

HOUSING IMPROVEMENT TASK FORCE
RESPONSES BY CONVEYANCING COMMITTEE OF THE LAW SOCIETY OF
SCOTLAND TO KEY CONCLUSIONS 83-102 OF THE FIRST REPORT

- 83** There is competition in the process for both buyers and sellers but it is not clear how well they use or benefit from this framework. The costs of the process are reasonably predictable but rely on the house purchasers and sellers obtaining the information from a variety of sources and making the comparison themselves to assess value for money in so far as this is possible.

Comment: It is agreed that there is competition in the provision of initial information and advice to both house purchasers and sellers, and that the cost of such advice is readily ascertainable from the provider whether a solicitor, an estate agent or a surveyor. It is accepted that it is necessary to “shop around” if the prospective purchaser or seller wishes to obtain comparative quotations for the services which he or she requires.

- 84** The principle source of professional advice, is often in the Scottish context a solicitor or in some areas the Estate Agent, who normally acts on behalf of buyers in the selection of surveyors. In the majority of cases, there is therefore no direct client relationship between the buyer and surveyor.

Comment: It is agreed that the principal source of professional advice is usually a solicitor who will advise his or her client with regard to the selection of a surveyor. As the report says, this role is sometimes undertaken by estate agents but in the Committee’s experience only rarely in the major conurbations other than Glasgow.

The second sentence of this conclusion is incorrect. There is a direct contractual relationship between the buyer and the surveyor irrespective of the fact that an intermediary such as a solicitor or estate agent has introduced them one to the other. This is fully accepted and acknowledged by the RICS. However, the Committee accepts that where the valuation report is instructed directly by the lender the surveyor’s liability to the purchaser is based on delict.

- 85** The absence of any obligation to disclose defects may lead some sellers to attempt to conceal repair problems from potential buyers and generally reduces the willingness of sellers to provide some practical information on the running costs and repair history and maintenance of their property.

Comment: The Committee doubts if the principle of *caveat emptor* is widely exploited by the house buying and selling public. However, whether or not the principle leads some sellers to conceal defects in the property it is the job of the prospective purchaser’s surveyor to disclose defects, wants of repair etc in the condition report provided to his or her client.

- 86** The majority of buyers opt for a mortgage valuation report from the surveyor even though this provides little information on the condition of the property. As a result prospective buyers are making purchases with very little information on the condition of the property.

Comment: Agreed.

- 87 The practice of setting “closing dates” at short notice can sometimes lead prospective buyers to make decisions and offers before they have had an opportunity to fully consider the results of an inspection or survey report and results in little opportunity for the buyer to go back with supplementary questions.**

Comment: Agreed. However, unless instructed otherwise by the client most selling solicitors will fix closing dates at least one week after the date on which the closing date is made known to those who have noted interest in the property.

- 88 A significant number of buyers face large unexpected repair or improvement bills in the first year after purchase.**

Comment: This may well be the case, but the Committee has no information one way or the other and, accordingly, cannot comment on this conclusion. Such repairs or improvements, to the extent that they can be foreseen, should be identifiable by the surveyor inspecting the property on behalf of the purchaser.

- 89 The current system does not encourage the provision of good quality information to buyers on the running and maintenance costs of the property.**

Comment: Again, this may well be the case but it is no part of a solicitor’s function to obtain information on the running and maintenance costs of a property.

- 90 As a result of administrative costs and a lack of commercial benefits lenders very seldom use their influence to encourage owners to undertake regular maintenance of their property.**

Comment: Agreed. In the 1970s and early 1980s when mortgage finance was difficult to obtain lenders invariably insisted upon retaining part of the loan until essential repairs and/or improvements which had been recommended by the surveyor were completed. In the current climate of fierce competition among institutional lenders such retentions are very rare because of the perceived risk of losing the business to another lender. The Committee considers this to be a material factor in the deterioration in the housing stock in Scotland and recommends that the Task Force should initiate discussions of the issue with the Council of Mortgage Lenders.

- 91 Information on energy efficiency is rarely available to house buyers at present.**

Comment: Again, this may well be the case but the Committee has no information.

- 92 Blind bidding, whilst providing a clear outcome for both buyers and sellers may have impacts on other aspects of the process including multiple surveys and house price information at a localised level.**

- 93 Low upset prices and high levels of competition are likely to be factors in stimulating multiple surveys.**

- 92 & 93** Comment: The Committee agrees with these conclusions. It is, however, satisfied that despite some indication to the contrary in the statistics quoted in the report the

problem of multiple surveys is only significant in a number of “hot spots”, particularly central Edinburgh. Even in these areas it is the view of the Committee that it is not the system of blind bidding that materially contributes to the multiple survey problem, but rather the practice (which the Committee deplors) of setting artificially low upset prices, which can and does result in many prospective purchasers who are relocated in their employment to, for example, Edinburgh incurring considerable needless expense on surveyors’ and solicitors’ fees in offering for houses in a price range which they can afford, but which the seller has no intention of accepting. The Committee considers that the practice, at least in the more extreme cases of which it has evidence, may be in breach of section 1 of the Property Misdescriptions Act 1991.

