

Economic and International Affairs Scrutiny Panel

Review of regulation of estate agents in Jersey

Response from Propertymark

November 2021

Background

1. Propertymark is the UK's leading professional body for estate and letting agents, inventory providers, commercial agents, auctioneers and valuers, comprising nearly 18,000 members. We are member-led with a Board which is made up of practicing agents and we work closely with our members to set professional standards through regulation, accredited and recognised qualifications, an industry-leading training programme and mandatory Continuing Professional Development.

Question 1. In a property market where estate agents are unregulated, would you have concerns about estate agents' level of knowledge about the properties they are marketing?

2. Yes, Propertymark would have concerns about estate agents' level of knowledge about properties they are marketing in a market where agents are not regulated. The level of knowledge about properties being marketed is fundamental to ensuring buyers and sellers have the right information at the right time to ensure they can make informed decisions. The average British homeowner moves property once every 21 years,¹ making a significant financial investment each time they move, so it is crucial that they are aware of all material information to enable them to make a fully informed decision related to these transactions. Sales agents are required by consumer laws which apply to all businesses, not just property agents, to ensure that the properties they market for sale are accurately described so that potential buyers have any material information within their knowledge that would affect the transactional decision of the average consumer.² Agents must do this while marketing properties in their best light on behalf of sellers. Marketing a property is not straightforward. Agents must deal with a product that will often come with significant history that is unique to it and can have a multitude of different things affecting it. Determining what counts as material information is complicated and will be different for each property, so compelling sales agents to comply with clearly defined guidance on what counts as material information can mitigate significant risks to consumer rights. The Property Ombudsman (TPO) Code of Practice for Residential Estate Agents in the Channel Islands, at 6h, sets out the requirements around Published Material and Information about a Property,³ but while residential estate agents in Jersey are not legally mandated to register with the TPO there is no transparent mechanism to hold agents to account against these standards.

1 <https://www.dailymail.co.uk/property/article-7205285/British-homeowners-spend-21-years-property.html>

2 The Consumer Protection (Unfair Practices) (Jersey) Law 2018:

<https://www.gov.je/Industry/RegulatingUnfairCommercialPractices/pages/misleadingactions.aspx>

3 https://www.tpos.co.uk/images/codes-of-practice/TPOE64-1_CoP_Residential_EAs_A5_Channel_Islands_Sales.pdf

Question 2. In the absence of estate-agent specific legislation, to what extent do you think that it is problematic for buyers and sellers in Jersey, that estate agents are not required to attain membership of a professional body or adhere to a code of conduct?

3. Propertymark believes that the absence of such estate-agent specific legislation is problematic for buyers and sellers because it leaves them extremely vulnerable to bad practice and questionable standards from non-professional agents who do not voluntarily adhere to the Code of Practice for residential estate agents in the Channel Islands, as members of The Property Ombudsman and/or a professional body such as Propertymark and the Jersey Estate Agents' Association (JEAA). Customers of non-registered agents therefore have no transparent legal route to redress for consumers when things go wrong, which means there is no incentive to operate to a specified standard and more importantly there are no consequences for breaking the rules. Having a robust and effective customer complaints handling procedure is fundamental to ensuring customers can hold agents to account but even TPO registered agents can get it wrong, with 'complaints handling' consistently appearing in the TPO's top four most common causes of complaints about the sales sector.⁴ Requiring 'adherence' to a code of practice on its own will be insufficient to drive the type of culture change required to consistently improve practice.

4. Monitoring compliance with a statutory code of practice requires regulatory oversight which is why estate agents in Jersey should, in the first instance, be legally required to attain professional membership before being permitted to practice. Being a member of a professional body also ensures many other aspects of an agent's fitness to practice are appropriately vetted. In an unregulated industry anyone can set up as an estate agent and begin selling properties because there are no entry requirements or minimum qualifications, which means that agents can either deliberately, or through lack of experience, run a substandard service. All Propertymark members must adhere to the TPO's code of practice once their application is successful. An application for membership is a rigorous process which begins with individuals completing a form which asks for individual details, employment status and work details, the membership grade the individual is applying for as well as divisional interests and marketing sign up information.⁵ We also require thirteen declarations. One, whether the individual has been convicted of a criminal offence which is not "spent" under the Rehabilitation of Offenders Act 1974 or the equivalent in another jurisdiction (motoring offences are excluded unless it resulted in a custodial sentence). Two, whether they have been warned or banned under the Estate Agents Act 1979. Three, whether the individual has ever been subject to disciplinary proceedings relating to their conduct by an employer. Four, whether a disciplinary finding has ever been made against the individual, or whether they are currently subject to an investigation, by any professional or regulatory body. Five, whether they have ever been a Director of a Company which was entered into liquidation or had an appointed receiver of its undertaking, administration order made against it or entered into an arrangement with its creditors. Six, whether the individual has been subject to any insolvency proceedings or other arrangements with creditors in respect of debts (e.g. Individual Voluntary Arrangement). Seven, whether they have been made the subject of a Bankruptcy Restriction Order (BRO) or Undertaking (BRU). Eight, whether they are on the Violent and Sex Offenders Register. Nine, whether that have ever been disqualified as a Director. Ten, whether

