

# Improving the house buying process

Recommendations of the General Consumer Council  
for Northern Ireland



**GENERAL • CONSUMER • COUNCIL**  
*for Northern Ireland*

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## Summary

This report is the culmination of a project that the General Consumer Council initiated in 1997. Following our research on the experience of consumers buying and selling their homes and consultations with key players in the transaction, we are recommending wide-ranging reforms.

Our exploration of how to improve house buying and selling in Northern Ireland in several respects parallels the Government's initiative for England and Wales. Indeed our recommendations for strengthening the house buying process broadly coincide with the Government's proposals announced on 11 October 1999.

With the impetus generated in England and Wales there is an unprecedented opportunity for Northern Ireland consumers also to benefit, through a faster and more efficient process and through better relations between the consumer and the solicitor, the estate agent and other businesses involved in the transaction.

We recognise that many of our recommendations require co-operation between the different players in the housing market. We are optimistic that real improvements can be achieved. The commitment of the Department for Social Development (formerly Department of the Environment) and the Northern Ireland Housing Executive has been demonstrated by their support for the Council's research. The feedback from the professional representative bodies has been constructive and there appears to be a genuine interest in working jointly for change.

### *Improving the buying and selling process*

We recommend changes to the process of buying and selling a home. Among the most important are:

- potential buyers getting information about the property at the outset, to reduce nerve-racking delays, deals breaking down and consumers finding that what they bought is not what they expected,
- a Government-led working party that includes the main players in the housing market to take forward the introduction of a seller's information pack and other reforms in Northern Ireland,
- better guidance from surveyors about the condition of the damp course and timber in existing homes,
- information for potential buyers on the energy efficiency of both new build and existing houses,
- adoption by builders of a standard purchase contract for new homes.

## **Better service and protection for consumers**

Consumers going through the process of buying or selling house deal with a variety of providers. We propose measures to improve the service provided and the redress available. These include:

- a builders' code of practice which has the Office of Fair Trading's new seal of approval,
- a standard price quotation form for estate agents specifying relevant services and conditions,
- compulsory registration of all agents in the residential market in the Ombudsman for Estate Agents scheme,
- establishing the principle that those who relied on a negligent residential survey be compensated to cover the cost of putting things right,
- all solicitors in residential conveyancing joining the Law Society of Northern Ireland's Home Charter Scheme.

The Council is writing to all those in a position to make house buying better asking them to take action, but looks to the Government through the Department for Social Development to take the main thrust of the initiative. Just as the Government is championing reform for England and Wales, it should also take the lead in Northern Ireland.

# House buying and selling

## A consumer concern

How people cope in buying or selling their home is an important consumer issue:

- Most consumers will buy a home at one time or another. Over the past two decades the number of households in Northern Ireland owning their home has climbed by more than one third to 70%, and many others hope to buy one day.
- It is a complicated and expensive transaction, over and above choosing and paying for the property.
- Mistakes can have harsh and long-lasting consequences.

The market facing consumers is changing:

- The pace of house price increases quickened in the 1990s, placing more pressure on participants.
- Technological advances and other developments are changing the options available.
- Government-initiated reforms, designed to improve the process in England and Wales, will affect transactions in Northern Ireland.<sup>1</sup>

## Investigating the issue

The Council commissioned a survey of people who had purchased a house between April and October 1997. Almost 1,500 recent buyers responded, describing what had happened at the different stages of the process. More than half the buyers were also sellers and this side of the market was also explored.

While the buying process went very smoothly for 23% of buyers, for almost as many (22%) it did not go smoothly. In addition, some buyers discovered problems after the sale had been completed and they had moved in.<sup>2</sup>

A minority of consumers were dissatisfied with the services of the solicitor, estate agent, financial advisor or builder used.

<sup>1</sup> See DETR statement (11 October 1999) "Home Buying and Selling: A Faster and More Efficient System".

<sup>2</sup> For example 27% of buyers of existing houses found unexpected defects while 35% of new house buyers were dissatisfied with their builder's after-sales care.

## ***‘Homing in on buying a house: a consultation on improving the process in Northern Ireland’***

Our report, published in February 1999, described the concerns of house buyers and sellers and also outlined a variety of possible changes to improve matters. We wrote to Government departments and agencies and to bodies representing professions and businesses asking for their views on the best way forward. We received over thirty responses commenting on what changes were needed (Appendix I). In addition we organised a round table meeting at which the professions and organisations playing a key role in the transaction were represented.

### ***Managing reform***

The importance of exercising care in contemplating reforms is underlined by the fact that the existing process seems to work for most consumers. The round table discussion demonstrated widespread support in principle for change but as the experts made plain – ‘the devil is in the detail’. We know that effective implementation of many of our recommendations depends on co-operation and joint initiatives between the various professions, businesses and public bodies active in the housing market.

As the voice for consumers we can point out where reform is needed but it must be the ‘practitioners’ who deliver it. In England and Wales the Government is orchestrating changes to the house buying process. In Northern Ireland the Department for Social Development (DSD) is well positioned to take this responsibility. To bring together the expertise and authority necessary we are asking the DSD not only to work with the public and private bodies in Northern Ireland but also to liaise with national organisations.

### ***Consumer guidelines***

In proposing changes to the way in which houses are bought and sold and services backing up the transaction are delivered, we are guided by three basic objectives:

1. to improve information for consumers so that the uncertainty, stress and delays are reduced;
2. to implement changes that give value for money for consumers;
3. to ensure that individual consumers are fairly treated, particularly that they can find redress when things go wrong.

Our approach emphasises greater openness and increasing consumer awareness of the options available. Better guides and the adoption of best practice will particularly help the most vulnerable buyers – those in the market for the first time and those on lower incomes.

