

SCOTTISH EXECUTIVE

HOUSING IMPROVEMENT TASK FORCE: STAGE 1 REPORT

A Response from the Royal Institution of Chartered Surveyors in Scotland

1. INTRODUCTION

The Royal Institution of Chartered Surveyors in Scotland (RICS Scotland) is grateful for the opportunity to comment on the Housing Improvement Task Force Stage 1 Report. In view of the rise in private sector housing over recent years, we agree that a comprehensive review of this sector, and the issues affecting it, is essential. Accordingly, the establishment of the Task Force was wholeheartedly welcomed by the Institution.

RICS Scotland has followed the work of the Task Force with considerable interest and we welcome the publication of the Stage 1 Report. **In principle, we broadly support the key conclusions which have been drawn.** In particular, the problems associated with the management and maintenance of communally owned properties are a matter of grave concern. In addition, we acknowledge the concerns which have been expressed about the operation of the house buying system, particularly in certain parts of the country. However, notwithstanding our general support for the Task Force's work, we have a few reservations relating not only to some of the conclusions, but also to the tone of the report and the limited analysis which has been applied to some of the findings. The focus of this paper is on areas where we believe more analysis could have been carried out or where we disagree with the conclusions drawn. Our comments are intended to be constructive and we hope they will add to the work of the Task Force as it completes Stage 2 of its work.

2. GENERAL COMMENTS

2.1 Timing

We understand that the conclusions which have been drawn in this Report will act as the basis for the development of recommendations for action, which will be drawn up during Stage 2. In this respect, given that consultation on the Stage 1 Report may lead to some of the conclusions being called into question, we would suggest that commencement of Stage 2 should have been delayed until comments on the conclusions of Stage 1 had been received. Proceeding at this stage may result in solutions being discussed to address issues which are not considered as problems by respondents. **It is therefore important that the work programme of Stage 2 is amended where necessary to reflect the responses received following consultation on the Stage 1 Report.**

2.2 Balance

RICS Scotland is concerned about the lack of balance in the Report and the tendency to adopt a rather biased tone in respect of certain parties active in the private housing sector. There are many examples, particularly in the sections which deal with the private rented sector, which portray private landlords in an extremely negative light. On the contrary, there is no acknowledgement of the problems which can be caused by anti-social tenants. The use of biased language, which is not even-handed, does not assist in bringing all parties together to work towards the common goal of improving the condition of Scotland's housing stock.

2.3 Baseline Data

RICS Scotland understands that the key source of data in respect of the condition of the stock has been the 1996 Scottish House Condition Survey (SHCS). Given that the results of the 2002 Survey will be available next year, we would have considered it worthwhile waiting until up-to-date information was available before drawing conclusions on the condition of Scotland's housing stock. Publication of up-to-date results would have allowed a more accurate assessment to be made, thus illustrating where the most significant problems exist and where efforts need to be targeted. Furthermore, comparison of the 1996 SHCS and the

2002 SHCS may have been helpful in determining whether, during the intervening years, there had been any improvements or, indeed, whether the stock had deteriorated.

Furthermore, consideration of the 1996 SHCS in isolation does not allow any analysis of improvements which may have been made to the housing stock over the last few decades. We appreciate that the Stage 1 Report does attempt to consider trends in housing condition, and we understand that making definitive statements in respect of trends in housing is far from straightforward. However, while reference is made to trends in relation to Below Tolerable Standard (BTS) housing, no consideration is given to trends in respect of the fabric of buildings. Although RICS Scotland does not have empirical evidence, the experience of our members, based on regular inspections of properties as residential valuers, as property managers or on behalf of local authorities, would suggest that the condition of Scotland's housing stock, in terms of the physical fabric, has improved since the 1970s. Admittedly, the rate of improvement has slowed considerably as a result of the dramatic decline in grant funding. In addition, because there was no requirement for on-going maintenance as a condition of the grant, we fully appreciate that some tenements are once again falling into a state of serious disrepair. Nonetheless, the Report should take cognisance of the substantial investment which was put into the fabric of the tenemental stock during the 1970s, 80s and early 90s.

With specific reference to the private rented sector, reliance on the 1996 SHCS is unlikely to reflect the improvements which have taken place in the private rented sector following the introduction of Short Assured Tenancies, as part of the Housing (Scotland) Act 1988. In the years following the introduction of Short Assured Tenancies, there was a steady decline in the number of regulated tenancies, which was coupled with increased investment in the private rented sector: regulated tenancies provided landlords with no incentive to invest in properties as rents could not be increased to reflect the investment made. Improvements to the private rented stock which flowed from the increase in investment will have taken some time to filter through and may not have been reflected in the 1996 SHCS; however, RICS Scotland would argue that significant improvements have certainly been made over recent years and we therefore question the very negative image which has been portrayed.

