

TAYSIDE SOLICITORS' PROPERTY CENTRE

RESPONSE TO CHAPTER 3 OF THE FINAL REPORT & RECOMMENDATIONS OF THE HOUSING IMPROVEMENT TASK FORCE

The TSPC welcomes any constructive proposals to improve the house buying and selling process in Scotland, but has a number of serious reservations regarding the conclusions and recommendations contained within Chapter 3 of the Final Report of the HITF, most particularly with regard to the proposals for a sellers' pack, which could have a seriously detrimental effect on the housing market.

Before detailing our concerns, we would point out a minor but important error in Paragraph 1.2.2 of Chapter 3 of the Report. This paragraph states that "if the prospective buyer, and any lender, is satisfied with the valuation or survey, a verbal "note of interest" can be made, which prevents sale to another person at least until an offer can be made by means of a letter from the prospective buyer's solicitor". In practice, a purchaser's agent will normally note their client's interest in a property as soon as their client has expressed an interest, and will not wait until a survey and lender's approval have been obtained. The point of noting interest is to try to avoid a situation where the property is sold whilst the client is obtaining a survey and arranging their loan finance.

More importantly, it should be noted that a note of interest does not prevent the sale of a property to another person. Noting interest is a convention which generally works well, but a seller is not legally bound to allow anyone who has noted interest to submit an offer, or to fix a closing date where there is more than one interested party. In practice, it is usually in the seller's interest to fix a closing date, but this will not always happen.

Proposals for a single survey

Paragraph 1.2.9 states that proposals for a single survey are linked to three important weaknesses in the house buying and selling system. The first weakness is the reliance of most house buyers on Scheme 1 valuations. In our view, responsible agents will invariably recommend that their clients obtain as much information about a property as possible and where appropriate this would mean a Scheme 2 Homebuyer's Report and any further reports (i.e. timber specialists, roofing reports, etc.) recommended by the surveyor. It must be recognised, however, that many purchasers, particularly first time buyers, have limited resources and will be unwilling to incur the expense of obtaining more detailed reports.

Considerable concern has been raised with regard to the problem of multiple surveys and valuations. A number of surveyors' firms in Dundee employ a system where the details of Scheme 1 valuations which they have carried out are made available to other prospective purchasers at a reduced charge, and a full valuation fee is subsequently charged to the successful purchaser for whom the surveyor will normally have to submit a report to the mortgage lender. This system generally works very well, and there would appear to be no reason why it could not also work well in other areas of the country. This would, however, only apply to Scheme 1 surveys, as details of Scheme 2 Homebuyer's Reports will only be passed to other parties with the express consent of the person who originally instructed the Scheme 2 survey.

It is noted that there are concerns regarding the setting of upset prices at an artificially low level in order to stimulate interest in a property. This practice should be discouraged, but we would not consider it to be prevalent among solicitors using TSPC. However, in a buoyant market, the price achieved for a property may at times greatly exceed an asking price which, on the basis of previous sales and all available information, seemed reasonable at the time it was set.

The principal concern which solicitors have with regard to proposals for sellers to obtain a single survey relates to the cost, particularly if the report requires to be constantly updated. Whilst the proposals may seem appropriate in a buoyant market, particularly in the more affluent areas where properties are expected to sell quickly and at a good price, they may present serious problems for sellers whose properties are not guaranteed to sell quickly. The costs outlined in Paragraphs 137 and 138 of the Report may be prohibitive for many home owners, particularly in a depressed housing market. In Dundee, for instance, there are areas where flatted properties have been extremely difficult to sell for a number of years and property values have remained static, or even decreased, over the past few years. This has placed great financial strain on many of the owners of these properties, which would only be increased if it became necessary for them to incur substantial costs before placing their property on the market.

This would be exacerbated if, as is often the case, their property remains on the market for a considerable period of time during which the homeowner must continually pay for updated reports.

It is not difficult to envisage a situation where homeowners, particularly those on the lower rungs of the property ladder, are simply not in a position to market their property, resulting in less properties being available for first time purchasers, and less potential purchasers being in the market for the purchase of higher priced properties.