# *Improving the buying and selling process*

## **Seller's Information Pack**

At present potential house buyers are given little information up front about the products on offer. However sellers could provide more, by producing a standard package of information when putting their property on the market.

A 'seller's information pack' would involve the seller or his agent collecting together the various documents currently made available only after an offer has been accepted. These include property certificates, searches, and copies of warranties and insurance policies. Potential viewers could inspect them and obtain copies in return for a fee to cover reproduction costs.

Authoritative up-front information on the physical condition of existing houses would also inform people more about what they are buying. First time buyers, who are less likely to be able to afford to commission a house survey, would particularly benefit. (See also page 10.)

## ***Up front information for potential buyers***

Although a seller's pack would increase the responsibilities and risks for sellers, and buyers may still need to consult a solicitor to interpret some of the details, on balance the pack can be expected to yield value for money.

- The vast majority of sellers are also house buyers thereby balancing out the costs and benefits.
- Up front information should reduce the time taken and the number of aborted sales and delays during the stressful stage between acceptance of offer and contract.
- Except for the house condition survey (page 11), most of the information is gathered at a later stage in any event; only if no sale materialises or the property is on the market for a long time would the seller be out-of-pocket on these.

Virtually all those providing us with comments on the idea of a compulsory seller's pack favoured it although some questioned the inclusion of a house condition report. The Government has announced plans to establish a compulsory seller's information pack for England and Wales. Introduction of the seller's information pack into the process should be easier in Northern Ireland. Here solicitors have for some time followed the practice of gathering together information when they receive instructions from a client selling a property. In England and Wales it is often the buyer's solicitor who must do this work.

We are persuaded that the advantages of openness and more information for potential buyers would outweigh the disadvantages, given careful planning and implementation of the reform.

**1. We recommend that the seller's information pack is adopted in Northern Ireland so that the seller provides certain information about the property, including a house condition report, as soon as it goes on the market.**

### **Implementation**

Unless the seller's pack is universally adopted, the advantage of streamlining the process would be compromised. Sellers therefore will probably have to be compelled to produce it. There might be a few exceptions, such as for sales within a family where the buyer already knows about the property.

Compulsion will require legislative change and the institution of penalties that are large enough to provide the necessary incentive to comply. At the same time, it will be important to contain the costs being imposed on sellers compiling the packs. A number of issues have to be addressed.

- For example, it makes sense to establish a format for a 'plain English' summary of the contents of the pack that potential buyers can take away to study.
- The requirement should not make it impossible for sellers to market their homes by themselves, without the services of an estate agent.

In England and Wales the Government has an advisory committee of the main players in the housing market to help design the new regime. Also a pilot scheme will be conducted in Bristol to test it.

As the law and customs in Northern Ireland differ in important respects from those in England and Wales, it is important that a similar arrangement be set up to ensure that the reforms work effectively here. This should also facilitate the implementation of the other changes to speed up and rationalise the process recommended in the following sections. In our view the Department for Social Development (DSD) is best positioned to orchestrate the initiative for Northern Ireland.

**2. We recommend that the Government (DSD) set up a working party of the main players in the Northern Ireland housing market to advise on the implementation of the seller's information pack and other reforms to the process.**

Use of the seller's pack is not a cure-all for delays and problems between offer and contract. For example, a buyer in the chain could be stalling because his current home has not yet sold or his mortgage has not come through. Delays due to mortgage arrangements would be lessened if buyers sorted out their financial arrangements early on.

**3. We recommend that lenders encourage house buyers to get an 'in principle' offer of a loan as soon as they start looking for a home.**

## Physical Condition of Existing Houses

Our survey revealed confusion among consumers about what kind of inspection had been done of the house they bought. More than one in four found unexpected defects after they moved in, but it was not possible to determine what type of survey, if any, these people had relied on. Clearly information on this aspect of the purchase needs to be improved even before the full seller's pack becomes standard practice.

### *Improving information for potential buyers*

At present many buyers rely on the valuation report prepared for the lending company. This focuses on matters affecting the sales value of the property and the security of the loan. It is the most popular type of inspection but our survey suggests that some buyers have unrealistic views about the extent to which the house condition is scrutinised.

Although the lender often can obtain a valuation by other means, building societies are bound by law to get a surveyor's report. Given the introduction of a compulsory house condition report when a house is put up for sale, the way in which lenders confirm that their loans are secured needs to be looked at again.

### **4. We recommend that the Government review the traditional approach of assessing the security of mortgage loans to see if the buyers, who pay for the survey, are getting value for money.**

Consumers need to understand what it is they are buying – what building defects if any exist and how costly they would be to repair. For this they require expert advice from a property surveyor.

A Channel 4 television programme 'Who surveys the surveyors?' as well as mystery shopping tests by the Consumers' Association indicate that the quality of the survey work carried out sometimes falls short.<sup>3</sup> Following the television report the Royal Institution of Chartered Surveyors (RICS) set up a working party to look at what action should be taken.<sup>4</sup> We endorse their suggestions, such as placing more emphasis on training, but we would go further.

### **5. We recommend that RICS monitor members' work more closely, for example by conducting random checks of a sample of surveys done, with appropriate penalties for sub-standard jobs.**

<sup>3</sup> "Safe as houses?" (June 1999) Which?: Consumers' Association, pages 12-15.

<sup>4</sup> June 1999 Notice on RICS Website: [www.rics.org.uk](http://www.rics.org.uk)

Responses to our consultation report included complaints about the propensity of house inspection reports to recommend further investigations, particularly by damp proofing and timber experts. This tends to delay sales and, according to some commentators, leads to unnecessary and even unsafe treatments. While wall-to-wall carpets and other obstacles may limit the ability to inspect the timber and damp course, the surveyor should be able to give definitive guidance based on the evidence available.

