaction of market changes with Government reforms should be carefully considered. A recent CML research report *Future Developments in Home Buying and Selling* (2002) analyses these changes.

24. Another important consideration for both consumers and lenders is the need for buying and selling processes that do not needlessly differ across the UK. Most lending in Scotland is undertaken by banks and building societies that operate across the UK. As far as possible these lenders will wish to develop processes that can operate UK wide. Ultimately, this brings cost benefits to customers. Buyers and sellers also operate across national borders, and in the interests of promoting stronger understanding of the processes leading the largest purchase or sale most will make, it is important that differences in process and terminology be kept to the minimum necessary to deal with country specific problems. In taking forward the HITF proposals, the Scottish Executive will be aware of the reforms to the home buying and selling process initiated by the UK Parliament. It is important that close contact is maintained between the Scottish Executive and the Office of the Deputy Prime Minister (ODPM) on this issue. Differences of terminology have already crept in; in England there is development of "Home Information Packs"; in Scotland, the equivalent is currently referred to as Purchasers Information Packs. It is important that due consideration is given to adopting common terminology where the real differences in the features are small.

### **The single survey**

25. CML Scotland believes that the single survey (SS) concept has merit and deserves to be piloted. If the SS works as intended, then it could make a useful contribution towards reducing the number of "wasted" valuations, could improve the level of information about the property available to both seller and buyer, and reduce the incidence of unrealistically low upset prices.

26. Lender support rests on two key conditions, however. The first is that it must be demonstrated that liability (and hence indemnity) for the SS and, in particular, its valuation can be shifted successfully from the seller to the buyer and their lender. Confidence has been expressed that this can be achieved, but it is important to recognise that the incidence of lenders accepting the valuation for mortgage purposes will be very low if the transfer of liability is not properly demonstrated.

27. The second condition for lender support is that lenders must retain the right to commission their own independent valuation where appropriate. CML Scotland believes that it is likely that lenders will use the SS valuation in a large majority of cases. There are situations, however, where lenders would commission a further valuation. These would include some instances of high loan to value lending, situations where demand for a property was suspect, or where the reputation of the valuer used had led to a lack of confidence in their work. A sound valuation is in the interests of the borrower as well as the lender; it is in no one's interest for a borrower to end up paying more for a property than it is worth, particularly if a loan is secured against the property. There is a suggestion in the HITF report that legislation might have to be introduced if a market led approach to introducing the SS failed. If such legislation were to take the form of placing a legal obligation on lenders to accept a particular valuation, then such a proposal would be strongly resisted. Such legislation would, in any case, arguably fall outside the powers of the Scottish Parliament.

28. CML Scotland is in agreement with the content of the SS as set out in the report, and agrees that the security report and defects insurance should be available as extras in order to keep core costs down.

29. It is most important that the SS is piloted. Any pilot should cover the diverse parts of the housing market, including areas of high and low market activity, urban and rural areas and take in, as far as possible, the different geographical areas within Scotland. CML Scotland believes that a pilot should last for at least a year. This would give time for new arrangements to bed down, and for the new system to be observed working throughout the annual cycle of the housing market. A commitment to a full-scale pilot replicating real conditions within the housing market over a reasonable period should help to avoid the inadequacies of the Bristol pilot of Sellers Information Packs in England carried out by the then Department of Transport Environment and the Regions (DETR). There are a number of concerns about the SS that remain, and that should be tested in practice. These are set out in the following paragraphs.

30. The SS does not overall increase average transaction costs greatly, since a larger number of valuations will be replaced by a single survey and valuation. Nevertheless, it is likely that there will be some increase, and those costs will be redistributed away from unsuccessful buyers towards the successful buyer and in relation to unsuccessful sales, the seller. It will be important to ascertain in the pilot whether increased and redistributed transaction costs are having an undesirable dampening effect on the housing market and, in particular, whether sellers are deterred from placing properties on the market for fear of the costs that could be incurred if a sale is not forthcoming. The introduction of Purchasers Information Packs (PIPS) could exacerbate this problem (see below).

