

STATES OF JERSEY
Public Accounts Committee
Public Hearing

MONDAY, 10th JANUARY 2011

Panel:

Senator B.E. Shenton (Chairman)
Connétable J.M. Refault of St. Peter (Vice-Chairman)
Senator A. Breckon
Mr. A. Fearn
Mr. M. Magee
Mr. K. Keen
Mr. C. Swinson (Comptroller and Auditor General)

Witness:

Mr. R. Aubert (Head of Conveyancing, Law Officers' Department)

In Attendance:

Mrs. M. Pardoe (Scrutiny Officer)

[11:58]

Senator B.E. Shenton (Chairman):

Mr. Aubert, good morning and welcome.

Head of Conveyancing, Law Officers' Department:

Good morning.

Senator B.E. Shenton:

Thank you for attending this morning. What we will do to start with is just go round the table so that we can all introduce ourselves and if you would like to just say your name and title and we will work our way round. It is as much for the purposes of the tape as for the people that have come to watch.

Head of Conveyancing, Law Officers' Department:

Okay. My name is Robert Aubert. I am Head of Conveyancing at the Law Officers' Department.

Mr. M. Magee:

Martin Magee, independent member, Public Accounts Committee.

Senator A. Breckon:

Senator Alan Breckon, member of the Public Accounts Committee.

Connétable J.M. Refault of St. Peter:

Connétable John Refault of the Public Accounts Committee.

Senator B.E. Shenton:

Senator Ben Shenton, Chairman of the Public Accounts Committee.

Mrs. M. Pardoe:

Mel Pardoe, committee officer.

Mr. A. Fearn:

Alexander Fearn, independent member of Public Accounts Committee.

Mr. K. Keen:

Kevin Keen, independent member.

Mr. C. Swinson:

Chris Swinson, Comptroller and Auditor General.

Senator B.E. Shenton:

First of all, I have to just read you some housekeeping. The proceedings of the panel are covered by parliamentary privilege through Article 34 of the States of Jersey Law 2005 and the States of Jersey (Powers, Privileges and Immunities) (Scrutiny Panels P.A.C. and P.P.C.) (Jersey) Regulations 2006 and witnesses are protected from being sued or prosecuted for anything said during hearings unless they say something that they know to be untrue. This protection is given to witnesses to ensure that they can speak freely and openly to the panel when giving evidence without fear of legal action, although the immunity should obviously not be abused by making unsubstantiated statements about third parties who have no right of reply. The panel would like you to bear this in mind when answering questions. So I suppose the easiest way to start us off, we are here to talk about the Jersey Homebuy scheme. This is often described as a shared equity scheme.

[12:00]

Would you say that this is the correct description of the scheme and perhaps give an outline of how the scheme operates under Jersey Law?

Head of Conveyancing, Law Officers' Department:

Certainly. Can I just preface my first answer to explain that although I am a conveyancer with 25 years' experience, I am not the accounting officer as it says at the bottom of the questions and I am not a lawyer. So, any references I give to legal advice is just my understanding of the law. If you want to rely on that, then it would be best if you ask one of the Crown Officers.

Senator B.E. Shenton:

Thank you very much.

Head of Conveyancing, Law Officers' Department:

Shared equity. My understanding of shared equity is it is used in many different countries. It is where the vendor sells the property to a purchaser, or part of a property to a purchaser, but retains some of the proprietary interest. So he may sell, for example, 35 per cent to a purchaser and retain 65 per cent of the ownership of the property, so it then becomes a jointly-owned property. The Homebuy scheme is obviously different to that. It is a deferred payment scheme whereby it is the consideration that is shared. The purchaser purchases 100 per cent of the property but only pays whatever percentage, 65 per cent, of the consideration. The other 35 per cent is secured as a charge on the property. We tried to avoid the use of a shared equity scheme because shared equity does cause confusion. People thought that the States and the public were going to keep part-ownership of the property, so we tried to avoid shared equity and call it a deferred payment scheme.