**6. We recommend that RICS set stringent standards for opinions about the condition of the damp course and timber to ensure that potential buyers have the most useful information possible.**

Buyers themselves can be helped to inspect prospective properties with a critical eye. By careful observation of key areas, such as the roofline and under the stairs, they can quickly narrow down their list of possible buys. Surveyor reports on the house chosen can be better appreciated. Such know-how would also be useful for home maintenance when buyers become owners.

Development of a step-by-step guide for consumers would require the participation and support of several bodies with the relevant expertise and resources and familiarity with Northern Ireland conditions. The presentation should be from the consumer's standpoint, independent of particular provider interests. The guide could be disseminated through local councils, estate agents, lenders and others, and accessed on the Internet.

**7. We recommend that a consumer's guide to house inspection be developed by a special project team, for use in viewing a house for sale and assessing the need for repairs.**

**The Council would be pleased to join such a project, given the participation and support of the Northern Ireland Housing Executive together with other interested parties.**

***A compulsory professional survey paid for by the seller?***

Under the present arrangements few sellers pay to have surveys conducted for the information of prospective buyers. Some houses are purchased without any expert checks of the physical condition while others are inspected several times on behalf of different potential buyers.

If a house condition survey were available for potential buyers in the seller's information pack, this would streamline sale transactions as well as letting consumers know what they are buying.

This is a longer term reform measure but work on it should start now. The supply of trained residential surveyors needs to be expanded. Also further research is required to design a compulsory survey regime that would give value for money. What the survey should cover would have to be defined to

ensure it met the typical buyer's needs without involving the seller in too much expense. The surveyor must be made liable to the buyer, and possibly the lender, as well as the seller.<sup>5</sup>

The working party recommended to help the Government establish the seller's information pack in Northern Ireland will be useful in coming to grips with these issues.

### **Energy efficiency**

More up-front information about energy efficiency should be provided about houses for sale, given the high cost of energy in Northern Ireland. Indeed the Select Committee on Environmental Audit recently recommended mandatory energy surveys of houses at the point of sale.<sup>6</sup>

All houses approved for construction by District Council Building Control after 1 April 1999 must be rated on their energy efficiency. Prospective buyers should see this information about the houses they view.

For existing houses an energy efficiency audit could be made part of the compulsory survey report outlined above. While this would involve some additional cost for the survey, the information would give significant advantages in promoting conservation measures and lower fuel bills.

Armed with the energy efficiency rating for the house, consumers could take advantage of the free advice available in Northern Ireland to find out how to improve the efficiency level of their home.

**8. We recommend that the Government require builders to inform prospective buyers about the SAP ratings on new homes, and that an energy efficiency audit be included in house condition surveys of existing homes.**

### **Breakdowns**

Our survey of recent buyers and sellers indicated that substantial numbers of accepted offers were never completed either because the seller or the buyer withdrew. This sometimes caused distress and extra expense. At the same time our consultation uncovered no sound, fool proof measures to prevent gazumping and gazundering.

In our view the seller's information pack is the most practical method of reducing the number of deals collapsing because fewer surprises or delays will occur late in the process.

<sup>5</sup> A compulsory survey would not include a valuation report. Surveyors would have to pay for the additional insurance to cover their wider liability.

<sup>6</sup> The Seventh Report of the Select Committee on Environmental Audit (July 1999).

## **Making Property Information Accessible**

### ***Inter-business relations***

The inter-relationships between the public bodies and commercial organisations involved in a housing transaction affect the efficiency of the process. We urge participants to increase their efforts to develop standard contracts and to agree tight turn-around times for dealing with the work.

Our feedback included criticisms of some contracts for new houses that were biased against the buyer. When the time comes for signature the buyer does not always feel in a position to insist on better terms, despite the advice of his solicitor.

### **9. We recommend that the Law Society and the Construction Employers Federation renew their efforts to make the Standard Building Contract more widely accepted.**

The response times of the Department of the Environment and many local councils for issuing property certificates have improved and in many cases performance is monitored and the results published. However there are exceptions. At present the Departmental target for processing property certificates is 93% within 10 days.

### **10. We recommend that the Government set performance standards for local councils providing property certificates that include turn-around times equivalent to the Departmental commitment.**

The buyer's solicitor typically also acts for the buyer's lender, vetting the purchase on the lender's behalf. While the various lenders have tried to standardise their requirements of solicitors, this has achieved limited success to date. As a consequence the time (and money) devoted to this aspect is greater than it would otherwise be.

### **11. We recommend that mortgage lenders in Northern Ireland devise with the Law Society a workable standard form to set the terms of their business relationship.**

Other areas where we received extensive comments concerned how home modernisations and extensions to existing houses were vetted regarding unauthorised work. Local council building control departments, solicitors, surveyors and lenders appeared to hold divergent views on the appropriate way to handle them. The DSD should take the lead in finding a satisfactory resolution.

### **12. We recommend that the Government rationalise the vetting of works in existing houses in co-operation with other interested parties.**

## *GIS for property transactions*

As we noted in our consultation report, land law in Northern Ireland and the processing of legal and other information on property need up-dating. In Sweden checking up on a property and proceeding to contract can take place quickly, using electronic geographic information systems. A pilot programme in Bristol provides a similar service. We recognise that substantial investment and planning is required to achieve the level of service in Northern Ireland available in Sweden or Bristol.