Turning to properties with common or shared obligations, RICS Scotland does agree that this is a major area of concern. It would be interesting to establish whether there is any research to illustrate how many of these properties are formally managed and whether there is any difference in condition between those which are managed and those which are not. Research of this nature would be helpful in determining whether there is a need for a statutory management scheme or whether the schemes used by individual developers and/or property managers are working sufficiently well. We would further suggest that it would be useful to establish what information is known about the extent and quality of maintenance carried out. This is particularly relevant because we are aware that some of the work carried out as part of the investment in the tenemental stock was not to the highest standards, e.g. counter batons were not used in some roof repairs which has, in some cases, resulted in outbreaks of rot.

Finally, RICS Scotland would like to take this opportunity to make a general comment about the methodology used to assess the condition of housing stock. We are concerned about the sample sizes which are used, not only in relation to the SHCS but also in relation to surveys carried out in respect of housing stock transfers to identify the level of investment required. Often the sample sizes are relatively low and they do not therefore provide an accurate assessment of the problems which require to be addressed. This is particularly true in areas where there are various types of construction, particularly if the construction is non-traditional. RICS Scotland would therefore firmly recommend an increase in sample sizes when assessing the condition of housing stock.

2.4 Blanket Approach

Notwithstanding our view that improvements have been made to the housing stock, RICS Scotland realises that there remain serious problems in certain sectors. These problems are not, however, common across all sectors nor within individual sectors. In this respect, the Report might usefully have made clearer distinctions in terms of where the real problems exist. With regard to the private rented sector, RICS Scotland would acknowledge that there remain many properties, for example in rural areas or in the regulated sector, which are not in good condition and which would benefit from major repairs and improvements. However, the Report fails to acknowledge that there is also a significant number of properties, for example in the deregulated sector in areas such as Edinburgh and Glasgow, which have improved considerably over recent years and which are, in fact, in extremely good condition. As outlined above, these improvements have been the result of the introduction of Short Assured Tenancies and the subsequent decline of the regulated sector. The regulated sector of the market is steadily decreasing and it is likely that it will more or less disappear in time. In areas such as Glasgow and Edinburgh, it is becoming increasingly difficult to let poor quality properties and landlords are therefore being forced by the market to invest in their properties. That said, we would acknowledge that the same might not be true in rural areas where rents are significantly lower and where it is therefore more difficult for landlords to realise the cost of improvements through an increase in rents. The cost of repair and maintenance is no lower in rural areas than it is elsewhere in the country – in fact it can be higher in very remote areas – but the return on the investment is much more difficult to realise. Accordingly, there is less incentive for private landlords to invest in their properties in rural areas. Similarly, there is little incentive for landlords with regulated tenancies to invest.

Turning to the owner-occupied sector, we are concerned about the predominance of evidence from the Edinburgh and Glasgow markets. Circumstances in housing markets elsewhere in Scotland are often completely different. Setting of “closing dates” at short notice, low “upset” prices and multiple surveys are not problems which are commonplace across the country. Although we agree that efforts should be made to address these problems, any changes to the house buying and selling system must not be made simply to suit the market conditions of Edinburgh and Glasgow.

As regards the condition of the owner-occupied sector, the experience of RICS Scotland members mirrors the conclusion drawn by the Task Force, namely that a clear distinction can be drawn between tenements and other types of housing. We believe that the major problems in the owner-occupied sector are generally found in pre-1919 tenements with common or shared obligations and, to a lesser degree, in some post-1919 flatted developments which were transferred from local authority ownership under the right to buy scheme. The Institution does not, however, agree with the view that there are few market-related incentives to keep a house in good condition. Admittedly, in high demand areas property values may increase whether or not the property is fully maintained. However, the condition of the property will always be taken into account when the property is valued and even in high demand areas, where there are two identical properties, the one which has been maintained and kept in good condition will generally command a higher value. Similarly, although values in low demand areas might be static or even in decline, a well maintained property will continue to command a higher value than one which has been left to fall into disrepair. At the very least, a well maintained property is more likely to maintain its value. Notwithstanding this view, we do share the Task Force’s concern that reliance on Scheme 1 Mortgage Valuations might not encourage tenement owners to maintain key parts of the building, such as the roof. Although a surveyor will do a “head and shoulders” inspection of the roof space when carrying out a Scheme 1 in a house, there would be no inspection of the roof space if the Scheme 1 was being carried out in a first floor tenement flat. Tenement owners may not, therefore, see any link between maintenance of the roof and the sale price of their property.

2.5 Links with other Policy Areas

There are key linkages between housing and other policy areas, such as the planning system and the benefits system, which have not been addressed in the Report. In relation to planning for example, there is an important link between planning and the demand/supply relationship in the housing market. Increasing concern is being expressed about the low level of house completions in comparison with the number of new households. With changing demographics, the number of households is predicted to rise dramatically in the coming years. However, in certain areas of Scotland the difficulties in obtaining planning permission are having an impact on the number of new house completions. As a result, supply is becoming more and more limited, with the result that there is increasing competition for the properties which do come onto the market: recent reports in the press suggest that in some areas there are 10 buyers for every property which comes onto the market. The demand/supply relationship, in turn, has an important link with multiple surveys: where supply is low, demand for each property rises and there are more bids per property. The unsuccessful bidders are immediately faced with the prospect of multiple surveys. It is therefore essential that the Task Force acknowledges the link between housing and planning. We would urge the Task Force to encourage the Scottish Executive to give greater prominence to the current review of the planning system to ensure that Scotland has a planning system which meets the needs of the housing market. Of particular importance in this respect is the current review of NPPG 3, Land for Housing.