Senator A. Breckon:

Under the scheme the bank that lends the money to the purchaser, to the homebuyer, takes the charge over the property and then the deferred payment is taken as a second charge.

Head of Conveyancing, Law Officers' Department:

That is right.

Senator B.E. Shenton:

If the value of the property moves up, can you just tell me how it operates in respect of what happens to any profit that is made on the property?

Head of Conveyancing, Law Officers' Department:

The idea was that under the deferred payment scheme whatever the percentage was of the consideration that was retained by the public, so for example if the charge that was registered in favour of the public was 35 per cent of the original sale price, then when the property was alienated, so in other words when it was sold on, the public would be re-paid at 35 per cent of the eventual price.

Senator B.E. Shenton:

All right. Now the ...

The Connétable of St. Peter:

Sorry, but the bond is not capitalised then in value?

Head of Conveyancing, Law Officers' Department:

It is, yes, because of the 1880 Hypothecation Law. Under the 1880 Hypothecation Law you have to have a "somme certaine", or a fixed sum, which made it difficult. So you cannot say 35 per cent of the eventual sale price because I am certain nobody knows what that would be. So we had to work out a way of having capital sum plus interest within the bond.

Senator B.E. Shenton:

So the Minister for Housing said that the £8 million is ring-fenced and the minimum that they will get back. Can we sort of turn around and say if we see a substantial fall in the prices the bank will take the first charge over the property; the second charge to the States? The implication of the bond is there is a minimum amount payable to the States regardless of the value of the property.

Head of Conveyancing, Law Officers' Department:

That is right. That would be the original capital sum which would be 35 per cent of the original amount. If the value of the property did fall then obviously you would not get the uplift, the interest on it.

Senator B.E. Shenton:

No, but the actual loss on the property, that would all go to the person that has entered the Homebuy scheme.

Head of Conveyancing, Law Officers' Department:

In what way? We would get the capital sum back; the original capital sum.

Senator B.E. Shenton:

Yes. So if the bank has taken their mortgage back and you have taken back your original capital sum ...

Head of Conveyancing, Law Officers' Department:

I think what would happen in practice is that because we have a second charge we are in quite a strong position.

Senator B.E. Shenton:

From this line of questioning I am more interested in the poor person that has bought the actual house. They are very vulnerable to falls in the property market.

Head of Conveyancing, Law Officers' Department:

Yes. They would be anyway, would they not?

Senator B.E. Shenton:

Yes, but the deal on Homebuy seems to be that they take a percentage of the profits if house prices go up and 100 per cent to any downward movement.

Head of Conveyancing, Law Officers' Department:

Well their percentage would fall, yes. That is correct.

Senator B.E. Shenton:

The only legal opinion on what would happen if property prices fell was from the Solicitor General who wrote: "I am not clear what is intended to happen if property has decreased in value." Did your department look into the ramifications of a sustained fall in property values in Jersey?

Head of Conveyancing, Law Officers' Department:

No, we did not. No.

Senator B.E. Shenton:

Did you do any stress testing or anything to do with that or ...?

Head of Conveyancing, Law Officers' Department:

No, that was not our job.

Senator B.E. Shenton:

No, okay.

Head of Conveyancing, Law Officers' Department:

Our job was to enable the legal framework to enable the transactions to take place.

Senator B.E. Shenton:

Why did we end up with the States being ultimately involved in this rather than housing trusts or other not-for-profit bodies?

Head of Conveyancing, Law Officers' Department:

Certainly for this trial run I think it had to be the States because there are too many other things to consider, really: the nature of the bond. Our bond is quite robust but I think you would have to get some framework for a bond if the housing trust, or if anybody else, was using a bond because it could be more onerous. They could put any sorts of conditions in, not necessarily the ones we had. I think there would have to be some framework. Also, because it was a trial scheme, I think the banks and the lawyers acting for the banks were a little bit jittery about it and I think it helped to have the States behind it.