31. It is not yet clear whether the SS will have unforeseen effects in areas of low housing market activity or low demand. Will the need to prepare a valuation and survey outlining the condition of the property be an additional deterrent to sellers in these areas, or even to buyers? It will be important that the SS is piloted in such areas.

32. Another potential difficulty with the SS in practice will be in areas of high housing activity and rapidly rising prices. It is possible that a valuation undertaken at the beginning of the selling process will be more conservative than one taken at the offer stage. In such a situation, a second valuation might be necessary where the first did not support a high loan to value ratio mortgage. Again, this will need to be tested in practice.

33. It will be important that the SS is priced competitively, and that pricing is transparent. It would be most unfortunate if restrictive practices were to prevent competitive pressure from keeping prices low.

34. At present, lenders operate panels of valuers. These enable lenders to exert some control over the delivery times, quality of work and adherence to professional standards. Lenders have the option of ceasing to use a valuer in whom they have insufficient confidence. The introduction of the SS will create a situation where there is pressure on lenders to accept valuations from valuers who are not on their panel. In these circumstances, it is important that RICS Scotland enforce adequate standards for those doing this work. Such standards would include minimum levels of professional indemnity cover, length of experience, and service delivery guarantees. It is important to be aware that at present some major lenders will not, as a matter of policy, accept valuations unless the valuer is on their panel.

35. Another potential area of difficulty is the inability to supplement the survey with follow up queries. There are cases where buyers and/or lenders would seek further information and where inability to obtain it could cause difficulties. Again this should be tested in practice.

### **Purchaser's Information Pack (PIP)**

36. Clearly, it is desirable for information to be available as early in the selling and buying process as possible, and lenders share the aim of HITF to make the process of selling and buying as smooth, speedy and well informed as possible.

37. It should not be forgotten, however, that the housing market will be subject to a number of changes summarised in the CML research report *Future Developments in Home Buying and Selling* referred to earlier in this response. While the report focussed on the market in England and Wales, it identified changes that will impact across the UK:

- the impact of ICT developments on the level of information available to consumers and the speed of delivery,
- measures such as instant credit referencing that can reduce the time needed to produce a mortgage offer,
- developments towards electronic Conveyancing (not as far advanced in Scotland), and;
- greater systems integration which will happen in the next five years with XML protocols enabling the speedy transfer of data between businesses using different IT systems.

38. The above report concluded that the development of a PIP would not be necessary if other developments were fully embraced, though it also expressed the view that this could (in England and Wales) lead to complacency amongst some players.

39. It will be important that, in considering whether to introduce PIPs, the Scottish Executive takes into account the above developments and produces a pack that is technologically up to date. Information should be available in electronic form for instant communication, and should be in compatible form for the new emerging systems of lawyers, lenders and others. The PIP should contribute towards speeding up the process of buying and selling, rather than functioning only as a source of information for customers and a marketing tool. These issues are not explored in the HITF report.

40. Cost is another important factor. The HITF report states that there should be no difficulties here as the information is collected at various points in the process already. This is, of course, true but the pack will, as HITF admit, have to be assembled, and costs will, in any case, be redistributed. There is a real concern that sellers may be discouraged from putting their properties on the market where they have to incur a sizable additional up-front cost which will not be recouped if there is no sale. This could have a negative impact on housing market activity.

41. This problem would be compounded in areas of low value or poor demand. It has been suggested that such areas might be exempt from producing a pack, but the resultant stigma of being labelled as an area of low demand/poor property values could be at least as damaging. In England, ODPM have decided to introduce their Home Information Pack (HIP) for all sales, except where the transaction value is less than £10,000. This approach has yet to be tested, however.

