



STATES OF JERSEY
Residential Property Review Panel:
Estate Agents
TUESDAY 3 OCTOBER 2017

Attendees:

Panel

Deputy D. Johnston of St. Mary, (Chairman)
Deputy R. Renouf of St. Ouen
Deputy A. Lewis of St. Helier
Connétable M. Le Troquer of St. Martin

Witnesses

Gill Hunt – Hunt Estates
Roger Trower – Broadlands

Deputy D Johnson of St. Mary:

Thank you for coming in. Can we go round the table identifying ourselves, because this is being taped? I am David Johnson, The Deputy of St. Mary, Chairman of the Panel.

Deputy A.D. Lewis of St. Helier:

Deputy Andrew Lewis.

Deputy R.J. Renouf of St. Ouen:

Deputy Richard Renouf, Deputy of St. Ouen.

Connétable M.P.S. Le Troquer of St. Martin:

Constable of St. Martin, Michel Le Troquer, and apologies because I have to leave for another meeting during the interview.

Hunt Estates:

Hunt Estate Agents.

Broadlands:

I am Roger Trower, Managing Director of Broadlands.

The Deputy of St. Mary:

Thank you for that. You know enough of the background to know that we are the Residential Property Review Panel, set up by the Chairman's Committee to look at all aspects of the conveyancing process to see where there might be problems and whether we can recommend any improvements. It, perhaps, came at a time when there was some advance publicity that that gave unnecessary focus to certain areas. We are looking at the whole spectrum. What we would like would be for each you in turn, so that we do not get into a debate, to identify what you see as particular problems with the process. We have some specific questions that we shall follow up on, if we may. Ladies first. Would you like to –

Hunt Estates:

Fundamentally, the system does work. At the moment, transaction times are still 4 to 6 weeks. From an estate agent's point of view, we try to keep the deals together and liaise with all parties. We are able to speak to all parties, so we are able to speak with the surveyors and the both sides' lawyers and suchlike. Generally, from our point of view, things do work. However, we are subject to so many links in the chain. Even with just one buyer and seller, there are all the lawyers, the surveyors, the banks, the people getting their money together. Any of these little links in the chain could break or fail and it is down to us to oversee it and to try to keep it on track. One of the difficult things from the point of view of the buyer or the vendor is if they are selling a property and then want to go into a rented accommodation, they might have to sign a lease or consider doing so, and they are on a wing and a prayer as to whether the house is going to go through, so at what point they sign and they take this up. This is something that a vendor has to take a view on because the upshot of a 4 to 6 week completion is generally more advantageous to buyers and sellers than if, for example, you were in the UK where they have exchange and completion. Their average is 88 days. That is the average in the UK for a completion and I hear that in Devon it is 6 months. It is crazy. That is the other end of the degree. So, while there can be lots going on, and, "Is this happening? Is that happening?" it is a concentrated period that can be a bit of a roller coaster. However, in the greater scheme of things, would you rather have that than exchange and

then complete with a much delayed completion? Fundamentally that is the only – there are other areas that come up that one needs to talk through, which we have spoken on before. In Guernsey they have not a preliminary contract but an agreement that focuses people a bit. However, a buyer can still walk away from it and it is still subject to a mortgage, finance and suchlike. Again, do people want that or not? Is it another raft of paperwork that one could go through more speedily in Jersey?

The Deputy of St. Mary:

Thank you for that. It was not originally my first item but we touched on this before. I am an English lawyer so I am used to the idea of preliminary contracts and 88 days sounds like an awfully long time to me, but the advantage of that is that it is not crowding the practical removal aspect. Once exchange is done, you are there almost; you have that certainty. Is there an appetite for that over here, do you think, a longer – maybe not 88 days but a longer process with a preliminary contract?

Hunt Estates:

Some people say, “Oh, if only we could,” but one has to look at the practicalities of placing a deposit. Do people want to do that? Some lawyers will say, “If we are ready, save a completion date, would you rather just go to court anyway?” The only other little suggestion is that if you transact on the Friday, because your monies are not paid until the Tuesday do you then have that period in which you know that you can book your removals and suchlike and you have a little bit of a run-in? Again, practically, it is not that long. Removal men and suchlike are used to clients booking and then they are not. It is part of their lives.

The Deputy of St. Ouen:

Do you have experience of clients who have had to pay penalties to removal companies because that Friday date has been delayed?

Hunt Estates:

I have not. That does not always come back to me, unfortunately. Generally, they just rebook.