Senator B.E. Shenton:

The Solicitor General, the advice basically was that the scheme should really be introduced through legislation which has not happened. Would your department prefer the scheme to be introduced through legislation where all eventualities are examined and dealt with?

Head of Conveyancing, Law Officers' Department:

Well right from the beginning I think we have been saying that it would be best ... personally I think it would have been best if the whole shared equity scheme had been researched properly. There are many schemes throughout the world, so I think we should have had proper research into the shared equity scheme throughout the world to pick the best parts of the best schemes and adapt them for all of Jersey and then bring in legislation to cover that.

Senator B.E. Shenton:

Because it has not, as far as we can gather, been formally approved by the States as a scheme, albeit the Island Plan has been amended to incorporate Homebuy.

Head of Conveyancing, Law Officers' Department:

I think the problem with us calling it a "scheme" is it implies a great deal of detail. I prefer to think of Jersey Homebuy as almost a concept. The idea is, through planning obligations, to provide homes that we call intermediate housing homes for people who fall between having too much money to rent but not enough money to purchase in an open market. That is the general concept but I think the actual detail will vary with each particular estate. So I would prefer to call this first scheme perhaps a Jersey Homebuy La Providence scheme because the details of the houses, how much they cost, the size of the houses, everything, the people who qualify would vary with each scheme. So, then I suppose the decision would be, does all the detail need to go back to the States or should it be the Minister for Treasury and Resources who decides on the detail? As I said, that is not my ...

Senator B.E. Shenton:

You used the term "intermediate housing". I could not find within any of the papers a definition of intermediate housing. Could you just define what intermediate housing is?

Head of Conveyancing, Law Officers' Department:

Intermediate housing is housing that can be sold to people who fall, as I was saying, between they earn too much to qualify for States rented accommodation but they do not earn enough to be able to purchase a property on the open market.

Senator B.E. Shenton:

How would you value intermediate housing? Again, we could find no evidence to see how the houses should be valued.

Head of Conveyancing, Law Officers' Department:

That is not my field, really. I am not a valuer.

Mr. M. Magee:

Mr. Chairman, can I just ...? Just to clarify that first point. So do you think it was clear to individuals who purchased these homes that if there was an upside then the States of Jersey would get 35 per cent of it at that proportion but if there was any downside then it was 100 per cent on them?

Head of Conveyancing, Law Officers' Department:

It would have been up to the lawyers to explain that.

Mr. M. Magee:

The lawyers representing them?

Head of Conveyancing, Law Officers' Department:

Yes, that is right. Yes.

Mr. M. Magee:

Okay. But that is clear the way the bond works that if it goes down then the States of Jersey's proportion does not get eaten into. The capital sum does not reduce.

Head of Conveyancing, Law Officers' Department:

It does not reduce, no. But it is obviously up to the discretion of the Minister. The authority within the bond is the Minister for Housing. It is at his discretion whether he exercises it or not.

Mr. A. Fearn:

From the descriptions of the La Providence arrangement there have been terms used "run as a pilot" which is evidently reasonable, in my opinion. To your knowledge was there any formal targets made on if we are running a pilot, what would we be testing? Are there any objectives that we would need to achieve running this pilot scheme which is what we normally expect to see in this type of arrangement.

Head of Conveyancing, Law Officers' Department:

I am not aware of any, no.

Mr. A. Fearn:

Okay.

Head of Conveyancing, Law Officers' Department:

It was just run as a pilot scheme because it was the very first one. I suppose what really should have happened was we should have sat down afterwards and analysed how it went, et cetera, which is what we are doing now.

Mr. A. Fearn:

Again, that would be another natural, sensible thing to do. Thank you. Thank you, Chairman.

Senator B.E. Shenton:

The catalyst to allow the scheme to go ahead was the planning obligation agreement.

Head of Conveyancing, Law Officers' Department:

Yes.

