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**RESPONSE TO LAW SOCIETY OF SCOTLAND'S CONSULTATION ON
SEPARATE REPRESENTATION**

24 July 2013

Response to Law Society of Scotland's Consultation on Separate Representation

Introduction

Homes for Scotland is the representative body for the home building industry in Scotland, with a membership of some 180 companies together providing 95% of all new homes built for sale across the country as well as a significant proportion of affordable housing. Homes for Scotland makes policy submissions on National and Local Government policy issues affecting the industry, and its views are endorsed by the relevant local committees and advisory groups consisting of key representatives drawn from our members.

Homes for Scotland welcome the opportunity to provide input into the Law Society of Scotland's (LSS) consultation. The proposal for separate representation has the potential to impact across the entire housing market. While our focus is new build, our members are reliant on a well functioning housing market in the wider context therefore our interests here are broader than new build supply.

Proportionality of Response

We understand that historically separate representation was not required because the interests of the customer and the lender in domestic house sales were felt to be aligned and that a stimulus for discussion on separate representation has been the number of additional claims by lenders on the 'Master Policy'. We question whether the spike in claims that the LSS describe were as a result of losses experienced by lenders during the downturn and whether the volumes in claims has now stabilised? Given the change in behaviour of lenders as a result of the downturn in terms of their attitude to and policies on risk, we question whether the potential for claims has already reduced? We therefore question whether some of the motivation for the principle behind the proposal for Separate Representation is a reactive one that may have diminished.

Whilst we are sympathetic to Law Society members regarding rules on Conflicts of Interest we feel that the response proposed is not proportionate to the problem, given that in the main the interests of the customer and lender remain aligned. We understand that in the vast majority of cases the role of the solicitor on behalf of the lender is simply to register documents and to provide information to the lender in terms of the Lenders' Handbook. We are concerned that the need for all house purchase transactions to involve separate representation is being proposed as a consequence of a minority of fraudulent or misled cases (i.e. if more prevalent in 'buy to let' transactions then perhaps the focus for regulatory changes should be on that section of the market).

Furthermore whilst we are well aware that conveyancing already takes different forms across the UK, we question why single representation is only a problem in Scotland? We are not aware of any plans for the separate representation model being implemented in England or Northern Ireland.

We would therefore favour a more proportionate response such as a change to the Lender Handbook as proposed by the CML and encourage further, constructive dialogue between LSS and CML at the earliest opportunity to work through alternative solutions.

Extra Expense

The proposal for separate representation will most likely lead to extra expense for home buyers. Whilst it could be suggested that the cost is borne by lenders, given that the additional legal representation is to protect their interests, we believe that this cost will in some form be passed onto the customer (whether through interest rates or product fees).

Whilst this change in practice would have a life beyond the current downturn, we cannot ignore the current fragile nature of the housing market in Scotland. With only 14,877 new homes built across all sectors in 2012, new housing supply is at lowest levels since 1947. New schemes to promote confidence in the new build market and help customers overcome the barrier of high deposit requirements such as MI New Home can make a positive impact. However new or higher fees for customers to cover separate representation could erode some of the progress made. Operating conditions remain very challenging for home builders and therefore we would oppose any additional costs to the customer that could discourage a purchase at this time.

The same will be true across the housing sector. It is in everyone's interests for activity across the housing market to be increased.

Risks & Change for Lenders

Noting the CML's current stance on separate representation we are extremely concerned about lenders attitudes towards this proposal. Given mortgages are regulated by the Financial Conduct Authority and the like we assume there will also be potential changes required to scripting, internet content and customer documentation. All of which will have cost and time consequences for lenders. Whilst for some lenders this may be little more than an administrative nuisance, other more marginal players in the Scottish market may take the view that it is no longer worth their while operating in Scotland. This would have a negative impact on choice for Scottish customers and competition behaviour in Scotland between lenders.

Even what might appear to be relatively insignificant administrative or IT changes should not be underestimated. From our own experience developing MI New Home (our 95% LTV mortgage indemnity scheme) in 2011/12 with the support of CML and Scottish Government, we have become well aware of how complicated a simple IT change for a lender can be. With millions of pounds of transactions going through their systems at any time it is important for lenders to programme and test any changes. With MI New Home for one lender, an IT change to incorporate what we saw as basic adjustments (Scheme name, post code areas and price cap) meant a 5 month delay in participation within the scheme. This limited the choice for both participating home builders and customers looking for a mortgage within the scheme.

Working with CML and Scottish Government on the monitoring of MI New Home and the development of new schemes such as the forthcoming Help to Buy Shared Equity initiative in Scotland, we are very aware of issues currently facing mortgage lenders across the UK. The forthcoming Mortgage Market Review being the most significant. Accepting that lenders will prioritise change requests to allow planning and programming, we are seriously concerned that changes to allow for separate representation for a market in Scotland that probably only makes up around a tenth of some lenders businesses will be low down on their priority list.

Due to concerns about the proportionality of the response, the extra expense it will generate and the impact it will undoubtedly have on lenders operating in Scotland, Homes for Scotland would strongly encourage the identification of an alternative solution to that of the introduction of separate representation.

If however after taking into account responses to this consultation LSS members vote in favour of introducing separate representation then we would urge LSS to take account of the following.

Timing

We understand that the LSS members vote is due to take place in September and, if the result is in favour of separate representation, the LSS is keen to implement changes immediately.

On a practical level introduction without a sufficient notice period has the potential to cause chaos in the mortgage market. From our own experience we are aware that lenders need a significant lead in time to manage internal changes, particularly where IT adjustments are required. Based on our experience with MI New Home we would suggest that at least 6 months notice would be required.

Homes for Scotland is currently working hard with the Scottish Government on the development of their new 'new build' shared equity initiative. This will be the equivalent scheme to the 'Help to Buy' scheme launched in England in April 2013. The manner in which the Scottish Government received the consequential funding, along with procurement requirements, has already delayed introduction of the scheme to the Scottish Market. The Scottish Government is currently programming the scheme for an August/September launch. It would be unacceptable for the scheme to launch in Scotland with early operation only to be then disrupted by lenders withdrawal in order for them to accommodate separate representation.

In addition we would strongly encourage LSS to take a view from CML on the timing of any changes stemming from the FCA Mortgage Market Review to ensure that a change to accommodate separate representation would not fall at the same time as these significant and regulatory changes.

Support for Consumers, lenders & other agents

We would also suggest that in implementing the change the LSS has the responsibility to provide support to everyone involved. This may include the creation of guidance for consumers, as well as partnership working with lenders and other agents to ensure everyone is geared up accordingly.

If separate representation is to be introduced, our recommendation is for supportive implementation plans that take into consideration all known key lender activities in order to reduce disruption for customers, lenders and the wider industry.