Broadlands:

That used to be 10 days. We always held a client for 10 days and you had a bit of a chance, if anything was going wrong, to be able to – anything could happen during that time, but that has been moved forward now. Everyone wanted the monies to be transferred over, because you would be in a house and, effectively, no-one had been paid, so that was a system that was –

The Deputy of St. Mary:

There is some mileage in the idea that one could have an extended period. Whether mortgage companies would be happy with that I do not know. That is something else.

Hunt Estates:

They are just about okay with Tuesday. I am not sure how the mortgage banks would feel about it if it went longer.

The Deputy of St. Mary:

Going back to the time factor, it has been suggested that maybe agents are the ones who determine the over-all time factor. They are told at the beginning that it can be done in 4 weeks. You may well say that in fact it is the vendor or the purchaser who is demanding it. Where are we in that?

Hunt Estates:

The agent will speak to all parties concerned and see what is a feasible day. As a general rule of thumb we will look at 4 to 6 Fridays in advance and then we will put a suggested completion date to the lawyers. We will also liaise with the lawyers and ask whether it is feasible for a particular transaction. If there is a cash buyer, with only one or two properties involved, does the property have lots of land and are there likely to be boundary issues? That type of thing. The other thing, now, is that we want as much information as we can have from buyers to verify their situations. We want to know who they are going through, what mortgage adviser. Some people say, "We have our consent to buy," having actually just been in for a 5-minute chat and have been told, "Once you provide all your information, then we will let you know." We need to know the exactly at which stage they are so as to flush such people out, find out whether they have a substantial deposit and where that is coming from, whether we can have a letter from their bank to say that they are in funds to that amount. All those things will minimise the transaction time and help to avoid other things coming up at a later date.

Deputy A.D. Lewis:

Would a mandatory process whereby you have to have a letter of comfort from the bank before progressing, if there is a mortgage involved –?

Hunt Estates:

I am sorry, say that again Andrew?

Deputy A.D. Lewis:

Having a letter of comfort from the bank if a mortgage is involved, as a mandatory requirement within the code of conduct for yourselves. Would that be useful, because I suspect that the finance arrangement often causes delay or the deal falling over?

Broadlands:

Proof of funds is absolutely essential.

Deputy A.D. Lewis:

Do you demand that, then, yourselves?

Broadlands:

We ask and try to get it as much as we possibly can but over here, historically, it has not been something that we have asked, because it was embarrassing.

Deputy A.D. Lewis:

If was mandatory that you had to have that letter from the bank before going ahead.

Broadlands:

In the UK, mostly, now, proof of funds has to be given straight away. We try to improve the process as much as we can. We want to know people's financial situation, as Gill said, and proof of funds is really important because a lot of people say, "Yes, I have the money," but no, they have not. Then that is dependent on the surveyor coming up with the right valuation to the property and whether the bank will lend. The whole process then starts getting in a mix and at the end of it all we are down to what the lawyers can do.

Deputy A.D. Lewis:

So, if it were a mandatory requirement that you had to have proof of funds, would that help you a lot?

Hunt Estates:

It would. However, it depends at what stage we have proof of funds, because if they have just been to the bank and they say, "Yes you can borrow X amount," they can have made an offer on that basis. It is down to us to let the vendor know that they have only been in for a preliminary chat and are making their offer on that basis. We are seeking further information. Vendor

Deputy A.D. Lewis:

It would normally be subject to survey, would it not?

Hunt Estates:

It would be.

Broadlands:

It is always subject to survey, right at the very start, anyway, and we try to get someone to say, "I have all that sorted out," but in lots of cases they will say that just because they want to buy something.

The Deputy of St. Mary:

Picking up Andrew's point, I can see that in a small community you do not want to quiz your best friend too much about what he has because if there is a mandatory thing, it is like KYC. That might help.

Hunt Estates:

But we do have a duty of care under our KYC and our anti-money laundering, to find out where the money is coming from, so we do already have the right to ask that and we can ask that. Sometimes we know that we might be selling the house of someone who is scaling down so, if they say that the funds are coming from that, we have a bigger picture. However, if they have just walked in and said, "We have the cash in the bank," are they cash cash, or are they on a mortgage or have they a small deposit but they are borrowing too? All these things we need to know as an agent for the vendor, to verify them and to vouch for them once we have found out that information. We do do second checks. We cannot just take people at face value.

The Connétable of St. Martin:

You are talking a lot about the buyer. Do you think it is possible to provide more information in relation to the seller?

Broadlands:

Do not forget that the seller is our client. We are acting for the client and the client is the vendor. Our responsibility is to the client so we need to find out what the applicant, who is the purchaser, has, what their situation is, and we are duty bound by KYC to find out as much as we possibly can, but we are acting on behalf of the client. So, we are concentrating on whether the purchaser is in a position to be able to buy because then we can advise our client accordingly.