Senator B.E. Shenton:

Can you just explain the significance of the planning obligation agreement in making the scheme viable?

Head of Conveyancing, Law Officers' Department:

It is not really my field of expertise. We do have a lawyer within the department who just specialises in planning obligation agreements. Generally

it is just to set out the agreement between the developer and the Planning Department as to what happens to the properties within a development.

Senator B.E. Shenton:

Were you aware that the Solicitor General had given advice that a key condition of the planning obligation agreement should be that the developer should not be in a position to sell any properties at La Providence until the Jersey Homebuy properties had been transferred to the States?

Head of Conveyancing, Law Officers' Department:

Yes, I was aware of that condition. Otherwise, I think the concern was the developer would build the most profitable parts of the development and sell it off and then the remainder, the intermediate housing, would be left until the end and he may have dragged his feet to complete it.

Senator B.E. Shenton:

Was this condition adhered to by Dandara the developer?

Head of Conveyancing, Law Officers' Department:

No, because I believe when the revised planning obligation agreement went in, I think they had sold some of the houses already. This development was a bit odd because we came in sort of quite late in the day. Normally if we were running this sort of scheme, it would all be sorted out before the houses even were started to be built.

Senator B.E. Shenton:

So do you think by ignoring this advice there was a level of risk undertaken by the States that perhaps should not have been there?

Head of Conveyancing, Law Officers' Department:

I do not think so because the buildings were all complete anyway, so I do not think there was very much danger there.

Senator B.E. Shenton:

Do you know when the revised planning obligation agreement was signed?

Head of Conveyancing, Law Officers' Department:

Yes, it was signed on 15th July 2009 and it was registered in the Public Registry on 16th July 2009 and we started passing the first contracts on 17th July 2009.

Senator B.E. Shenton:

But the developer had already sold a number of properties on the estate before that?

Head of Conveyancing, Law Officers' Department:

Yes.

[12:15]

Senator B.E. Shenton:

There was a briefing memorandum prepared within the Law Officers' Department dated 6th July 2009. Are you aware of this?

Head of Conveyancing, Law Officers' Department:

Yes, I am.

Senator B.E. Shenton:

This memorandum refers to the possibility that the States could have negotiated a lower price than the price agreed. Do you understand the circumstances in which this suggestion was made?

Head of Conveyancing, Law Officers' Department:

This briefing memorandum, it resulted from the concerns that the Minister for Treasury and Resources expressed when he signed the ministerial decision. He wrote a memorandum to John Richardson asking him to investigate it. So he called a meeting and asked us to prepare briefing memorandums for use at the meeting. My colleague prepared this memorandum. The figures that were included in the memorandum were merely discussion points. The figures were not in any way scientifically calculated. They were merely based on our experience in dealing with properties as conveyancers and a lot of guesswork and assumptions. It was more a discussion point rather than anything properly calculated.

Senator B.E. Shenton:

Could you just outline why the memorandum believed that a lower price could have been obtained?

Head of Conveyancing, Law Officers' Department:

Again, it was just an assumption going by previous housing trust purchases basically. But it was assuming a lot and a lot of guessing at how much was paid. All we could go on was the contracts of the past in the registry. We could see how much that the housing trust, for example, had borrowed and estimate how much they paid for each plot. Then we would guess on the possible cost of building the houses. It was very unscientific.

Senator B.E. Shenton:

You act as conveyancing for the States of Jersey so when you are looking at something like this, are you looking at it purely with the States of Jersey hat on? From that point of view you would have been comfortable because the bond does give you a minimum return regardless. The major people disadvantaged by any over-valuation I suppose would be the Homebuy purchasers themselves which would not necessarily have been of concern to you.

Head of Conveyancing, Law Officers' Department:

Yes, that is right. No, our job is to secure the public's interest, really. The lawyer acting for the purchaser is supposed to look after the purchaser's interest.

Senator B.E. Shenton:

Do you know if any lawyers acting for the purchasers raised any concerns about the level of ...?