Similarly, there is an important link between housing benefit and the private rented sector which does not appear to have been addressed. The housing benefit system does nothing to encourage investment in the private rented stock at the lower end of the market. For example, there is a wide variety of decision among Rent Officers in respect of rent assessments. Furthermore, if it is established that rent has been paid incorrectly to the tenant, there is a clawback against the agent and there is no time limit on this. In addition, no deposit is paid and rent is paid in arrears. In some parts of the country we understand it can take up to three months to receive payment. These factors do nothing to encourage landlords to invest in their properties. Although housing benefit is a reserved matter, the Report should acknowledge the problems which are being caused by the inadequacies of the system and the Scottish Executive should be making every effort to exert pressure on Westminster to bring about change. In addition, we would suggest that changes could be made locally to the administration of housing benefit.

2.6 Resources

The Report acknowledges that funding repair work is a significant problem for some households. However, although brief reference is made to grants as a source of investment, the Report does not fully acknowledge the key role that grant funding played in the 1970s, 80s and early 90s in terms of improving not only BTS properties but also in terms of improving the fabric of tenements. Without 90% grants, the vast majority of this work would not have been carried out. Without a similar level of grant funding in the future, it is questionable whether there will be any significant improvement to the stock in the long term. However, grant funding obviously has considerable resource implications for local authorities and/or central government. The question of resources is not addressed in the Report and yet it is central to the problems associated with the condition of Scotland's housing stock.

In addition to financial resources, the Report does not address the very serious skills shortage in the construction industry. The construction industry plays an important role in the Scottish economy, yet it is currently experience huge problems in attracting new entrants. A solution to the problem receives no encouragement from the Scottish Executive with its focus on the knowledge economy to the detriment of the more traditional sectors. With the transfer

of Glasgow's housing stock to the Glasgow Housing Association and the subsequent investment programme in repair and maintenance, there is already going to be a strain on the existing workforce. If the skills shortage is not addressed urgently, there is a danger that repair work could either be delayed or it could be carried out to a low standards, thus storing up problems for the future.

2.7 Incentives for Investment

Key conclusion 28 raises an important point which has long since been a matter of concern for RICS nationally, namely that there are few, if any, tax or benefit related incentives to save or invest in regular repair, maintenance or improvements. The Institution has consistently argued in favour of the abolition of VAT on repair and maintenance. Although landlords can off set tax on repairs against rental income, they are unable to do so in respect of improvements. Accordingly, installation of double-glazing or central heating to improve energy efficiency would not be valid for tax relief. Owner-occupiers generally have no such benefit for either type of work. The only situation where owner-occupiers do not require to pay VAT is where work is being carried out under a statutory notice in cases where the local authority carries out the work. This anomaly means that it is actually more of an incentive for owners to wait until their building has reached such a level of disrepair that a statutory notice is put on it and work carried out by the local authority, rather than carry out regular repair and maintenance themselves. Statutory notices should, in our view, be used as a last resort, with the emphasis being placed on regular maintenance as opposed to emergency repairs on a "just-in-time" basis. Although VAT is a reserved matter, we would urge the Task Force to raise this matter with the appropriate Department at Whitehall.

2.8 Tolerable Standard

RICS Scotland supports the view that unfitness as measured by the tolerable standard is no longer the best basis for assessing the condition and quality of Scotland's housing stock. Even where houses meet the tolerable standard, they may be suffering from serious disrepair. Accordingly, we would support the introduction of the proposed Index of Housing Quality as an additional measure of housing quality.

If the tolerable standard is to be expanded, as has been suggested, additions should be given very careful consideration. For example, we would be concerned if it became a requirement of the tolerable standard for all properties to be fitted with a mains-powered smoke alarm. Although this might appear attractive, it should be borne in mind that there are also good reasons to suggest that such devices are not the best solution. Detailed consideration of such proposals is therefore required.

3. DETAILED COMMENTS

In view of the comprehensive nature of this Report, this section has been divided into three broad headings which reflect the sub-groups which have been established for Part 2 of the Task Force project: (i) Common and Shared Obligations; (ii) Private Rented Sector; and (iii) the House Buying and Selling Process.

3.1 Common and Shared Obligations

3.1.1 Conditions in Properties with Common on Shared Obligations

RICS Scotland agrees that levels of disrepair are generally higher in flatted properties, where there are shared and common obligations. However, it should be borne in mind that developments with common and shared obligations vary significantly in style, ranging from traditional tenements, through four-in-a-block villas and converted townhouses, to multi-

storey blocks. There are also significant differences in terms of the arrangements for management and maintenance. Accordingly, the condition of such properties also varies. We would suggest that key conclusions 10 and 11 should recognise these variations. In addition, as outlined above, we would also suggest that information on any differences in condition between managed and non-managed properties would be helpful.