Much of the necessary information in housing transactions comes from public bodies who are committed to the 'modernising government' initiative. A step in the right direction is the development of a new electronic land registration system announced in July 1999 by the then Minister for the Environment.<sup>7</sup> The private sector, including professional organisations, must also innovate so that the many different exchanges involved in each and every housing transaction are conducted as efficiently as possible.

We strongly support the Government, the professions and businesses concerned working together to modernise the process of house buying and selling, by up-dating the law, applying technological advances and sharing information.

## *Prices*

The Department of Regional Development's Central Statistics and Research Branch, the Centre for Research on Property and Planning at the University of Ulster as well as commercial organisations are important sources of housing market information for Northern Ireland.<sup>8</sup> In showing the current market trends by area, house type and age, they help potential buyers and sellers in coping with price issues.

Further useful information would be the selling prices for individual properties that recently sold in the neighbourhood.<sup>9</sup> At present this is difficult or impossible to obtain because price is not recorded in the Register of Deeds and the Land Registry's coverage of residential properties is very limited. However the computerisation of the Land Registry and the speeding up of compulsory land registration will eventually make individual sales price information available.

We welcome the fact that the prices paid for individual properties will become generally available with the expansion of the Land Registry.

<sup>7</sup> Northern Ireland Office Information Service (28 July 1999) "Minister Announces Online Conveyancing Break Through".

<sup>8</sup> Many estate agents voluntarily contribute to the University of Ulster's review of house prices.

<sup>9</sup> Although considered sensitive information in England, individual prices are accessible in some other jurisdictions such as Scotland and Ontario Canada.

# *Better service and protection for consumers*

## **Buying a New Build Home**

About one quarter of houses sold each year are brand new. Our survey found that one in four buyers of new build homes was dissatisfied with the builder's performance overall. Less than half (41%) said that they were satisfied with their builder's after-sales care. A number of buyers experienced problems in getting information about when the house would be ready or what the final cost would be. Selecting kitchen, bathroom and fireplace fittings also proved to be an issue for some.

We recognise that houses are not produced by the same methods as cars and other durables purchased by consumers. Indeed every house is unique to some degree. As a consequence quality checks before putting an item on the market are more difficult to do and consumers cannot readily return a defective product. This makes schemes such as the National House-Building Council's (NHBC) Buildmark warranty crucial for ensuring consumer protection.<sup>10</sup>

### ***Value for money from NHBC***

The Chairman of the NHBC has said, "Our job is to give peace of mind to new homeowners. To be the independent regulator of the house building industry – trusted by the homeowner, respected by the builder."<sup>11</sup>

Achieving this is not easy for the NHBC for several reasons:

- It depends on builders for its funding although builders are a minority on its board of directors.
- When handling claims and disputes it is in part vetting its own work, in setting standards and inspecting building work during the construction process.
- Buyers may not understand the difference in the protection offered during the first two years and the subsequent eight years after purchase.
- A subjective element in assessing building quality, especially in finishing work, can lead to differences that are difficult to resolve.

While consumers are directly concerned with NHBC's insurance against faults in their new home, they also have an interest in the scope and stringency of the NHBC building standards and the application of those standards in construction. Despite some recent changes we still believe that stronger consumer representation is needed across the NHBC board and committee structure to ensure that the buyer interest is sufficiently reflected in decisions.

### **13. We recommend that consumer representation on the NHBC board and committees is increased.**

<sup>10</sup> The NHBC sets building standards, inspects building sites to see that the standards are complied with, guarantees the quality of the product to buyers and arranges for the rectification of defects when these occur. Houses built under the supervision of an architect have comparable protection.

<sup>11</sup> Sir Michael Pickard (22 October 1998) Notes for a speech to the NAEA Northern Ireland Conference.

Prompt and fair complaints and claims handling at the outset, within the NHBC, is critical to providing effective redress for consumers. We welcome NHBC's efforts to speed up the processing of disputes and to motivate builders to comply promptly.<sup>12</sup> It is also important to ensure that the NHBC's resolution and claims assessment is always conducted impartially and is seen to be so. The separation of claims and inspection work by the NHBC has been a step forward.

We understand that its recently established Consumer Committee will audit NHBC's complaints handling procedures. The NHBC should consider allowing dissatisfied buyers to appeal to the Committee for a review of their case. Follow-up surveys by the Committee of buyers who made claims or complaints would also provide a useful check on the quality of customer care.

Statistics should be published on a regular basis about the number of disputes and claims by region, by type, by outcome, and about the achievement of NHBC's targets in case handling. We expect this to be addressed in the forthcoming NHBC Charter.

**14. We recommend that NHBC take further action to improve the handling of both disputes and claims to ensure that buyers see that builders cannot unfairly influence outcomes. The process must be transparently independent.**

During our consultation several local councils pointed out that in future they may offer an alternative to the NHBC scheme. In our experience the possibility of the entry of a new supplier into a market encourages existing providers to do better. If such competition develops, however, it will be important to ensure that it serves the consumer interest.

### ***Dealing with builders***

Consumers should know what to expect from their builder. We understand that NHBC plans to introduce a best practice guide. In our view a code of practice is needed to ensure best practice by all registered builders.

The Government's White Paper, *Modern Markets: Confident Consumers*, sets out certain core principles that a code of practice should incorporate. The Office of Fair Trading (OFT) is responsible for evaluating codes and will be issuing a seal of approval to those that are effective in protecting consumer interests. If a builders' code cannot be implemented on a voluntary basis, the pressure will increase for statutory obligations on builders.

<sup>12</sup> Buyers of NHBC houses have recourse to external review. If dissatisfied with NHBC's resolution service for disputes with the builder during the first two years after purchase, a buyer can go to arbitration. If dissatisfied with the handling of a claim against the warranty, a complaint can be taken to the Insurance Ombudsman.