Head of Conveyancing, Law Officers' Department:

No.

Senator B.E. Shenton:

No one out of ...?

Head of Conveyancing, Law Officers' Department:

No.

Senator B.E. Shenton:

Okay.

The Connétable of St. Peter:

Just coming back to the valuations and the comment that the Chairman was making a few moments ago saying that essentially there was a better deal to be done on the actual purchase price or the bond value to the States. Do you believe that the negotiations were possibly not robust enough to get the best deal?

Head of Conveyancing, Law Officers' Department:

I do not know. I was not privy to any of the negotiations on the prices at all, I am afraid.

The Connétable of St. Peter:

So no sort of background to why one could assume that the better price was available?

Head of Conveyancing, Law Officers' Department:

Not really, no. I would not like to comment because I do not have any knowledge of it at all.

The Connétable of St. Peter:

Okay. Thanks very much.

Senator B.E. Shenton:

Were some of the cash deposits paid by the Homebuy people joining the scheme fairly substantial?

Head of Conveyancing, Law Officers' Department:

Yes. I think the greatest was about £155,000. There were a few at £115,000 and downwards. The majority was around the £20,000 mark, I think.

Senator B.E. Shenton:

I suppose from your point of view what is paid as a deposit is of no concern to you because your job is just to undertake the conveyancing of the transaction?

Head of Conveyancing, Law Officers' Department:

That is right. I am sure because all these people went through the Gateway, there must be a good reason why. I presume the people might have owned a flat before and had a deposit to pay already.

Senator B.E. Shenton:

Okay.

Senator A. Breckon:

Can I ask you what date the properties went through the court?

Head of Conveyancing, Law Officers' Department:

They started going through on 17th July.

Senator A. Breckon:

17th July. You say "started going through." They did not all go through on the same day then?

Head of Conveyancing, Law Officers' Department:

No. No. It was staggered over the next few weeks.

Senator A. Breckon:

Over what sort of period?

Head of Conveyancing, Law Officers' Department:

Probably about a month to 6 weeks.

Senator A. Breckon:

We were given the impression that everything was bought and sold on the same day, so that is not true?

Head of Conveyancing, Law Officers' Department:

No. Because there was no funding available for the whole scheme, we could not buy the properties and then sell them off. So we had to get a purchaser lined up and then take the property from the developer and then sell it on to the purchaser on the same day. But it did not necessarily all have to happen on the same day.

Senator A. Breckon:

So from 17th July that would be 4, 5 or 6 weeks, something like that?

Head of Conveyancing, Law Officers' Department:

Yes.

Senator A. Breckon:

I wonder if you would like to comment, R.68 was lodged before the States on 23rd June which said that the Minister for Treasury and Resources was indicating to buy these 46 residential properties. Where does that sit in the conveyance, this going to the States, that any Member could object within 15 days to this transaction going ahead? So where does that sit with the legal process?

Head of Conveyancing, Law Officers' Department:

Standing Order 168 says that it has to go to the States for 15 days. I think States Members can make comments but it does not necessarily stop the transaction going through. I think the Minister can ignore those comments and carry on. We have to assume that it is going to carry on, so we just carry on with the legal aspects.

Senator A. Breckon:

Did you process any of the mortgage arrangements? You mentioned some people paid a £155,000 deposit which I do not think was the States intention of people who were in need of this type of housing. So, can you supply figures anonymised - later if not now - of who paid how much deposit of a percentage of the 46?

Head of Conveyancing, Law Officers' Department:

I can give you a list of the whole ...

Senator A. Breckon:

If you can supply that later. Can I ask you from that, was an opinion expressed that if I could find a £155,000 deposit then should I not be in this market? Did nobody express that opinion? Housing, Planning, nobody else? It was not your job?

Head of Conveyancing, Law Officers' Department:

It was not our job because Housing would have looked at the people as they came through the Gateway. So I presume if someone had a £155,000 deposit then there must have been a very good reason why they still qualified under the scheme.