Although there are problems in other types of developments, such as some properties bought under the right to buy, we would argue, based on the experience of our members, that the main focus of the Task Force should be the pre-1919 tenements which have no form of formal management arrangements. RICS Scotland agrees that the picture of disrepair outlined in the Report broadly reflects the condition of properties in the pre-1919 tenemental sector. Although significant investment was put into tenemental properties in the 1970s and 1980s, thereby improving a significant proportion of the sector, the decline in grant funding in the 1990s, coupled with the abolition of ring-fencing, has meant that little work has been carried out in the last decade. Unfortunately this trend looks set to continue with only £33 million being available under the new grant system for the whole of Scotland, compared with the £35 million which was previously available for Edinburgh alone. Accordingly, although local authorities will continue to undertake works in terms of statutory notices, they will be restricted in providing grants.

In addition to the decline in grant funding, the grant scheme itself has not been helpful in maintaining properties in good condition following substantial repair works. Unfortunately, the grant system did not place any conditions on recipients in terms of on-going management and maintenance. As a result, many of the properties which benefited from substantial investment in the 1970s have deteriorated to a similar state of repair as they were in before the investment was made. It is vital that public funds are not wasted in this manner in the future. We would therefore urge the Task Force to recommend that grants should be conditional on the recipients entering into a formal management and maintenance contract.

3.1.2 How Communal Repairs and Maintenance are Organised in Practice

The key conclusions 58 – 63 fairly reflect the day-to-day experience of RICS Scotland members working in property management. While we would acknowledge that some of the problems may be the result of a lack of willingness on the part of some owners to participate in repair programmes, we would argue that they are, in the main, the result of a failure in the law to address the difficulties associated with managing and maintaining communally owned properties. We appreciate that some local authorities have attempted to address these problems. For example, the local statutory notice repair system operated in Edinburgh and the recently introduced Stair Partnership initiative are aimed at addressing the problems faced by tenement owners. However, these procedures are not commonplace across Scotland.

Given that the Report indicates that the poorest conditions are to be found in flatted developments with common and shared obligations, we firmly believe that addressing these problems will be fundamental to improving the condition of Scotland's housing stock. Purchasers of a flat could be provided with as much information as is truly possible, whether by means of a seller's survey or by means of an improved buyer's survey; however, if they are unable act upon that information and carry out repairs to the property because there is no management and maintenance system, that information would be relatively useless. Similarly, providing incentives to owners, either through grants or tax breaks, will be of limited use to owners in flatted developments if there is no management scheme (i) by which they can come to agreement about what requires to be done and (ii) which compels everyone to participate and provide their share of the cost once agreement has been reached. On this basis, therefore, RICS Scotland would firmly recommend that the focus of Stage 2 should be

on addressing the problems associated with the management and maintenance of communally owned properties.

As an advocate of formal property management, RICS Scotland fully appreciates that concerns have been expressed about the lack of regulation of private sector property managers in Scotland. Members of RICS Scotland who operate as property managers are already bound by the Institution's Code of Professional Conduct and by Guidance Notes on Residential Management. If formal regulation were introduced, our members would therefore be well-placed to meet the standards required.

3.1.3 Local Authority Powers for Tackling Poor Quality Housing

We agree that the link between statutory notices and mandatory grants can be seen as a significant constraint for local authorities. We understand, however, that the link to mandatory grant only applies to notices served under Section 108 of the Housing legislation. It does not apply to notices issued under Section 13 of the Building (Scotland) 1959 nor to those issued under Section 87 of the Civic Government (Scotland) Act 1982. In addition, as is noted in the Report, the City of Edinburgh Council has very effectively managed, through local legislation, to serve repair notices without there being any link to mandatory grant. Perhaps the more pertinent question to be addressed, therefore, is not whether the link can be broken, but why there are so many types of notices, covered by a number of pieces of legislation. We would recommend that the complexity of the notice system should be reduced, with the introduction of a single system, accompanied by a stand-alone grant system. Indeed, in our response to the Building Standards consultation paper we have recommended a thorough review of the statutory notice repair system. The Task Force should be aware of the work being carried out as part of this consultation exercise.

3.1.4 Additional Comments

RICS Scotland would like to draw attention to some additional matters of concern which have not been covered in the Report. These are as follows:

- Commercial premises: in traditional tenements there are cases where a heavy burden for the cost of repairs falls on the commercial premises. This often acts as a disincentive to the owners of commercial properties.
- Insurance: there is no requirement on the owners of flatted developments to insure their properties, except where a property manager is employed and it is a condition of the property titles. Accordingly, major problems could arise if there is storm damage or fire damage to a building and one owner is not insured.
- Statutory Notices: where a local authority has had to act in default, they can only undertake the minimal work required to address the points covered in the statutory notice. This, in many cases, could result in defects remaining in the property.

We would urge the Task Force to consider these additional points during Stage 2.

