

CARSBERG REVIEW OF RESIDENTIAL PROPERTY
Standards, Regulation, Redress and Competition

- The Carsberg Review setting out proposals for the reform of the residential property market was published earlier today. Sir Bryan Carsberg was commissioned by RICS, NAEA and ARLA in July 2007 to review regulatory standards for those operating in the sector and the property transaction itself.
- In responding to this remit, Carsberg has focused on how to improve the customer experience of buying, selling, leasing and renting property. The report is split into two distinct segments: the active regulation of estate agents; and, action to improve efficiency and expedite of the transaction – particularly from conditional offer to exchange.
- There are 30 main recommendations for action – largely to be taken forward by the industry rather than Government – but within the body of the report there are also a number of minor proposals. However, all of these are underpinned by 3 basic principles:
 - Simple, transparent information for clients and customers
 - Proportionate control over service providers rather than the service itself to encourage and allow innovation
 - Consistent enforcement and redress to underpin all schemes
- The bulk of the report is taken up with analysis of the estate agency market and the need for more effective regulation of the industry. Three quarters of the recommendations are devoted to this issue. Only 2 pages and 1 recommendation are devoted to searches.
- Carsberg argues that clients and customers are not well informed about agency qualifications, what to expect as a service, what alternatives are available to the traditional transaction process. The professionals in the industry have not done a good enough job in informing customers.
- His medicine for remedying these problems is to focus on making the market work better to deliver improved customer outcomes. He argues strongly against additional legislation – “it is not the business of government to tell consumers how they must undertake transactions” – but rather in favour of statutory industry regulation. He does, however, recommend that government should seek to simplify and consolidate existing legislation.
- He says his aim has been to describe what a new steady state the industry should be in after the current period of change has bedded down. The way to achieve that will be for the industry bodies to negotiate and decide.

Estate Agency Regulation

- The review states that the existing ‘negative licensing regime’ is less structured and more fragmented than that for other professional bodies. It also fails to serve the interests of customers, who do not have a good understanding of the status of those providing services, nor the standard of behaviour they should expect.
- He recommends instead an active system of regulatory control where all estate agents have to join a professional body and meet set standards. The regulatory regime would be

privately operated but backed by a statutory requirement for estate agents to be a member of the scheme. The main requirement for a new regulatory scheme should be to provide customers with more information to make the market work more effectively.

- As a minimum, Carsberg recommends that the new scheme should set admission criteria/qualifications, a code of best practice, include business and consumer protection measures eg clients' money handling, complaint handling, professional indemnity insurance, monitoring of compliance by a regulatory body with investigative and enforcement powers and access to independent consumer redress.
- His preference is for a single regulatory body for estate agents over time, although he accepts that in the short term there may be one for each sector of the market to avoid competition. The starting point should be greater cooperation between existing voluntary accreditation schemes.
- In the absence of government intervention to underpin a new active regulatory scheme with statutory backing, he recommends that NAEA, RICS and ARLA should proceed with the establishment of a voluntary regulatory Board to pave the way for a single statutory scheme in the future.
- An entry qualification is seen as key to a new regulatory regime. This should be pitched at a basic level equivalent to the NAEA qualification. In his view, the unqualified should not be involved in price setting or determining the way the transaction progresses.
- Estate agents should be encouraged to disclose information to customers on the qualifications of those offering advice, other parties they are acting for, features of the transaction and regulatory/redress arrangements, conflicts of interest and fees and alternative billing arrangements eg flat fee.
- He urges the FSA or CML to investigate potential action to deal with excess charges to customers where the cost of valuations are much lower.
- The regulatory and redress regime should be separate, with a common code against which to assess agents. He suggests that responsibility could be transferred to the newly created Residential Property Standards Board.
- Ideally, Carsberg would like a scheme to include sanctions against irresponsible operators. He puts forward the suggestion that the OFT's existing powers to ban estate agents from trading should be transferred to the new scheme.

Property Transaction Process

- The remainder of the report identifies the main areas of delay or concern and considers a number of ideas to speed up the process from offer to completion. However, Carsberg notes that there is little consensus on the way forward.
- He suggests that the new regulatory body should make it a requirement for agents to explain the transaction process more clearly and set out alternatives to the standard transaction model eg auctions, the Scottish model, precontract deposits, draft standard contracts, lockouts, buyers declarations and sellers packs.

- His view is that the regulatory body should spread information about these alternative market interventions and practices so that the market can improve itself and transactions be expedited. He wants the market freed up to innovate.
- He touches on the problems with leasehold properties and recommends that the Land Registry increase the scope of information it carries to develop a comprehensive store of generic information about leasehold blocks. The new regulatory body should take action to improve the provision of other relevant information.

Searches

- Whilst searches rarely cause the collapse of transactions, they do introduce unnecessary delay into the process. He highlights that in Scotland searches are routinely achieved in a matter of days. He enumerates the same problems with the search sector at present as Beardsall did – monopoly holders of information, restricted access, cross subsidisation and high charges.
- However, unlike the situation with estate agents, he believes that the problems in the market cannot be rectified without legislation. He argues that the Government should introduce legislation to require all holders of search information – private and public sector - to make it available instantly to anyone interested party who wishes to examine it. Access should be during normal working hours and without the need for prior appointment.
- He argues that it is inefficient to require someone to have to visit and inspect physical records and states that this should be transferred to electronic databases as soon as possible. In order to cover the costs of this investment in IT systems, he suggests that the information holders should be allowed to charge a reasonable fee for access.
- Legislation should also place obligations on holders of information to compete fairly. In particular, information holders must separate the provision of basic information to others from the division which prepares search reports. The provision of search information to an in-house division should not differ in terms of cost, time or access to the service available to a personal search company or other interested party.
- Carsberg states that they offer a “high quality service ... clear and interesting reports ... a useful new product to the market” and he wants to see the market continue to develop to allow them to perform well and prosper. He believes his proposals for access for anyone will not adversely impact on property search companies because they have expertise in knowing where to look for the information, interpret and present it.
- The legal profession should give advice on the contents of a standard package of search information. This information could be included in his suggested seller packs.

HIPs

- It is perhaps unsurprising that the review is critical of HIPs as the imposition of constraints on the transaction process. He argues that the potential usefulness of HIPs has been reduced as their content has been cut back. Conveyancers have expressed a lack of confidence in the limited content. His preferred approach is regulation to require agents to provide information to customers to make transactions progress efficiently.

- He does praise AHIPP, however, stating that he was impressed by their professional attitude to standards, compliance and redress. He believe the HIP Code is helpful and goes a long way towards fulfilling the need for suitable professional-led regulation and standard setting which he wishes to promote.
- He suggests that HIPs should be made voluntary rather than mandatory, allowing providers to add real value to the product and innovate to improve efficiency.

Future Developments

- The report concludes with an assessment of future developments which may impact on the transaction process:
 - Chain matrix: development of databank by Land Registry to map properties linked by a chain
 - Chain Break: companies buying properties for resale and acting as intermediaries to allow chains to proceed
 - E-conveyancing: this is capable of making a modest contribution to overall efficiency providing there are strong control systems and knowledgeable participants.