Senator A. Breckon:

Can I ask you, in your professional opinion, if you think Homebuy, as you have seen it, is fit for purpose for the buying and selling of property for people who might be first-time buyers or perhaps inexperienced?

Head of Conveyancing, Law Officers' Department:

I think certainly the La Providence pilot scheme has worked inasmuch as we have 46 families in houses and it has not cost the States anything. I think the actual scheme, to me, it seemed a little bit hurried and, to be truthful, I think it was a little bit half-baked. So I think some more detail and some more thought needs to go into it but that is just my opinion.

Senator B.E. Shenton:

Yes, you said at the start that you agreed perhaps it should be implemented through legislation rather than *ad hoc*.

Head of Conveyancing, Law Officers' Department:

Yes. I think if you wanted to get a first class scheme. This one, unfortunately, we have to work within the confines of the 1880 Hypothecation Law which really restricts us. So this was the only way we could think of making it work.

Senator B.E. Shenton:

When the States normally acquires property, does it pay stamp duty?

Head of Conveyancing, Law Officers' Department:

Yes.

Senator B.E. Shenton:

It does pay stamp duty? The States acquired these properties from the developer, was stamp duty paid?

Head of Conveyancing, Law Officers' Department:

No, I think it was waived in the circumstances.

Senator B.E. Shenton:

Who has the power to waive stamp duty?

Head of Conveyancing, Law Officers' Department:

I believe it was through the States, was it not? Was the Homebuy scheme not exempted from stamp duty? I am not sure. I thought it was through the States.

Senator A. Breckon:

The States only approved P.74. Are you able to direct us in P.74 where it says that no stamp duty will be paid?

Head of Conveyancing, Law Officers' Department:

I am sorry, I would have to look it up. I cannot remember offhand. I cannot remember exactly.

Senator B.E. Shenton:

So when they were sold on to the Homebuy people, they were exempted from stamp duty as well?

Head of Conveyancing, Law Officers' Department:

That was the idea, yes. The whole scheme was exempt from stamp duty.

Senator B.E. Shenton:

That was a political decision?

Head of Conveyancing, Law Officers' Department:

I thought it was, yes.

Senator A. Breckon:

We were also told as well that the developer would bear the costs, the legal costs, and any other valuations or whatever. Do you know if the Law Officers' Department received a fee for your services for this job?

Head of Conveyancing, Law Officers' Department:

No. We did not receive anything for it.

Senator A. Breckon:

You did not receive anything?

Head of Conveyancing, Law Officers' Department:

No.

Senator A. Breckon:

Do you know if any account was tendered to the developer?

Head of Conveyancing, Law Officers' Department:

For our work?

Senator A. Breckon:

We were told that the developer would foot the bill, the legal costs of the buyers, which in some instances would involve the Law Officers' Department. Do you know if a bill was tendered by the Law Officers' Department?

Head of Conveyancing, Law Officers' Department:

No. No, it was not. No, I was not aware of that.

Senator B.E. Shenton:

Did you ever see the Gateway documents or they were of no relevance to you whatsoever?

Head of Conveyancing, Law Officers' Department:

No, I have not personally.

Mr. K. Keen:

Can I ask, Mr. Aubert, back to the bond, the 35 per cent, is there any way that an owner of the 65 per cent could make a partial re-payment of it and therefore effectively have more equity in the property, or is it clearly on sale or ...?

Head of Conveyancing, Law Officers' Department:

Yes, we thought of trying to do that but it became very complicated and the bond became very cumbersome. We thought that the ideal opportunity would be ... they could because it is the judicial hypothec which has to be re-registered every 10 years. So we thought that if they wanted to at the end of the 10 years then they could possibly pay off some of it and we could calculate it. It also needs to, within the bond, calculate the amount that would have to be re-paid. The property would have to be valued, so someone would have to pay for the valuation. So we thought if it was going to be small

tranches of, say, 5 per cent or something, it would be quite expensive to keep getting it valued.