3.2 Private Rented Sector

3.2.1 Condition of Properties in the Private Rented Sector

The Report suggests that the condition of property in the private rented sector is in worse condition compared with other housing tenures. In addition, it states that problems of low energy efficiency are worse in the private rented sector than in any other sector. RICS Scotland believes that these statements require much deeper analysis. According to the figures in the 1996 SHCS, the condition of private rented housing in respect of pre-1919 tenements, post-1919 tenements and post-1919 "other flats" is comparable, if not slightly

better, than the condition of owner-occupied stock in the same groups. Given that almost 41% of the private rented sector comprises tenement flats compared with 23% of the overall housing stock, it would appear that a large proportion of the private rented sector is not in any worse condition than owner-occupied stock.

Turning to the problems of poor energy efficiency, it is perhaps not surprising that the private rented sector has a higher percentage of poor energy efficiency properties than the owner-occupied sector given that such a high percentage of the stock comprise pre-1919 tenement flats. In this respect, it would have been interesting to examine the results in closer detail to establish whether there is any considerable difference between the energy efficiency of pre-1919 owner-occupied stock and the energy efficiency of pre-1919 private rented stock. Closer analysis of the rural sector might also have been interesting. The private rented sector is more significant in rural Scotland. Energy efficiency is also known to be poorer in rural areas. It therefore follows that the percentage of private rented housing which has poor energy efficiency will be higher. Once again, it might have been more helpful if the statistics could have been broken down to illustrate the energy efficiency of owner-occupied housing in rural areas compared with rural private rented housing. Finally, the Report fails to provide any explanation as to why energy efficiency is lower in some sectors than it is in others. In respect of rural housing, for example, it should be acknowledged that central heating cannot always be easily installed because there is no gas supply. It can also be more difficult to make older properties energy efficient and some energy efficiency measures may even cause more problems than they solve, e.g. older stone built properties may suffer from problems of condensation, which may result, in extreme cases, in outbreaks of rot.

3.2.2 Attitudes, Incentives and Disincentives to Investment by Private Landlords

RICS Scotland acknowledges that market pressures operate most effectively in the good quality stock in the deregulated sector, where landlords are in a position to increase rental levels to reflect investment in the property. However, the experience of our members working outwith the central belt would suggest that it is becoming increasingly important for landlords to invest in their properties, even at the lower end of the market. In an environment where borrowing is relatively cheap, many potential tenants would now rather buy properties than rent sub-standard accommodation. Average lease lengths are falling (to approximately 12 months) and turnover is subsequently on the rise, as tenants move quickly from private renting to owner-occupation. High turnover can often result in properties lying empty for a month or two until a new tenant is found. Obviously this impacts on rental income and therefore most landlords will try hard to ensure that they retain tenants. Accordingly, even in rural areas, where it is generally more difficult to realise investment through rental increases, landlords are recognising the importance of investing in properties in order to ensure that they do not lie empty. We understand from members who practice in rural areas that landlords will generally invest in repairs and improvements if they can ensure as little as a 5% return.

Notwithstanding our view that there is an increasing recognition of the need to invest, we do appreciate that there remain some landlords who are either unwilling or unable to invest in their properties. For example, we agree that landlords who have tenancies in the regulated sector will most likely be discouraged from investing in their properties simply because the investment cannot be reflected in the rental level. Fair rents which operate within the regulated sector have not improved over the years and the difference in rental levels between the regulated and the non-regulated sectors is now considerable; for example, a deregulated flat may achieve a rental income of £6000 per year while exactly the same flat in the regulated sector might achieve as little as £2500. Problems also exist in some rural areas where landlord on large rural estates are finding it increasingly difficult to finance repairs and improvements. In any instances, they do not wish to sell any of the properties in

an attempt to raise capital as these properties form an integral part of an estate which would suffer a reduction in value if sold off piecemeal.

3.2.3 Tenancy Regime Impacts

Although unlawful eviction may be a genuine concern to a small minority of tenants, RICS Scotland refutes the suggestion that it is a major concern within the private rented sector. Unlawful eviction is extremely rare and in areas where supply outstrips demand, it would be highly unlikely ever to happen. We are also concerned by the implication that tenants live in fear of their landlord and a landlord would never have a legitimate reason to bring a tenancy to an end. There may be genuine reasons why a landlord would wish to terminate a tenancy, e.g. if the property was rented to “anti-social” tenants. However, if this were the case, we would argue that the vast majority of landlords would do so lawfully. The penalties of doing otherwise are so high that any scrupulous landlord would not consider unlawful eviction. The Short Assured Tenancy system provides the landlord with a lawful manner in which to bring a tenancy to an end. However, most landlords would not in fact wish to bring a tenancy to an end unless there was a genuine problem with the tenant. Bringing a tenancy to an end can take several months, can result in court action and can incur considerable expense. As outlined above, given that supply is far outstripping demand in many areas, landlords are keen to retain the tenants they have for as long as possible.

Turning to quality standards, the tenancy regime, as set out in the housing legislation, does provide that the property must be wind and water tight. We do accept, however, that there are no standards in respect of decoration. However, the introduction of such a standard would be ill-advised. Who would decide, for example, what constitutes reasonable decoration?