42. The HITF report offers a list of contents of the PIP. The list covers many of the items that would be needed to enable a purchaser's solicitor to convey the property, but not all the items that would be necessary in all cases. It is essential, if the pack is to be as useful as possible, that all necessary items required by the lawyers are included. Since this varies from property to property (the report accepts this in the case of Coal Authority Reports), it would be sensible to make a general requirement that packs contain all necessary searches, etc. The methodology for deciding what is necessary in a particular case is becoming more sophisticated, and such a requirement should not cause difficulties in the longer term.

43. CML Scotland agrees that a log book should not form part of the PIP, due to the difficulties of validating the information it contains.

44. The PIP should be piloted, preferably together with the SS, given the concerns that exist about its impact on the housing market. Any decision as to whether to introduce the PIP permanently should be dependent on the outcome of a comprehensive pilot along the lines suggested for the SS.

45. HITF favours a market-led approach to introducing the PIP, but suggests that legislation might ultimately be required to enforce its use. CML Scotland believes that the market-led approach is the right one; if the market does not take up this innovation, then government should consider carefully the reasons for its failure before attempting legislation. Markets tend to accept changes that have proved themselves in practice.

### **Other changes to the home buying and selling process**

46. CML Scotland supports the decision of HITF not to recommend changes to the procedures applying to closing dates, blind bidding and upset prices, over and above introducing the SS. While action on these matters is superficially attractive, it would be difficult to identify changes that would not carry with them their own problems.

47. Lenders also support the work of The Law Society of Scotland aimed at standardising missives.

48. Recommendations 43, 44, 45, 46, 48, 49 and 50 are also acceptable to CML Scotland and its members.

49. Recommendation 47: "Lenders should continue to use retentions where there are major repairs to be carried out and the council of Mortgage Lenders should assist its members in achieving a consistent approach to ensure that retentions are used in appropriate cases" rests on a misunderstanding. Retentions are used less frequently than in the past, but there are good reasons for this. There now exists an extremely competitive mortgage market which has delivered a wide choice of mortgage products to the borrower as well as low mortgage rates. Retentions do not work well in a competitive environment where consumers rightly have the ability to shop around for the deal that best suits their needs. Retentions have not proved an effective sanction in the past for ensuring repairs are carried out. Borrowers can often circumvent a retention by choosing to withhold equity from a previous sale or by some other means. It should not be forgotten that evidence suggests that most owners do repair and maintain their homes. Where they do not the reason is usually inability to afford what is known to be necessary. In these circumstances, it is perverse to insist on a retention.

50. HITF rightly rejected a related proposal that borrowers should be charged different interest rates according to the state of repair of their property. As the report states, such a proposal would be practically unworkable and very expensive for borrowers. It would also be inequitable by financially penalising those who did not undertake repairs because they could not afford them. In addition, it appears to be based on a misunderstanding of the scope and purpose of the Basel 2 negotiations on capital adequacy.

51. It should also be remembered that CML is a representative trade body. It can inform (and has informed) its members of this recommendation. Nevertheless, its role is not to intervene in what are essentially individual commercial lending decisions made in a competitive environment. Such intervention to moderate competition would be considered undesirable in principle by many commentators.

### **Tax and benefit incentives**

52. While accepting that, in general, taxation and benefits fall outside the remit of the Scottish Parliament, CML Scotland is aware that UK Government measures in relation to these areas do have an impact on the sustainability of home ownership and, in particular, on the ability of owners to repair and maintain their properties. In the past eight years, the UK government has severely cut back Income Support for Mortgage Interest (ISMI), abolished Mortgage Interest Tax Relief (MIRAS), and significantly increased Stamp Duty. These measures have all impacted on the financial position of home owners, particularly those on low incomes. In addition, local authorities are exempt from VAT in respect of on repairs they carry out on behalf of owners but those owners are not exempt on repairs they carry out themselves.