Mr. K. Keen:

So currently as the bonds are drafted, the owner owns 65 per cent until the property is sold, is that correct, as they are drafted now?

Head of Conveyancing, Law Officers' Department:

Yes, that is right.

Senator B.E. Shenton:

Who pays the re-registration charge?

Head of Conveyancing, Law Officers' Department:

The purchaser would have to pay that.

Senator B.E. Shenton:

For the total value of the property inclusive?

Head of Conveyancing, Law Officers' Department:

No. It would not be the value of the property; it would be the borrowing.

Senator B.E. Shenton:

But what about the States bond?

Head of Conveyancing, Law Officers' Department:

Yes, the States bond. That is what I am talking about. That would have to be re-registered every 10 years. So it would just be the stamp duty on that plus whatever their legal fees are.

Senator B.E. Shenton:

So the owner of the property would have to pay stamp duty on the 35 per cent owned by the States?

Head of Conveyancing, Law Officers' Department:

Yes, I think it is a nominal £50 or something.

Senator B.E. Shenton:

Could you run through what happens in case of inheritance?

Head of Conveyancing, Law Officers' Department:

In case of inheritance?

Senator B.E. Shenton:

On the death of a homebuyer.

Head of Conveyancing, Law Officers' Department:

If the property was owned jointly then it would carry on in the survivor's name but once both the couple had died, one of the trigger points for the re-payment

of the bond would be 3 months after the property had been inherited they would have to re-pay the capital sum plus interest.

Senator B.E. Shenton:

Can they hand the property over to their children or ... because the children would not necessarily qualify as first homebuyers.

Head of Conveyancing, Law Officers' Department:

No. Well the children could inherit it. Strictly speaking, they should not live in it because they are not first homebuyers, as you say, but that would be up to the Minister for Housing to enforce.

Senator A. Breckon:

In some of the paperwork we have seen it is saying that the Minister for Planning and Environment should have discretion in this area. Is that anywhere in any legislation you have seen or enforceable anywhere? That the Minister for Planning and Environment should have legislation if somebody inherits whether they can occupy or not?

Head of Conveyancing, Law Officers' Department:

Supposing a condition would be imposed by the Minister for Planning and Environment it would have been on the original building permit it was a first-time buyer property so I ...

Senator A. Breckon:

You would not be able to vary it then?

Head of Conveyancing, Law Officers' Department:

I do not know. We would have to think about that. I am not sure.

Senator B.E. Shenton:

You have mentioned a few times that the Minister for Housing would have certain powers as to whether he asks for re-payment of the 35 per cent, whether he allows someone else to re-pay it, what checks and balances are in place to prevent cronyism or favouritism from the Minister for Housing in this respect?

Head of Conveyancing, Law Officers' Department:

None whatsoever.

Senator B.E. Shenton:

None whatsoever?

Head of Conveyancing, Law Officers' Department:

No. No, he is just the ...

Senator B.E. Shenton:

That is part of the fact that there is nothing in legislation to deal with this?

[12:30]

Head of Conveyancing, Law Officers' Department:

No, that is right. It is purely within the terms of the bond so he is the authority in the bond who decides.

Senator B.E. Shenton:

So you could let one homeowner off the 35 per cent while charging another without documenting any particular reason why he has made that decision?

Head of Conveyancing, Law Officers' Department:

He could do, yes. In theory, yes.

Mr. M. Magee:

Could I ask just a couple of quick questions? One is a clarification point. When we talked about the £100,000 plus deposits that were lodged from a few people, you made the comment after saying it, it could be that they sold a previous flat or something for their deposit. You would not be able to do that, would you, because as a first-time buyer you would not be able to have owned a property before?

Head of Conveyancing, Law Officers' Department:

It depends. Strictly speaking, under the first-time buyer definition, yes. But if you read further down, the last paragraph gives the Minister for Housing discretion if he thinks that the person is in need of help.