Key conclusion 51 states that the current “common law” provision allows for poorer standards in houses rented to lower income households or in lower value areas. The background text to this conclusion is drafted in unfortunately phrased language, referring to the “imbalance in the power relationship” between landlord and tenant. As outlined above, such language is not helpful. While RICS Scotland would acknowledge that it might be difficult for a tenant, under the common law, to assert his/her rights in terms of a landlord’s repairing obligations, we would argue that there are other factors, not addressed in the Report, which may have resulted in poorer standards in houses rented to lower income households. As outlined above, the impact of the housing benefit regime on the private rented sector is significant. In particular, where rent assessment officers are unwilling to meet market rents, landlords are discouraged from investing in properties as they can see no return from their investment. Some may even be unwilling to rent to people on housing benefit at all. This type of disincentive is failing those at the lower end of the market and it should therefore be addressed by the Task Force as being an “issue affecting the condition and quality of private sector housing”.

Although RICS Scotland agrees that tenants should have rights in respect of ensuring the property is maintained and repaired to a high standard, we have reservations about extending these rights unequivocally to improvements. Problems would arise in determining the definition of an “improvement”. Would this extend to gas central heating, to double glazing? Or would improvements be restricted to changes which impact on the structural fabric of the buildings, e.g. replacement of a flat roof with a pitched roof? While some “improvements” might legitimately be classed as repairs, there will be dubiety about others. We would therefore be opposed to compulsion in respect of improvements.

3.2.4 Local Authority Powers in Respect of the Private Sector

The Institution accepts that some form of regulation of the private rented sector would be helpful, not only to protect the rights of tenants but also to improve the image of the sector. Regulation must not, however, penalise good landlords who already operate to the highest of standards. In addition, regulation must not result in there being fewer properties available for rent. It is interesting to note that reference to the existing regulatory scheme – the Houses in Multiple Occupation (HMO) Regulations 2000 – is made from the perspective of powers which are available to local authorities to tackle condition problems. No mention is made of the impact of HMO licensing in respect of investment in properties by landlords. Concerns are already being expressed about the impact of the recently introduced HMO legislation. In view of the costs associated with licensing – which can vary widely among different local authorities – landlords may decide either to raise rental levels or to pull out of the rented market all together. It is unlikely that the costs will encourage landlords to invest further in their properties, other than to ensure they meet the minimum required to obtain a licence. Although RICS Scotland fully supports the ultimate aim of the HMO legislation, we are concerned that it was introduced too quickly, without sufficient consideration of the impact it might have. We also believe that the number of adults constituting an HMO is too low. We understand that a review is currently being carried out and that there may be a limited moratorium on the extension of the scheme. This is a welcome move.

Essentially, any regulatory scheme must be fair, workable and cost effective. One possible approach would be to link the regulation of the private rented sector to the possible regulation of property managers. Properties could then be accredited, provided that they were managed by a property manager who operated within the regulatory scheme.

3.3 House Buying and Selling

3.3.1 Initial Information and Advice Sources

RICS Scotland agrees that it can be difficult for buyers and sellers to compare value for money in respect of the costs involved in the house buying and selling process. We would suggest that this is particularly difficult when they are offered “all-in-one” packages; for example, it is difficult to assess whether the conveyancing fees are reasonable when they are included in an overall cost of selling a property which will include marketing costs, etc. This problem could be addressed by requiring professionals to provide an accurate breakdown of the costs involved in order to ensure transparency.

In terms of the sources of professional advice, it should be noted that mortgage brokers and financial advisers are increasingly providing advice to purchasers. They too may have a role in instructing the surveyor. The lack of a direct buyer/surveyor relationship is a matter of concern to RICS Scotland, as there is a danger of information being diluted or misunderstood if it is passed through a third party. A direct relationship would also allow the purchaser to seek additional information or clarification, thereby ensuring that he/she has as much information as possible before making an offer. This concern is currently being addressed within RICS Scotland by means of a public relations campaign which is to be launched in September. The aim of the campaign is to encourage house buyers to contact surveyors directly and to encourage a higher take-up of Scheme 2 Homebuyer Surveys. Any support from the Scottish Executive for this campaign would certainly be much appreciated.

3.3.2 Locating a Suitable Property

Although we appreciate that some sellers may attempt to conceal repair problems from potential buyers, based on the experience of our members, who inspect thousands of properties each year, we would not agree that this is a major problem. As regards running

costs and the repair/maintenance history of a property, such information would be useful, although we would question how meaningful it could be. Information on major repairs such as dry rot work or major roof repairs is already generally provided by means of guarantees. Providing information on smaller jobs might not be particularly meaningful as there will be no guarantee that the quality of the work is high. Similarly, running costs will differ depending on the people living in the property and the information may not therefore be particularly helpful.