53. CML has recently urged Government to ensure that the take up of the recently introduced Tax Credits increases from its present low level and has consistently argued for the introduction of a tenure neutral Housing Credit. The latter would be available to those on low incomes and would go some way to redress the imbalance between the public housing assistance received by tenants compared to owner-occupiers. It has been estimated that over 50% of the poorest decile of UK home owners are in owner occupation, but that they receive less than 10% of state assistance in respect of housing (cf. Burrows R. Ford J. and Wilcox S. in *Housing Finance Review 2000/2001*, JRF/CIH/CML 2000). The Scottish Executive may wish to add its support to the above initiatives when considering the HITF report.

54. The tax changes set out in recommendation 52 would also be supported by CML Scotland. CML has recently had some success in promoting mortgage products that do not discriminate against those of the Muslim faith, and has campaigned for reform of the Consumer Credit Act (CCA) along the lines suggested by HITF. Modification of the CCA would assist facilitate lenders in making smaller loans available for repairs and improvements; the present arrangements are too onerous to make such loans commercially viable in many cases.

## **Chapter 4: Facilitating common repairs and maintenance**

### **Background**

55. The report highlights that 25% of dwellings in the private sector are flats where there is some degree of shared responsibility for the maintenance of communally-owned parts of the building such as roofs and common stairs. In these circumstances, agreed and effective

common factoring arrangements will be of advantage, reform of titles will also be helpful, and CML Scotland supports their introduction.

56. Lenders' primary interest is in the arrangements for the recovery of costs and, particularly, enforcing an obligation to meet common costs on owners who may not have the money or to reclaim costs incurred by others. It is important that owners are not put in the position where their mortgage payments may be at risk. Lenders would be concerned at any proposals to allow repair or improvement costs to be placed as a charge against the property concerned. Any such charge would have to rank behind that of the mortgage lender if the risk and hence the costs of lending were not to rise, and were the imposition of a second charge to produce a situation (particularly in areas of low demand) where owners were in negative equity the problems securing the execution of repairs or of recovering costs could be compounded.

## **Chapter 5: Public intervention and support at the local level**

### **Background**

57. The report confirms “ the primary responsibility for maintaining and improving the condition of private sector housing rests with the owners”. This is intrinsic to home ownership. Owner occupation is about choice. Given the underlying picture of improving private sector stock condition, it would be an unjustifiable attack on a fundamental aspect of home ownership if individual choice were to be replaced by coercive public policy. Such intervention would run the risk of undermining or distorting the housing market with unpredictable and potentially undesirable results. Accordingly, CML believes that intervention by public bodies should only occur in extreme cases.

58. Given the significant increase in the numbers of home-owners in Scotland and the proportion who have low income, CML Scotland believes that there needs to be a more fundamental review of the level of public support for owner occupiers whose financial circumstances mean they are unable to meet their commitments. This should include recognition of the significant reductions in expenditure by Local Authorities on improvement and repair grants, and also the examination of tenure neutral support to low-income households, including the establishment of a Housing Credit.

59. As outlined above, the recent Communities Scotland report *The Future of Owner Occupation in Scotland* (2001) suggests that some 38% of the lowest income decile households in Scotland live in owner occupation. UK wide the 57% of households in owner occupation receive less than 10% of public housing expenditure. The abolition of MIRAS and cuts in income support for mortgage interest has both contributed to this situation in recent years. Against this background, CML Scotland believes that there needs to be recognition that some owners will require financial support to improve their houses to modern standards. Assistance might take the form of grants or loans or a combination of both. CML has campaigned for the introduction of tenure neutral Housing Credit that would improve the position of low-income homeowners in work and would begin to rectify the imbalance in the provision of public housing assistance between tenants receiving housing benefit and owners.

**Strategic Planning** (Report recommendations paras 66 - 71).

60. CML Scotland welcomes the recommendations concerning strategic planning to put in place a planning framework to determine housing needs and investment priorities.