**15. We recommend that the NHBC and house builders introduce without delay a code of practice that receives the OFT's new seal of approval.**

**16. The Government (Department of Trade and Industry and the Office of Fair Trading) should consider additional measures if builders fail to establish a code of practice within three years.**

Buyers often choose a house that is not yet built and they must trust the builder to deliver. They need information about the builder's performance. They can of course visit developments already completed by the builder and talk to residents but information could also be provided in a builder's portfolio that is put on view along with marketing material.

Information in the portfolio would include the locations of the builder's recent residential developments, the length of time that the builder had been registered with the NHBC, building awards earned as well as the builder's record on customer complaints and outcomes.

**17. We recommend that the NHBC consider providing a portfolio of information about each registered builder that potential buyers could view on the builder's new housing site.**

One problem area for consumers is PC Sums – the builders' practice of allocating an amount of money in the advertised purchase price for the equipment going into the kitchen, bathroom and fireplace. This practice confuses some buyers about costs and it can lead to difficulties with the mortgage offer. Moreover one in five new house buyers in our survey said that they were not given a choice of fittings suppliers, preventing them from shopping around.

We note that the newly created national Housing Forum plans to survey buyers of new homes in the summer of 2000.<sup>13</sup> Buyer views about PC sums should be part of that survey.

**18. We recommend that the Government (Department of the Environment, Transport and the Regions) organise a task force to review PC Sums practice and find ways of making the arrangements for the purchase and installation of fittings more customer-friendly.**

<sup>13</sup> See DETR statement (19 October 1999).

## Buying Advice

When buying or selling a house, the consumer must also buy advice from some or all of the following: solicitor, estate agent, surveyor, financial advisor. To get the best deal the consumer needs:

- information about the service and the provider,
- a choice, through competition among providers, and
- confidence that providers meet minimum standards of service.

Few consumers are familiar with the ins and outs of the transaction and they seek advice in order to avoid making expensive and long-lived mistakes. They trust the judgement of their advisors.

## Shopping around

Our survey showed that few consumers got quotes from different sources, even though the costs involved were substantial and prices varied amongst providers.

As emphasised to us by the professional bodies, the level of service given is at least as important as the price charged. This does not deny the advantages for consumers of shopping around, in understanding what to expect, and in promoting competition in the market place.

Greater efforts by professional bodies are necessary to facilitate the effective selection of service providers by consumers. They should make it easier for consumers to compare prices and to recognise the key aspects of quality to consider when making their choice, through the provision of up-front price and service details.

The Law Society requires all members to provide written quotations for residential conveyancing and recommends the use of a standard form. Our mystery shop phone survey revealed difficulties in comparing price and service among solicitors as some solicitors did not follow up with a quote in writing.

Estate agents are obliged by law to provide price information before a contract is signed but it does not appear to be observed. Our mystery shoppers could not get written quotes, albeit on a preliminary visit. Also 40% of house sellers in our survey said that they had not got a written quotation.

Associations of estate agents should jointly develop a quotation form and require their members to use it. In monitoring compliance with the law the Trading Standards Service should look for evidence of the form being used.

**19. We recommend that standard price quotation forms be adopted by estate agents. The forms should explain the service to be provided.**

Professional associations today generally forgo rules restricting competition among members.<sup>14</sup> This is to be welcomed, especially as the Internet is opening opportunities for more informative advertising.

**20. In regulating their members, professional bodies should explicitly encourage promotions and advertising. Members should not be inhibited from giving quotations by phone so long as they send a written quote as well.**

Solicitors play an important part in the transaction, both in doing the conveyancing work and co-ordinating the various parts of the process. In Northern Ireland a high percentage of firms are very small (80% have only one or two partners). This makes for easy access across the Province.

However, with the up-dating of land law and the implementation of computerised geographic information systems, economies and faster processing may be realised especially when large numbers of transactions are handled. If law firms do not evolve to take advantage of these developments, the Government should review the case for introducing licensed conveyancing into Northern Ireland, as exists at present in England.<sup>15</sup>

**21. We recommend that the Government (The Lord Chancellor's Department) monitor the development of the residential conveyancing sector, and introduce reforms should this appear to be in the consumer interest.**

### ***Professional standards***

Consumers feel more confident shopping around when they know that providers comply with a code of practice. The trades and professions serving house buyers and sellers should apply to their businesses the core principles for codes identified in the Government's White Paper and obtain the OFT's seal of approval.

The relevant bodies and their members should advertise their codes so that people select a committed provider. For example, not all solicitors in residential conveyancing have joined the Law Society's Home Charter Scheme. Companies acting as estate agents or surveyors do not have to join a professional association and comply with the qualification criteria and code of conduct.

**22. We recommend that the representative bodies who enforce codes of conduct undertake campaigns to increase consumer awareness of their role and the advantages their membership can offer.**

<sup>14</sup> For example the rules of conduct of the National Association of Estate Agents states, "it places no restriction on honest advertising and permits its members to advertise in such ways as they judge appropriate."

<sup>15</sup> A wide-ranging review would be necessary to ensure that intervention was in the consumer interest overall. Fewer, larger law firms would probably reduce access to locally based legal advice. The ability of consumers to rely on the same solicitor for all their legal work might also be compromised.

Some responses in our consultation suggested that compulsory qualification and professional membership for estate agents and for surveyors would improve consumer protection.

While it is not necessary to have special training or other credentials to become an estate agent, conduct is regulated by law. The Trading Standards Service investigates complaints and makes unannounced inspections. The Service reports that the compliance levels give no cause for concern in Northern Ireland.