3.3.3 Valuation Reports and Surveys

RICS Scotland is concerned about the over-reliance on Scheme 1 Mortgage Valuations. We do not agree, however, that a Scheme 1 provides “very little” information. On account of Scottish practice, the Scheme 1 Mortgage Valuation provides a more detailed inspection in Scotland than it does in other parts of the UK and subsequently, buyers are currently provided with more information than was traditionally the case. That notwithstanding, RICS Scotland does agree that buyers would be better informed if they commissioned a Scheme 2 Homebuyer Survey. Furthermore, commissioning a Scheme 2 may become increasingly important as many lenders are introducing very basic Scheme 1 Mortgage Valuation forms, e.g. the Property Risk Assessment introduced by HBOS, which restricts the level of information which can be relayed. One of the aims of the aforementioned PR Campaign will therefore be the promotion of the Scheme 2 Homebuyer Survey, which we believe will give buyers greater confidence about the properties they are purchasing.

Although we agree that setting “closing dates” at short notice can lead prospective buyers to make decisions and offers before they have had an opportunity to consider the results of a survey in depth, we are unsure whether this problem could ever be addressed. Even if a two week period had to be left once a closing date was announced, a prospective purchaser might not view the property until the night before the closing date. The problem might therefore be alleviated, but it could never be fully overcome.

Turning to the concerns raised in respect of unexpected repair or improvement bills, RICS Scotland is disappointed that the figures quoted have not been analysed in more detail. The Report states that 27% of house buyers had discovered unexpected repairs and improvements in the first year after purchase. However, given that, according to RICS Scotland’s findings, approximately 90% of purchasers rely on a Scheme 1 Mortgage Valuation, it is highly probable that the vast majority who have discovered unexpected repairs did not in fact commission a survey in the first instance. We would also be interested to know what is meant by the term “improvement”. It may be that some of the expenditure was spent on matters which fall outwith the remit of a survey or which are a question of personal choice. Once again, more detailed analysis of this statistic would have been helpful.

Of particular concern, however, is the figure itself. Based on the evidence of our members’ claims records, we would suggest that 27% is particularly high. On average in Scotland, fewer than 1% of surveys carried out result in a complaint. Of these complaints, fewer than 0.5% result in actual claims being made. This picture is reflected across the board, even among the firms which offer a “guarantee”, i.e. where the buyer could not be said to have been dissuaded from pursuing a claim in the fear that he/she might lose. We do appreciate that the figure of 27% has been derived from a survey of recent buyers and that the Stage 1 Report is merely reflecting the findings of this survey. However, we would question whether the high figure might be the result of an ambiguously, or indeed badly, worded question which referred to both repairs and “improvements”.

Despite our questioning of the percentage of buyers who discovered unexpected repairs and improvements, RICS Scotland does appreciate that improvements to the existing Scheme 2

Homebuyer Survey would be helpful. We are aware that the existing product could be made more user-friendly and that it could contain additional information which would be beneficial to buyers, particularly first-time buyers. As outlined above, information on running costs might not be particularly meaningful. However, although detailed information on maintenance costs might be difficult to predict, general information and advice on how to maintain certain parts of the property, and how regularly to do so, would certainly be useful. Chartered surveyors would also be in a position to provide information on energy efficiency – most of them are already trained to do so but there is currently no demand for this information. An access audit would also be helpful for less able-bodied people. Although this would require additional training, such information could be included, subject to appropriate fees. RICS Scotland is currently considering ways in which the existing Scheme 2 could be extended.

3.3.4 Securing the Property

While we agree that blind bidding may have an impact on house price inflation at a localised level, we fail to understand how it has an impact on multiple surveys. Whether bidding was sealed or by open auction, unsuccessful purchasers would still have paid for a survey. We do agree, however, that low upset prices, which can lead to misleading levels of competition, are a major factor in stimulating multiple surveys. In this respect, it is important to note that there is often a major difference not only between the upset price and the price achieved, but also between the upset price and the valuation for mortgage purposes. We appreciate that it would be difficult for a selling agent to give a firm guarantee of the price a property might achieve as there is always the possibility of the so-called “special purchaser” who will be willing to pay well over the valuation in order to secure the property. However, we would suggest that there should be a closer correlation between the upset price and the valuation for mortgage purposes. Whether this problem can be addressed will be a matter for the Task Force to address in Stage 2. However, RICS Scotland would certainly agree that consideration should be given to this problem.

3.3.5 The Cost of House Buying

RICS Scotland acknowledges that concerns about the costs of surveys and valuations may play a part in discouraging some buyers from commissioning Scheme 2 Homebuyer Surveys, particularly if they are concerned about the potential for multiple surveys. However, the statistics collated by RICS Scotland illustrate that even in areas which are not traditional hotspots, the percentage of people commissioning a Scheme 2 Homebuyer Survey is extremely low. Accordingly, we would argue that there must be other reasons why people opt for Scheme 1 Mortgage Valuations. One of the reasons why people do not commission a Scheme 2 may be a lack of knowledge. Again this is a problem which we hope to address with the PR Campaign.