⁴ <https://www.tpos.co.uk/news-media-and-press-releases/reports>

⁵ <https://www.propertymark.co.uk/membership/join.html>

the individual has ever committed racial or sexual discrimination during their work as a property professional, or any other form of discrimination as defined by the Equality Act 2010. Eleven, has a Banning Order been made against the individual. Twelve, is or has the individual been on the Database of Rogue Landlords and Property Agents. Thirteen, if an agent is operating a business in a relevant jurisdiction, have they failed to either register with the Scottish Register of Letting Agents or failed to become Licensed under Rent Smart Wales. In addition, we require individuals to agree with our privacy policy and a certification declaration, which includes authorising Propertymark to carry out relevant company/individual credit checks and identity checks as part of the membership approval process.

5. For employers, our Company Obligation declaration includes four areas. Firstly, as a Principal, Partner or Director they agree to declare all their companies as part of a company declaration form and submit appropriate documentation for regulation such as evidence of independent redress. Secondly, as a Principal, Partner or Director they agree to provide an Accountant's Report if it is determined that one is needed for any company, they are responsible for. Thirdly, as a Principal, Partner or Director they agree to join the Propertymark Client Money Protection (CMP) Scheme and pay the annual CMP levy. This is a requirement for any company that handles client money or uses a Client Accounting Service Provider (CASP). Fourthly, as a Principal, Partner or Director they agree to provide evidence of professional indemnity insurance cover.

6. Once in membership there are five main member benefits and a requirement for members to undertake at least 12 hours of Continued Professional Development.⁶ Firstly, members have access to key industry information. This includes regular newsletters, Fact Sheets, guides, FAQs, Toolkits on legislation and Primary Authority Assured Advice. Secondly, members receive discounts on events, training, industry suppliers and qualification workbooks. Thirdly, members are provided with legal documents and templates including a Property Information Questionnaire and tenancy agreements. Fourthly, members are given tools to promote their membership and a 'Find an Expert' listing on our website. Fifthly, members have unlimited access to legal helplines as part of their membership. Propertymark also provides training through online and classroom courses. The training is offered at foundation, intermediate and advanced levels, catering for everyone at different stages of experience and covering all areas of property related subjects. Our training courses do not equate to a qualification but a certificate of attendance. We also provide training through a series of regional meetings and workshops across the UK, national conferences, road show events and webinars. The training is provided face to face and online.

Question 3. A 2019 Report produced by the UK Regulation of Property Agents: Working Group, concluded that "Regulation will provide the opportunity to prevent bad practice and drive cultural change within the industry". Do you believe that this statement could also apply to estate agents in Jersey?

7. Yes, Propertymark believes that regulation will provide the opportunity to prevent bad practice and drive cultural change in Jersey. We think this for three reasons. Firstly, it will

⁶ <https://www.propertymark.co.uk/membership/benefits.html>

protect consumers from receiving low-quality services. Secondly, it will ensure all practicing agents have appropriate training and are sufficiently qualified and commit to continued professional development. This is important because buying and selling property are complicated tasks governed by complex areas of law. Therefore, it is imperative that the new regulatory regime includes the need for individuals to obtain regular training and business owners provide regular opportunities for their staff to do this. Without regular training and continued professional development the sector and consumers will not reap the benefits of regulation. Thirdly, it will create a level playing field, bring greater levels of consistency and a joined-up approach. Propertymark welcomes the recommendations of the Regulation of Property Agents Working Group and believe that they provide a solid basis for the regulation of estate agents in Jersey for the Government to adopt.

Question 4. Do you believe that the experience of transacting property in Jersey would improve if all staff working for an estate agent, were required to be appropriately qualified?

8. Yes, Propertymark believes the experience of transacting property in Jersey would improve if all staff working for an estate agent, were required to be appropriately qualified. This requirement should include both a fit and proper person test and a professional qualification. This is important for three reasons. Firstly, the raft of existing legislation governing the property industry, means that training courses that last from one-day to one-week, for example, are not enough to provide agents with the necessary understanding of the industry or legislative environment in which they operate. Secondly, ensuring agents are suitably qualified and meet minimum competency standards is the only way to drive up standards of service for consumers and eliminate the bad practice in the sector. Without minimum entry requirements to practice, such as a qualification, consumers are potentially dealing with someone who does not understand the technicalities involved in buying and selling property or understand how to analyse the level of risk to their business. These include the ability to account for substantial flows of funds, customer service and people management skills. An agent's job is not only to promote and secure a buyer with an offer on a property but also to help progress the sale. If a problem occurs the agent is the only person who can speak to all parties to help progress matters which requires knowledge of various roles including surveyors, lawyers and finance. Thirdly, it will improve consistency and transparency in the home buying and selling process so consumers will know what to expect and what their options are if things go wrong. Consumers need to know what costs they are facing, what the key milestones are in the process and what is required of them and others throughout the whole process.
9. Moreover, we believe that estate agents should be required to hold a specific qualification in residential sales at Level 3 in order to practice.⁷ The Level 3 qualification or five years industry experience is currently a requirement for membership of Propertymark for sales agents. The Level 3 is an Ofqual regulated qualification ideal for estate agents who are actively working in the industry. This qualification is broadly equivalent to A-Level standard and has been designed and developed over a number of years by practitioners, lawyers and academics to provide sales agents with a comprehensive knowledge and understanding of the industry, best