Proposals for purchasers' information pack

The TSPC recognises that it is good practice for selling agents to obtain and make available as much information about properties for sale as possible. However, there are grave concerns over the proposals for the introduction of a compulsory purchasers' information pack, particularly with regard to the following:-

(a) Costs. The costs involved in putting together an information pack are likely to be substantial and, in many cases, prohibitive. The National Association of Estate Agents has calculated that an information pack would cost an average of £600 to compile, and this figure is not unrealistic. Compilation of the report is likely to involve charges for the following:-

- (i) Lender's administration fee for releasing title deeds
- (ii) Cost of obtaining copies of prior title deeds not held with the principal titles for the property
- (iii) Costs involved in obtaining any documentation relating to alterations to the property (i.e planning permissions, building warrants, Letters of Comfort) if not with the principal title deeds or held by the seller
- (iv) Cost of copy timber specialist reports and guarantees if not with the titles or held by the seller
- (v) Coal Authority report
- (vi) Copying fees
- (vii) Agents' charges for compiling information pack.

It would therefore appear that the cost of preparing the information pack, obtaining a single survey and even basic advertising of the property is likely to be close to, or exceed, £1,000 which may well prove prohibitive to sellers, particularly at the lower end of the market.

(b) Delays. A further major concern is that the requirement for a purchasers' information pack will inevitably result in delays in marketing properties. Many lenders take two weeks, or even longer, to deliver title deeds, and there may be further delays if the title deeds are at the Registers or if the property owners have recently re-mortgaged. If, on receipt of the title deeds, it is discovered that not all relevant titles, timber specialist reports and guarantees, local authority documentation, etc., is available, there will be further delays while copies of these documents are obtained. It is not unreasonable to assume that in many cases it will take up to four weeks or longer to compile the purchasers' information pack with the resulting delay in marketing the property. This would mean that

prospective purchasers would often be unable to offer for a property as they would not be in a position to market their own house immediately. This could therefore have a seriously detrimental effect on house sales.

Disadvantages for purchasers

The following comments address the practical consequences to purchasers of the compilation of the purchasers' information pack. There are also very real concerns about the potential for conflict of interest that arises from purchasers placing reliance on a "seller's survey". This is a concern not only within the legal profession, but is also recognised and identified as a potential problem by an increasingly cynical house buying public!

Whilst the proposals for a purchasers' information pack would appear to be to the benefit of purchasers, there are also disadvantages. Many prospective purchasers will already be homeowners and have a property which they require to sell if they are to proceed with their purchase. As already noted, the inevitable delay in preparing the purchasers' information pack may prevent many prospective purchasers from offering for properties and they may find that, once they are in a position to market their property, the house which they wish to buy has been sold in the intervening period.

If, as is possible, the additional costs involved in marketing a property result in fewer houses on the market, it may well be that house prices would rise and purchasers would have more difficulty in finding a property.

It is also probable that the introduction of a purchasers' information pack will in fact increase purchasers' legal costs. As stated in Paragraph 124 of the Report, the purchaser's agent examines the title deeds and various other certificates and warranties once an offer has been accepted. If, however, all the relevant information is provided to purchasers prior to their submitting an offer, it is probable that contracts for the sale and purchase of properties will evolve to take this in to account, and in future a purchaser will be deemed

to have satisfied himself on all such matters prior to submitting his offer. This is akin to the current situation where properties are sold at auction, where it is necessary for purchasers to make all necessary investigations prior to submitting their offer, as they are contractually bound to purchase the property once the hammer falls, notwithstanding any problems which they may subsequently discover with the property.

In practice, this would mean in the majority of cases prospective purchasers would require their solicitors to carry out an investigation of the purchasers' information pack, including titles, local authority documentation, etc., prior to submitting an offer, and inevitably this will increase the purchaser's expenses. There is a very real possibility that the end result will be a number of solicitors having to investigate titles for properties which their clients subsequently do not purchase, and for purchasers paying for the title examination of properties which they subsequently do not purchase.

It may seem incongruous that an organisation of solicitors should question the introduction of proposals which would increase the amount of work to be carried out by solicitors in the house buying and selling process, given that the increased work would undoubtedly result in increased legal charges. However, the TSPC take the view that any possible benefits to the legal profession would be outweighed by the detrimental effect which the proposals would have on the housing market and to consumers. As a general principle, the TSPC consider it to be advantageous that sellers be encouraged to provide as much information as possible to prospective purchasers, but the introduction of a compulsory information pack as proposed in the Report is likely to cause more harm than good.