The Office of Fair Trading is not in favour of a licensing regime and the setting of minimum standards of competence for estate agents.<sup>16</sup> However, some intervention may be desirable to increase consumer confidence. Our survey revealed suspicions among a minority of sellers about estate agent conduct in the bidding process. A compulsory redress system for all agents would help to address such concerns. (See page 22.)

In the case of surveyors, there is a practical check at present because mortgage lenders insist that properly qualified surveyors carry out the valuation aspect of inspection. When a house condition report becomes compulsory, statutory measures may be needed.

**23. We recommend that the Government (Department of Trade and Industry and the Office of Fair Trading) keep under review the effectiveness of the codes of practice applied in estate agency and residential surveying.**

<sup>16</sup> See the speech by John S Bridgeman, Director General of Fair Trading (22 October 1998) "Estate agency 2000 and beyond, an OFT perspective".

## **Communications ‘en route’**

A major reason for dissatisfaction with advisors related to poor communications with their client. Almost one third of the sellers who were dissatisfied with their estate agent said the main reason related to information delivery whereas this was the main reason for 43% of those dissatisfied with their solicitor. Twelve percent of borrowers dissatisfied with their lender said that the mortgage terms and conditions were not explained adequately.

Professional bodies and trade associations can help their members to strengthen client relations. For example the latest annual report of the Lay Observer, an independent appointment who reviews the Law Society’s handling of complaints about solicitors, emphasised the growing importance of client care in solicitor’s work generally. Given the small size of most law firms he concluded that the Law Society should take the lead, initially by providing a client care guide to all solicitors.

### **24. We recommend that the initial training, continuing education and guidance sponsored by professional organisations place more emphasis on training in client relations.**

A variety of free pamphlets on house buying and selling are produced by professional and trade associations. Guidance on some aspects is available from public bodies.<sup>17</sup> There are also ‘how to’ books. However no independent guide focuses on house buying and selling in Northern Ireland. Local consumers would benefit from a booklet that gives the full picture of the process and the players, not skimming over some of the more difficult aspects.

### **25. We recommend that the project team we proposed to produce a guide to house inspection also consider developing a booklet to help Northern Ireland consumers through the process of buying or selling a home.**

## **Customer Redress**

Taking someone to court for negligence or sub-standard service is not usually feasible for consumers. To increase consumer confidence companies and their trade or professional organisations must establish accessible and fair arrangements for redress. This is especially important when the product or service in question is complex and the customer has to trust the provider to get things right.

The various providers encountered by a house buyer or seller have different redress arrangements. We have already discussed how the NHBC ought to enhance protection for the customers of its registered builders. We also see scope for improving the complaints procedures of the professions advising consumers.

<sup>17</sup> See HM Treasury statement (13 October 1999) “CAT standards help you choose your mortgage”, Department of Trade and Industry statement (20 October 1999) “Ten key questions offers guide to mortgage maze” and various OFT leaflets.

## **Estate agents**

There are several bodies to which an estate agent might belong, each with a set of rules of conduct and disciplinary procedures should those rules be breached. The Royal Institution of Chartered Surveyors (RICS) and the Incorporated Society of Valuers and Auctioneers (ISVA) have rules on the redress procedures of member firms. Neither the code of the National Association of Estate Agents (NAEA) nor the code of the Irish Auctioneers and Valuers Institute (IAVI) sets such standards.

In addition to informal arrangements members should have a written procedure that specifies response times. Information about complaints handling should be readily available to customers.

### **26. We recommend that the NAEA and IAVI immediately amend their codes of conduct to include standards for internal complaint procedures.**

The Ombudsman for Estate Agents (OEA) scheme is premised on participating firms having a complaint procedure.<sup>18</sup> If this internal redress fails to satisfy the customer, the scheme offers a free and independent investigation of most types of complaints. Participating firms are expected to honour the Ombudsman's recommendation.

RICS, the ISVA and the NAEA have encouraged their members to join the OEA but few Northern Ireland estate agents have done so.<sup>19</sup> Even if the professional bodies decided to make participation in the OEA scheme compulsory for their members in UK residential estate agency work, non-members would still not be covered.

The increased responsibilities for estate agents with the seller's information pack make an effective system of redress essential. The patchy coverage of the OEA scheme can no longer be tolerated.<sup>20</sup>

### **27. We recommend that the Government (Department of Trade and Industry) consider legislation to require estate agents to register with the OEA scheme.**

### **28. We recommend in the interim that the bodies representing estate agents require their members to join the OEA scheme.**

<sup>18</sup> Under the present arrangement estate agents have to belong to one of the representative bodies that supports the OEA scheme to give their clients access to the Ombudsman.

<sup>19</sup> The Ombudsman reported that in July 1999 the offices of Allen & Harris and Halifax Estate Agencies as well as the following independents belonged to the scheme: James Wilson & Son, Robin Cruikshanks, McClelland Salter, Niall Maneely, The Eric Cairns Partnership.

<sup>20</sup> See 1998 Annual Report of the Ombudsman for Estate Agents, pages 10-11.

<sup>21</sup> In Great Britain, the Local Authorities Coordination Body on Food and Trading Standards announced a 'watchdogs working in partnership' experiment with the OEA in February 1999.

**29. We also recommend that the Government (Department of Enterprise, Trade and Investment's Trading Standards Service, as the enforcement body for estate agent legislation in Northern Ireland) consider how it can help in resolving consumer complaints.<sup>21</sup>**

### **Solicitors**

The Law Society of Northern Ireland is responsible for the redress arrangements for clients of solicitors. In 1994 the Society set up a voluntary Home Charter Scheme. About three-quarters of solicitors doing conveyancing work have joined; they undertake to abide by a code of conduct regarding the procedures followed and relations with their clients.

