CNPA said that the recession and banking crisis had led to changes in borrowing that made it harder for crofters to get a mortgage.

The BBC’s report concentrates on this being linked to the existence of a Section 75 Agreement that “binds any properties on, or built on, crofts to the land to encourage continued working of the croft”. This is to prevent the houses being sold separately as a holiday or second home.

Clearly, CML are no longer happy to lend where a Section 75 Agreement of this type is in place and the CNPA have removed this requirement to enable a crofting couple in Newtonmore to get a mortgage. Instead CNPA have accepted a personal undertaking from the couple that they will not sell the property separate from the croft.

What the BBC’s report does not make clear is that mortgages have never been available from members of the CML for land subject to crofting tenure. The property has to be decrofted (i.e. removed from crofting tenure) before a mortgage can be obtained. Thus it is quite normal for the croft house and garden ground to be purchased from the landlord, decrofted and a mortgage taken over it. In those circumstances the remainder of the croft will either remain in tenancy or be owner/occupied but still subject to crofting tenure with no mortgage over it. However, I have on occasion seen members of the CML taking security over land subject to crofting tenure because the panel solicitors instructed by them did not appreciate the nuances of crofting law!

Don McKee, CNPA’s head of planning said that a way around the wider issues of mortgages on croft houses had to be found. This is actually something that the Scottish Government looked at in the consultation draft of the Crofting Reform (Scotland) Bill. However, by the time the Bill was introduced to the Scottish Parliament gone completely from it was the proposal to provide crofters with the option of using their tenancy as security for a loan.

The Policy Memorandum that accompanied the Bill states that “although the Committee of Scottish Clearing Bankers indicated that they were satisfied that the proposals provided a sufficient framework for lending, other responses to the consultation indicated that crofters would prefer to continue with current arrangements where they decroft a house site in order to access loan finance. As a result, this proposal has been dropped from the Bill.” I indicated in my blog post on the newly unveiled Crofting Reform Bill for the Firm Online that I was unsure of the logic in this given that it perhaps contradicts the provisions in the Bill that seek to prevent decrofting in respect of speculation of croft land. Furthermore, I indicated that it did not address the situation of young crofters wishing to raise finance to actually purchase a croft as opposed to “a house site” on a croft. I asked then “what would have been the harm of leaving these provisions in the Bill and giving crofters the option of granting securities with or without decrofting?”

The problems now highlighted by CNPA demonstrate that there are issues to be considered where securities are granted over decrofted house sites.

These problems would possibly have been lessened, perhaps even removed, had the option to grant securities over tenanted croft land been retained within the Bill. This would have allowed a tenanted croft to be retained as one unit (including the croft house) with a mortgage being available over it all. Surely there would be no need, in those circumstances, for a Section 75 Agreement.

The opportunity presented by the Crofting Reform (Scotland) Act 2010 has long since passed. Perhaps it is time for the Scottish Government to give serious consideration to introducing a crofting mortgage bill.