**Providing assistance to owners** (Report recommendations paras 72 – 89).

61. In considering how to make each of the forms of assistance available in its area, local authorities should consider the use of grants in conjunction with commercial loans to achieve value for money. Lending for housing is extremely competitive, and the use of grants alongside commercial loans is an efficient means of raising finance. The provision of loans by local authorities themselves should be assessed against the option of provision by commercial lenders.

**Modernising Local Authority powers** (Report recommendation para 433).

62. CML Scotland generally supports the recommendations concerning local authority powers set out in para 433. The primary concern of lenders is in respect of the proposals for increased flexibility in the power of local authorities to make a charging order. As stated elsewhere in this response, any changes should not prejudice the position of lenders and their security. At present a local authority charge in respect of work it has carried out ranks in front of a lender's charge though this would not be the case if work was carried out by a managing agent. Any extended powers given to local authorities should not result in additional charges that rank in front of a lender charge; such charges would tend to undermine lender confidence when considering lending on properties where such powers might be used.

**Chapter 6: Improving standards in the Private Rented Sector (PRS)**

**Background**

63. CML Scotland welcomes the application of the principle that private landlords should bear the primary responsibility for repairing and maintaining their properties. In considering measures to enforce those responsibilities, however, the Scottish Executive should be aware that the largest proportion of landlords own only one property for rent. Many, in addition, are not landlords because they have taken a decision to start this type of business, but because of "accidental" factors, such as inheriting a property or needing to let a holiday home.

64. Small landlords typically lack staff and do not have access to substantial funds for investment. In addition, returns in the PRS are low and have fallen in recent years. In these circumstances, a decision to raise standards in the sector through regulatory or enforcement measures has to be balanced against the likelihood that some landlords will be unwilling to face extra administration and red tape, or will be unable to make the necessary investment. Such landlords may well leave the sector altogether. Reform, therefore, becomes a matter of establishing a balance between raising standards and cutting the supply of rented homes.

65. The PRS is widely accepted as an important sector providing for those for whom neither home ownership nor social renting are appropriate, and as a transitional tenure for those requiring short-term accommodation. It is important that the supply of homes in the sector is not significantly eroded.

66. A special and growing category within the PRS, though one that is difficult to define precisely, is the buy to let sector. This has been encouraged by deregulation in recent years

and by the provision by lenders of appropriate mortgage products. Lending for buy to let now amounts to over £21 billion UK wide. Buy to let properties are believed to be generally in good condition, and to be well managed. This growing area has made a significant contribution to increasing the size of the PRS. It is important that proposed reforms do not damage this market. CML Scotland would support research into buy to let and its impact on the wider PRS.

67. Scotland was the first country within the UK to introduce mandatory licensing of Houses in Multiple Occupation (HMOs). According to recent research commissioned by the Scottish Executive, the scheme has encountered significant problems with many landlords failing to register, and local authorities being unable to properly check who should register and who should not. There is a real danger that good landlords will register and be regulated while many bad landlords will escape. The Scottish Executive have announced some changes to improve the scheme but it is still too early to assess the real effectiveness of the scheme in terms of raising standards and possible negative effects in causing landlords to leave the sector. Until full evaluation has been carried out on the HMO licensing scheme, the Scottish Executive should be cautious about introducing measures that may have a significant deterrent effect on landlords within the PRS or considering entering it.

### **Rights of private tenants**

68. CML Scotland accepts that the Scottish Executive should produce guidance on unfair contract terms (recommendation 116). It is important, however, that such guidance extends to positive advice for landlords on what terms would be acceptable, and that clear examples of acceptable and unacceptable terms are given. This guidance should be widely publicised, perhaps via local authorities that may have more information about landlords within their areas.

69. The proposals to extend the remit of the Rent Assessment Committee to take in disrepair are sensible as they stand (recommendations 118-131). It will be important, however, that proper training and resources are also allocated to avoid initial bottlenecks, particularly if publicity about the new service increases the case load in the initial period. In addition, Rent Restriction Orders should apply to the landlord, rather than to the property. This will avoid a situation where a landlord could find their ability to sell a property restricted if they were unable to meet repair costs. Similarly, a mortgage in possession might also find their rights unfairly fettered were the landlord to default on their mortgage.