⁷ <https://www.propertymarkqualifications.co.uk/qualifications/sale-of-residential-property/england,-wales-northern-ireland-level-3-award/>

business practices and the legislative framework in which they practise. Its syllabus contains everything that those academics, lawyers the industry leaders believe are necessary for an agent to practise to a high professional standard. Broken down into four key themes, the qualification teaches:

- Health & Safety, Security & General Law
- Law Relating to Residential Property Sales
- Practice Relating to Residential Property Sales
- Property Appraisal & Basic Building Construction

Question 5. Overall, do you think that estate agents in Jersey should be regulated and/or required to adhere to a standard of Code of Practice?

10. Yes, overall Propertymark thinks that estate agents in Jersey should be regulated and be required to adhere to a standard Code of Practice, but to enhance the new regime, regulation should extend to the entire property industry and should be made up of four additional components. Firstly, individuals should be required to hold professional qualifications to practice. Secondly, individuals should also be required to undertake at least 12 hours of Continuing Professional Development (CPD) per year. Thirdly, companies should be required to meet certain obligations and officers of companies must be held liable for penalties and offences relating to the company obligations. Fourthly, regulation must be combined with adequately resourced enforcement agencies.
11. To help ensure greater levels of consistency and a joined-up approach in an industry with multi-disciplinary firms, the Jersey Government must widen the scope of regulation to include both letting agents and block management agents. Ensuring that the whole housing market is under the same regulatory umbrella will reduce confusion, inconsistency, and cases of where services fall between different regulatory regimes. Propertymark believes that full mandatory government regulation of sales and letting agents is the quickest and most effective method to eliminate unprofessional, unqualified, and unethical agents from the property sector. Piecemeal legislation is unmanageable and unenforceable. We also believe there should be a single overarching Code of Practice for everyone working in the property industry.
12. The absence of statutory regulation to ensure agents are suitably qualified is a cause for concern. Additionally, agents who are not members of a professional body do not have to meet minimum competency standards. As with many other professions to ensure the workforce is properly trained and have the correct skills and necessary understanding of the regulatory and legislative landscape in which they operate, we believe that individuals should be required to hold professional qualifications in order to practise. All staff delivering 'reserved activities'⁸ employed within the residential agency business should be qualified to a

⁸ Reserved activities refer to the list of property-related activities only licensed firms and licensed individuals would be permitted to carry out and they include; conducting viewings; market appraisals; negotiating with and on behalf of clients; signing contracts; providing direct advice to clients; instructing contractors to undertake works; collecting or handling client money; and having responsibility for the health and safety compliance of a property.

minimum of Level 3 of Ofqual's Regulated Qualification Framework and all company directors and managing agents should be qualified to a minimum of Level 4.⁹

13. Individuals should also be required to undertake at least 12 hours of Continuing Professional Development (CPD) per year. This will ensure that in addition to meeting initial requirements to join the industry, agents continue to learn and develop their skills and understanding as the industry and its associated legislative requirements change. Propertymark currently delivers over 70 events each year including regional meetings as well as both regional and national conferences to provide letting agents with industry updates, best practice advice and information on recently introduced and forthcoming legislation.

14. For companies, we would argue they should be required to meet the following obligations:

- Hold Client Money Protection.
- Have a properly designated client account for their client funds which is independently reviewed on an annual basis.
- Hold Professional Indemnity Insurance with levels suitable to the size of their business.
- Belong to one of the three UK Government-approved redress schemes for letting agents.
- Follow an approved Code of Practice.

We believe that the officers of companies (the Principals, Partners or legal Directors) must be held liable for complying with these company obligations. Regulation needs to acknowledge that employees cannot be held responsible for actions which are beyond their control and therefore liability for penalties and offences relating to company obligations must fall to those officers who are responsible for the business.

15. Regulation in isolation will not work because, as with any industry, there will always be a minority who flout the regulations. Therefore, regulation must be combined with adequately resourced enforcement agencies who are not wasting their limited resources on administrative licensing schemes.

⁹ <https://www.propertymarkqualifications.co.uk/qualifications/sale-of-residential-property/england-wales-level-4-certificate/>