The Report estimates that £27.4m is spent each year on surveys and valuations commissioned by or on behalf of buyers. We understand that this figure was reached, based on 100,000 property transactions, using the results of the DTZ Prieda Research which suggested that 60% of purchasers commission a Scheme 1 Mortgage Valuation and 40% commission a Scheme 2 Homebuyer Survey. RICS Scotland has since conducted its own research and we have found that approximately 90% of purchasers commission a Scheme 1 Mortgage Valuation, with only 10% relying on the Scheme 2. Based on these results, and using the same number of property transactions as the base calculation¹, we would estimate that £17.9m is spent each year on surveys and valuations, with around £5.7m being spent on surveys which did not lead to a house purchase. Given that 76% of purchasers were successful in buying the first property for which they offered, of that £5.7m, we would

¹ The actual number of residential transactions in 2000 was 135 384 (source: Paisley University).

estimate that only £4.3m is spent on “abortive” surveys. This represents a very small percentage of the total value of the property market. In addition, it does not take into account the discount schemes offered to purchasers who have a number of unsuccessful surveys.

Although the amount of money represents a very small percentage of the total value of the property market, RICS Scotland does appreciate that in some hotspot areas, the cost of multiple surveys can be financially difficult for individuals. We appreciate that the “most comprehensive survey of buyers currently available” does not suggest that multiple surveys are restricted to a few, relatively buoyant markets. However, based on several years’ experience of the housing market in Scotland, RICS Scotland would argue that multiplicity is, indeed, limited to hotspots. It must be borne in mind, that the most recent survey was carried out over a very limited period of time. Local markets will always have temporary periods of buoyancy, e.g. if new jobs are being created or if there is a shortage of a particular type of property which results in high demand. Recent examples of this nature include Ayrshire where, as a result of new jobs being created at Prestwick, there has been an increase in the demand for housing. However, chartered surveyors’ experience of the market over a much longer period would suggest that multiple surveys are generally limited to the traditional hotspots of Edinburgh, parts of Glasgow and parts of Aberdeen.

We would also argue that multiplicity is cyclical and only occurs when there is a boom in the housing market. These conditions are not always present and it might therefore be unwise to change the system fundamentally to address a problem which does not always exist. That said, we agree that consideration should be given to ways in which multiplicity can be avoided. Consideration should not, however, focus on only one possible solution to the exclusion of others. There has been a tendency in Scotland to consider the introduction of sellers’ surveys as the only way in which the house buying and selling system can be improved. We hope that the Task Force will adopt a much more comprehensive approach and we look forward to seeing consideration of a number of possible solutions, with advantages and disadvantages clearly identified, as part of the work carried out in Stage 2.

3.4.6 After Sales

RICS Scotland notes the concerns that the avenues of redress open to consumers are not being used significantly. In relation to the surveying profession, the Institution has made considerable efforts to improve the service offered to dissatisfied consumers. In 1998, RICS introduced a compulsory arbitration scheme. This requires all firms to have a formal complaints handling scheme which meets the benchmark standards set down by the Institution. If, at the end of this process, the client is still not satisfied, the firm is obliged to enter into arbitration – previously the client could only proceed to arbitration if the firm was agreeable. The arbitration scheme is administered independently of RICS, by the Chartered Institute of Arbiters, and the cost is considerably lower than taking court action, which was the alternative route. We understand that take-up of the arbitration scheme has been low. This may be because the scheme is relatively new. However, we do question whether take-up might have been discouraged by solicitors who are advising their clients to take the traditional route of court action. We note that no research has been carried out to identify why avenues of redress are not being used and would suggest that research would be helpful.

4. CONCLUSION

In conclusion, RICS Scotland would emphasise the need to digest the responses received to the Stage 1 Report and to amend the Stage 2 work programme to reflect the views expressed. We would further suggest that future work should adopt a more balanced approach to the various parties involved in the private housing sector. Improvements to both the owner-occupied and, in particular, the private rented sectors should be acknowledged.

More specifically, as outlined throughout this response, we firmly believe that the focus of Stage 2 should be on the pre-1919 tenements which have no formal management and maintenance arrangements. These are the properties which demonstrate the most significant problems and resources should therefore be targeted accordingly. In this respect, there is a need for a robust, “joined-up” approach to the Law of the Tenement reform.

With regard to the private rented sector, care must be taken not to discourage private landlords from investing properties. It will also be important to ensure that they do not withdraw completely from the private rented sector as a result of excessive regulation. That said, we fully appreciate that tenants should be protected from less scrupulous landlords and we therefore accept that a degree of regulation might be required.

Turning to the house buying and selling system, we appreciate the concerns raised in respect of the efficiency of the current system. As outlined above, RICS Scotland is keen to work with the Scottish Executive and others to ensure buyers are provided with as much information as possible before they offer for properties. We ask, however, that fundamental changes to the existing system be given very careful consideration as they may not suit all markets at all times. In addition, the system must be equally fair to buyers and sellers alike.

Finally, it is vital that key links are made with other policy areas such as planning and housing benefit. In addition, the Task Force should pay careful consideration to the ongoing review of Building Standards which may have an impact on the work of the Task Force.