Senator B.E. Shenton:

Are you aware of anyone on Homebuy that previously owned flats under equity?

Head of Conveyancing, Law Officers' Department:

I do not know. As I say, I was not party to the Gateway scheme, so it would be best to ask the Chief of Housing.

Senator B.E. Shenton:

One of the factors was that people should have children. Were you aware that a number of the purchasers did not have children?

Head of Conveyancing, Law Officers' Department:

No, I was not.

Senator B.E. Shenton:

No.

Mr. M. Magee:

Can I ask one other one? Have any of the homes been sold just to see if logistically there had been disposal of proceeds and the States have had money back for the bond? Has anything been sold yet?

Head of Conveyancing, Law Officers' Department:

No, they have not. I believe there was one couple I think separated but that was a few weeks ago and I do not know what the outcome of that is yet.

Mr. M. Magee:

So it might be a test case for the first one flowing through.

Senator B.E. Shenton:

Could you explain what happens if someone enhances the property significantly, say built an extension or built a conservatory or something like that, would the States still get 35 per cent of the valued added by these extensions?

Head of Conveyancing, Law Officers' Department:

No. The value is supposed to take any improvements into account. So if there was an extension or something, then you would deduct that from the valuation.

Senator B.E. Shenton:

Okay.

Senator A. Breckon:

I wonder if I can ask you to comment on some notes that were from the Jersey Homebuy Working Group. There was a meeting held on 15th August 2008 and in there you mentioned earlier that the gain is 46 people or families have homes but the minute says this: "Availability of homes on the Jersey

Homebuy. The group were concerned that only 60 homes were going to be available through the Jersey Homebuy and queried where future Jersey Homebuy homes would come from. The group was informed that the Minister for Planning and Environment was informed by the Housing Needs survey which indicated that some 3,000 first-time buyers required homes over the next 5 years.” Could I ask you to comment on where the present Homebuy scheme sits if 3,000 people with availability ... is it robust enough to do anything with?

Head of Conveyancing, Law Officers’ Department:

I do not think so. As I was saying before, I think this is the Jersey Homebuy La Providence scheme so it was just tailored for this one scheme. I think the Jersey Homebuy concept could be expanded. For example, if you had a development of one-bedroom flats, I do not see why you could not allow single people who fall within the same category that earn too much to rent but not enough to buy on the open market, I cannot see why they could not be helped to buy flats.

Senator A. Breckon:

But then, in your opinion, should we learn from this experience and put a robust system in place that does one-bedroom, 2-bedroom, 3-bedroom rather than do *ad hoc* developments in respect of it?

Head of Conveyancing, Law Officers’ Department:

I think that is why the whole thing should be looked at perhaps a bit further, yes.

Senator A. Breckon:

So, again, in your opinion, is it wise not to sell any more houses in this way until we have a robust system in place from a conveyancing point of view?

Head of Conveyancing, Law Officers' Department:

That is not really my decision. From a conveyancing point of view, I am just instructed to sell the houses. I do not have any say in who they are sold to or why they are sold.

Senator B.E. Shenton:

Does anyone have any further ...?

Mr. K. Keen:

Are you dealing with any other transactions of this type in this scheme then, Mr. Aubert?

Head of Conveyancing, Law Officers' Department:

No, no. That was the one and only trial scheme we have done so far. I believe there were only 2 other sites, I think, that were ... but we have not heard anything on the other 2 sites yet.

Mr. A. Fearn:

I am sorry, Mr. Aubert, just to go back to the previous point. Have you currently been asked by any party within the States to give feedback on your experience with this process and you will identify any enhancements or requirements made, bearing in mind we have talked about this legislative process that you feel needs to be in place?

Head of Conveyancing, Law Officers' Department:

No, I have not. No. The only time I have spoken to it was to Mr. Swinson and then today.

Senator B.E. Shenton:

Well thank you very much for coming in. Thank you.

[12:35]