The Law Society has been considering making participation in the Charter mandatory. In our view the clients of all solicitors would benefit because the Charter gives priority to client care.

**30. We recommend that the Law Society require all solicitors doing residential conveyancing work to join the Home Charter Scheme.**

In the most recent (1997/98) Annual Report the Lay Observer concluded that customer complaints were handled in a competent manner by the Law Society and noted that the number of complaints was proportionately much lower than in England.<sup>22</sup> However he favoured making the process more open and customer friendly which we would strongly endorse.

**31. We recommend that the Law Society publish more information on complaints handling, providing more detail on the outcomes of the process.**

**32. We also recommend that consumer representation on the Law Society's Professional Conduct Committee be increased substantially above the present level of 2 lay members.<sup>23</sup>**

The Council has for some time held that Northern Ireland should have a Legal Services Ombudsman; such posts have existed in both Scotland and England and Wales since 1991. At that time the Government also proposed to set up an Ombudsman scheme for Northern Ireland. But the project was abandoned despite the support of the General Consumer Council and others. The Lay Observer is independent of the Law Society but he lacks the powers and the resources necessary to ensure that the clients of solicitors have adequate redress.

<sup>22</sup> The Lay Observer reports to the Chief Justice of Northern Ireland. He monitors complaints about solicitors made to the Law Society and considers individual complaints that are directed to him. However he can neither order nor recommend compensation. Neither is he empowered to publicise a failure of the Law Society to heed his recommendation.

<sup>23</sup> The Committee has 13 solicitor members.

**33. We recommend that the Government (The Lord Chancellor's Department) establish a Legal Services Ombudsman for Northern Ireland.**

### **Surveyors**

RICS and the ISVA recently made participation in a complaints arbitration process compulsory for members when a customer wished to use it. Although an improvement this is not as consumer friendly a system as an ombudsman scheme. The complainant gets less help in preparing a case and can end up out-of-pocket, with no recourse to the courts if dissatisfied with the arbitrator's decision.

**34. We recommend that RICS and ISVA consider establishing an ombudsman scheme in place of arbitration for resolving complaints about surveyor reports.**

**35. We recommend in the interim that RICS and ISVA revise their existing scheme to make it more accessible, for example by not requiring complainants to pay unless the arbitrator determines that their complaint was frivolous and by allowing them wider grounds for appeal to the courts.**

Another issue concerns the basis on which awards are made given a negligent survey report that failed to note defects in the property. According to the jurisprudence compensation should cover the estimated negative effect of the defects on the property valuation, had the defects been known.<sup>24</sup> This amount is likely to be considerably less than the cost of putting the defects right, which most homeowners will need to do.

**36. We recommend that the Government require a change in the calculation of awards for negligent residential surveys to cover the cost of putting defects right.**

<sup>24</sup> Keith Richards, "Surveying the judges" (Jan/Feb 1995) Consumer Policy Review, Volume 5, Number 1, pages 2-8.

## *Lenders and financial intermediaries*

Buyers in our survey took out mortgages before the voluntary code of conduct for mortgage lending was fully in place. Our findings indicate that an effective code is needed. One in ten buyers was dissatisfied with their lender. A high proportion of those using a financial intermediary took out an endowment rather than a repayment mortgage although endowments are only suitable for borrowers intent on holding them for the long term.<sup>25</sup>

Our consultations revealed concerns about the 'one-stop-shop' situation where lenders also offered estate agency and other services. It was suggested that this confused some clients about costs because of the limited transparency about the financial components of the package being offered in combination with the estate agency services.

It is imperative that consumers be adequately protected when making probably their largest ever financial commitment. The investigation of the existing self-regulatory scheme announced by the Treasury in July, with the release of *Regulation of Mortgages: a Discussion Document*, is opportune.<sup>26</sup>

We welcome the Treasury's evaluation of the effectiveness of the voluntary mortgage code, with a view to extending the regulatory responsibility of the Financial Services Agency to cover mortgages if this is in the consumer interest.

<sup>25</sup> General Consumer Council, (1999) *Homing in on buying a house*, Belfast: pages 48-49.

<sup>26</sup> HM Treasury plans to announce decisions by the end of 1999.

# *Recommendations*

## **Government**

*We recommend that the Government improve the buying process by:*

**introducing the seller's information pack in Northern Ireland so that the seller provides certain information about the property, including a house condition report, as soon as it goes on the market**

**setting up a working party of the main players in the Northern Ireland housing market to advise on the implementation of the seller's information pack and other reforms to the process (DSD)**

**reviewing the traditional approach of assessing the security of mortgage loans to see if the buyers, who pay for the survey, are getting value for money**

**setting performance standards for local councils providing property certificates that include turnaround times equivalent to the Departmental commitment**

**requiring builders to inform prospective buyers about the SAP ratings on new homes, and requiring an energy efficiency audit in house condition surveys of existing homes**

**rationalising the vetting of works in existing houses in co-operation with other interested parties.**

*We recommend that the Government take action to protect buyers and sellers by:*

**requiring a change in the calculation of awards for negligent residential surveys to cover the cost of putting defects right**

**considering additional measures if builders fail to establish a code of practice within three years (Department of Trade and Industry and the Office of Fair Trading)**

**organising a task force to review PC Sums practice and find ways of making the arrangements for the purchase and installation of fittings more customer - friendly (Department of the Environment, Transport and the Regions)**

**monitoring the development of the residential conveyancing sector, and introducing reforms should this appear to be in the consumer interest (The Lord Chancellor's Department)**