94 The relative speed of the Scottish system has significant advantages and avoids lengthy periods of uncertainty for both buyers and sellers.

Comment: Agreed. However, the Committee has noted the recent trend whereby purchasers delay concluding missives until the last possible moment if they have opted to purchase before selling their present houses and are, therefore, reluctant to become contractually bound to the purchase until the sale has been concluded.

95 The increasing insistence on the part of buyer’s solicitors on a wider range of warranties, the trend to more complicated missives and delays in the production of planning/building certificates or the loan offer is tending to delay the process, and in some instances give rise to unforeseen costs.

Comment: Agreed. However, it is the Committee’s experience that sellers generally are unwilling to warrant anything other than the title, and that a compromise is usually reached whereby the seller either “certifies” or “confirms” to the best of his/her knowledge and belief that a certain state of affairs exists. Undoubtedly, the length and complexity of modern offers contributes to the delays referred to in the Committee’s response to conclusion **94**, and the Committee is currently considering various initiatives in order to speed up the process, such as *pro forma* offers to sell incorporating standard conditions of contract such as have obtained in England and Wales since 1925, and the possibility of persuading builders/ developers to adopt standard conditions of contract for the purchase of new houses.

96 There is no evidence that the transaction cost of buying a house is a significant obstacle to entering owner occupation. By international standards transaction costs in Scotland appear to be relatively low.

Comment: Agreed.

97 There is some evidence of inconsistent practice in respect of advising on costs on the part of some professionals acting for buyers and sellers.

Comment: Agreed. The great majority of solicitors practising in the field of residential property issue terms of engagement letters to all their new clients detailing their professional fees, the outlays which the client will require to pay and the services which will be provided by the solicitor. Consideration is currently being given by the Council of the Law Society to making it a requirement that such terms of engagement letters be issued in every case, rather than simply a recommendation which is the current position.

- 98 A concern over the costs of surveys and valuations may be a factor for some buyers; this may play a part in discouraging them from commissioning scheme two homebuyer's surveys which provide a greater level of information on the condition of the house.**

Comment: Agreed. The Committee considers that solicitors should in all cases where the property is over ten years old and therefore no longer covered by the NHBC 10 Year Protection Certificate attempt to persuade their clients to meet the cost of a Scheme 2 condition report unless it is obvious that the amount which the client is prepared to offer is unlikely to secure the house, in which case the expense of a Scheme 2 report cannot be justified.

- 99 Overall, it appears that multiple surveys and valuations are a feature of the Scottish house buying process. However, the additional costs incurred by house buyers on surveys, over and above that of a survey for the house they purchase, are a small proportion of the total value of the property market.**

Comment: As indicated above, the Committee is not convinced that multiple surveys are a problem outwith the most popular areas. It does, however, agree that the expenditure on multiple surveys forms a small proportion of the total value of the property market.

- 100 Just under 31% of the current estimated expenditure on surveys and valuations may be on multiple surveys that do not lead to a house purchase for a variety of reasons.**

Comment: It should be remembered that the statistics on which this conclusion is based constitute a relatively small sample out of the total number of house purchase and sale transactions in the period under review and, as such, cannot be regarded as definitive. It should also be borne in mind that all statistics with regard to house buying and selling provide no more than a "snapshot" of the market conditions prevailing at the time and therefore the number of surveys likely to be generated by those conditions.

- 101 There are conflicting views on the extent to which multiple surveys are restricted to a few, relatively buoyant housing markets but the most comprehensive survey of buyers currently available does not suggest that this is the case.**

Comment: As already indicated the Committee does not agree with this conclusion.

- 102 It appears that for some buyers the risk of additional costs arising from multiple surveys may be a factor in their use of mortgage valuation reports rather than the homebuyer's survey.**

Comment: Agreed. The Committee respectfully points out that the correct terminology is "house buyer's report" and not "homebuyer's survey".

- 103 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 is likely to be due to a variety of reasons, but these are not clear from the existing research.**

Comment: The Committee does not agree with this conclusion. Some members of the Committee frequently provide opinions to other solicitors who have been instructed to raise actions of damages for professional negligence against their client's former solicitors, and there is strong evidence that the number of such actions reaching the courts is steadily increasing. Again with respect to the sub-group of the Task Force there appears to be some confusion between professional negligence and professional misconduct. Only the courts have jurisdiction to deal with the former, whereas the latter is the responsibility of The Law Society of Scotland and, ultimately, the Solicitors (Scotland) Discipline Tribunal. However, the Council of the Law Society does have limited power to award compensation to an aggrieved client where a finding has been made against the former solicitor of inadequate professional services.