### **Accreditation**

70. CML Scotland has consistently supported the principle that a voluntary accreditation scheme could make a useful contribution towards raising standards in the PRS, and that it is preferable to compulsory regulation whether at the discretion of local authorities, or via a national scheme. At its best an accreditation scheme can provide landlords with realistic targets to achieve, and a genuine marketing incentive to sign up. An accreditation scheme should focus particularly on features pertaining to health and safety. It should not be so onerous as to deter landlords from signing up, and it will need to be sufficiently well publicised amongst advice agencies and prospective tenants that the marketing incentive to participate is there. In terms of designing the scheme, CML Scotland agrees that a partnership approach with local landlords would be the best approach, with background research being commissioned as necessary.

71. While supporting the principle of accreditation, CML Scotland has some concern at the proposal to allow each local authority to create their own scheme, albeit with guidance from the Scottish Executive. Landlords do not always operate within the boundaries of a single local authority, and neither do tenants. A landlord could well be deterred by the thought of having to come to grips with the requirements of two or more schemes. A preferable approach to accreditation would be to design a national scheme with individual local authorities having the right to apply it or not.

72. A further concern focuses on the capacity of local authorities to promote schemes. In the light of their problems with HMO licensing, it will be very important that resources are made available to local authorities for this purpose. A poorly promoted scheme that provides little incentive for landlords to sign up will be of little value.

### **Regulation**

73. The HITF proposals to bring in legislation to reform the system of HMO licensing and to bring in more flexibility as to which landlords are included are welcome in the light of problems observed with the scheme so far. In England, ODPM have targeted only those properties perceived to be most at risk (less than 20% of all HMOs) in their proposals contained in the draft Housing Bill 2003. Certainly provision to allow compliant landlords to move from the licensing scheme to the accreditation scheme would have merit. It would not be appropriate to link accreditation and licensing in the other direction, however. Landlords would be most unwilling to sign up to an accreditation scheme if they perceived it as a possible route into compulsory licensing.

74. HITF is right to reject compulsory licensing, registration and/or certification of the PRS as a whole. Quite aside from the impact on the inclinations of landlords to enter have remain in the sector, there are not the resources available to establish and enforce schemes on the scale required.

### **Discretionary regulation**

75. Discretionary regulation could produce the worst of all possible worlds. Landlords have no incentive to sign up, beyond compulsion. There is a risk that the good will comply and that the worst will evade whatever scheme is in operation. Local authorities have not yet shown that they can effectively administer HMO licensing; it would be premature to offer them discretion to establish new schemes. In addition, this approach will almost certainly lead to an assortment of different schemes causing confusion amongst landlords, tenants and advice agencies alike.

76. Were the Scottish Executive to decide, in spite of the above, to pursue this approach to the problems of standards in the PRS, it should at least require local authorities to adopt a Nationally conceived scheme should they wish to go down this route. In addition local authorities should, before being authorised to introduce a scheme, be required to demonstrate that they have consulted local landlords in relation to the problems in their area, and that they have attempted voluntary solutions that have failed to achieve their objectives.

### **Wider issues**

77. CML Scotland supports the HITF recommendations 146-150 in relation to the provision of advice and information to the sector. The proposed review of the operation of the tenancy

provisions for the PRS contained in the Housing (Scotland) Act 1988 should take account of the positive effects of deregulation in stimulating growth in the PRS since 1988.

**A broad welcome**

78. CML Scotland gives a broad welcome to the proposals within the HITF report. There are a number of issues with which lenders disagree; but overall, the report represents a positive approach to tackling outstanding problems within the private housing market.

This response has been prepared by CML Scotland in consultation with its members.

Senior Policy Advisor  
The Council of Mortgage Lenders Scotland