**establishing a Legal Services Ombudsman for Northern Ireland (The Lord Chancellor's Department)**

**keeping under review the effectiveness of the voluntary codes of practice applied in estate agency and residential surveying (Department of Trade and Industry and the Office of Fair Trading)**

**considering legislation to require estate agents to register with the Ombudsman for Estate Agents scheme (Department of Trade and Industry)**

**considering how the Trading Standards Service as the enforcement body for estate agent legislation in Northern Ireland can help in resolving consumer complaints.**

## **The Law Society of Northern Ireland**

*We recommend that The Law Society of Northern Ireland take action by:*

**renewing their efforts, along with the Construction Employers Federation, to make the Standard Building Contract more widely accepted**

**devising, together with mortgage lenders in Northern Ireland, a workable standard form to set the terms of their business relationship**

**requiring all solicitors doing residential conveyancing work to join the Society's Home Charter Scheme**

**undertaking campaigns to increase consumer awareness of the role of the Home Charter Scheme and the advantages their membership can offer**

**explicitly encouraging promotions and advertising in regulating their members. Members should not be inhibited from giving quotations by phone so long as they send a written quote as well**

**giving greater emphasis to training in client relations in the initial and continuing education and guidance for members**

**increasing consumer representation on the Law Society's Professional Conduct Committee substantially above the present level of 2 lay members**

**publishing more information on complaints handling and providing more detail on the outcomes of the redress process.**

## **Council of Mortgage Lenders**

*We recommend that lenders take action by:*

**encouraging house buyers to get an 'in principle' offer of a loan as soon as they start looking for a home**

**devising with the Law Society of Northern Ireland a workable standard form to set the terms of their business relationship.**

## **Royal Institution of Chartered Surveyors, Incorporated Society of Valuers and Auctioneers**

*We recommend that RICS and IAVA take action by:*

**monitoring members' work more closely, for example by conducting random checks of a sample of surveys done, with appropriate penalties for sub-standard jobs**

**setting stringent standards for opinions about the condition of the damp course and timber to ensure that potential buyers have the most useful information possible**

**adopting standard price quotation forms for estate agents that explain the service to be provided**

**establishing an ombudsman scheme in place of arbitration for resolving complaints about surveyor reports, and**

**in the interim by revising their existing scheme to make it more accessible, for example by not requiring complainants to pay unless the arbitrator determines that their complaint was frivolous and by allowing them greater scope to appeal to the courts**

**requiring their estate agent members to join the Ombudsman for Estate Agents scheme, pending compulsory registration in that scheme**

**giving greater emphasis to training in client relations in the initial and continuing education and guidance for members**

**explicitly encouraging promotions and advertising in regulating their members. Members should not be inhibited from giving quotations by phone so long as they send a written quote as well**

**increasing consumer awareness of their role and the advantages their membership can offer through publicity campaigns.**

## **National Association of Estate Agents, Irish Auctioneers and Valuers Institute**

*We recommend that the NAEA and IAVI take action by:*

**immediately amending their codes of conduct to include standards for internal complaint procedures**

**requiring their members to join the Ombudsman for Estate Agents scheme, pending compulsory registration in that scheme**

**adopting standard price quotation forms that explain the service to be provided**

**explicitly encouraging promotions and advertising in regulating their members. Members should not be inhibited from giving quotations by phone so long as they send a written quote as well**

**giving greater emphasis to training in client relations in the initial and continuing education and guidance for members**

**increasing consumer awareness of their role and the advantages their membership can offer through publicity campaigns.**

## **National House-Building Council**

*We recommend that the NHBC take action by:*

**increasing consumer representation on the NHBC board and committees**

**taking further action to improve the handling of both disputes and claims to ensure that buyers see that builders cannot unfairly influence outcomes. The process must be transparently independent**

**introducing without delay a builders' code of practice that receives the OFT's new seal of approval**

**providing a portfolio of information about each registered builder that potential buyers could view on the builder's new housing site.**

## **The Construction Employers Federation**

*We recommend that the CEF take action by:*

**renewing their efforts, along with the Law Society of Northern Ireland, to make the Standard Building Contract more widely accepted.**

## **Partnership Projects**

*We recommend that interested parties, including the Northern Ireland Housing Executive, the General Consumer Council and others, contribute to a special project team to:*

**develop a consumer's guide to house inspection, for use in viewing a house for sale and assessing the need for repairs**

**prepare a booklet to help Northern Ireland consumers through the process of buying or selling a home.**

# Appendix 1

## Respondents to Consultation

Ards Borough Council  
Ballymena Borough Council  
Ballymoney Borough Council  
Building Control Service, Belfast City Council  
Building Societies Association/Council of Mortgage Lenders Committee for Northern Ireland  
Castlereagh Borough Council  
Craigavon Borough Council  
D. R. Mitchell Ltd.  
Down Borough Council  
Dunlop, David A, Dunlop Homes Ltd.  
Fermanagh District Council  
Land Registers of Northern Ireland  
Larne Borough Council  
Lisburn Borough Council  
McAffery, H  
Mulhern, G  
Murphy, Mick, Assembly Member for South Down  
National House-Builders Council  
Newtownabbey Borough Council  
North Down Borough Council  
Northern Ireland Economic Council  
Omagh District Council  
Robinson, Beth, Templeton and Robinson  
Scott, J, Down Construction Company  
Stewart, M, Building Inspection Services  
The Eric Cairns Partnership  
The Incorporated Society of Valuers and Auctioneers  
The Law Society of Northern Ireland  
The National Association of Estate Agents  
The Royal Institution of Chartered Surveyors  
Wooley, Professor Tom