The Deputy of St. Ouen:

Do you feel you have a responsibility to make sure that the client – the vendor – has got his property ready for sale?

Broadlands:

Yes, absolutely.

The Deputy of St. Ouen:

So what sort of questions do you ask about such things as boundaries and all the things that can cause difficulties?

Broadlands:

“Have you instructed a lawyer?” for a start, “And is he aware,” and, yes, we ask a number of very suitable... It is a case of finding out what we have to sell because if we do not know what we have to sell, then we cannot sell it in the first place. Yes, we do ask a number of fairly searching questions if there is a problem. If it is a straightforward house that has been conveyed God knows how many times before – sometimes we need to know the situation of the client; is it a messy divorce? Are they suddenly bust because something has happened, or are they just moving on and buying up the scale? So, there are loads of things that we have to find out. That is what we do as an agent.

The Deputy of St. Mary:

On the finding out process, two questions: I take it that would help you if most vendors went to their lawyers first and said, “Are there any problems with this?” and then they gave you the wherewithal so that you would then know exactly what you could sell. But that does not happen, I take it?

Broadlands:

It does in lots of cases. Put yourself in their position. You have a house that you want to sell. What are you going to do? If you are going to an agent, you are going to talk to your lawyer, are you not? That is the normal process that you would do as someone who wants to sell their house. Normally, you would speak to your agent and you would speak to your lawyer.

The Deputy of St. Ouen:

Can I question you on that, because surely, now, you like to ensure that you have a buyer before you incur the fees of a lawyer? And then you go and get quotes from all sorts of lawyers, do you not? Is that not the practice these days?

Hunt Estates:

Yes, when you -

Broadlands:

Not necessarily. A lot of people have been with the same people forever, because it is family or whatever. Yes, people do shop around but invariably, when people first come in and say, "I want to sell my house," they have spoken to various other professional people who will be involved in that process. They might have spoken to the bank, you never know. The thing is that we need to find out where they are and whether they are committed to the sale, because if they are not committed to the sale, it does not matter what the purchaser is going to do. If the vendor is not committed to the sale, then the whole thing is up in the air and the process falls apart. So -

Deputy A.D. Lewis:

Thinking of what Richard was saying, are sellers prepared, on occasion, to spend money with lawyers to prepare their house for sale? Unless they have owned the property for a long time and there were, perhaps, issues when they bought it with boundaries and so on, what do they do to prepare their house for sale, because in some countries you have to do that before you can put it on the market?

Broadlands:

You do not have to do that.

Deputy A.D. Lewis:

You do not have to do that? So are you saying that sellers do not really want to incur costs until they have tested the market?

Hunt Estates:

Yes, there can be things like that. When, as agents, we take instruction on a property, we have what we call a take-on form. There is every single question you can think about on there. We ask them where their boundaries are and suchlike. Sometimes, people will say, for example, if you go into the loft and ask, "Oh, have you had this signed off? Is it an official conversion?" or that type of thing, "Oh, yes, yes, it is a bedroom." "Oh, right, okay. Is it officially a bedroom or is it just in a usable space?" "Oh, I am not sure," "Okay, we need verification on that, please. Can you find that out?" So, as you are going around there will be various questions and we would then also say, "Which lawyer did you go through when you purchased your property?" and they might say, "Oh, so-and-so, but I am not sure whether I am going with them again." "Well, we need you to speak to somebody to verify these outstanding questions, because we need to be able to answer them for a buyer and we do not want it to come up at the eleventh hour." So, a lot of questions may well have been mitigated in advance. Having said that, as agents we do not see the deed of contract. We do not walk the boundaries. There might be a boundary stone that is missed. They might not be sure where their boundary is. They might not know if they need a deed of arrangement with the

neighbour in order to transact. Those are the kinds of things on which would encourage vendors to ring their lawyer, tell him they have put their house on the market, let him get the file ready and ask these questions, or ask him, "Is there anything that we need to know in advance?" The lawyer might be a bit guarded; he might not want to flag something up until a buyer's lawyer has flagged it up and then respond accordingly on behalf of his client. So, we already do a lot of ground work.

Deputy A.D. Lewis:

It is a lot of work for you, is it not? Just one of the things that has been suggested to us – and I wonder what think of this idea – is that every home should have a log book so that when you come to sell it you take the log book out and say, "Yes, these are the issues. These are the boundaries, this is the issue with the soak-away or whatever it might be," so that that is permanent to that house, so it is all there and every house has that history. Of course, at the moment that history is locked away in a vault somewhere with the last lawyer that dealt with it. Assuming you use the same lawyer you will get the data, but if you do not, you will not. What do you think of the concept of having some kind of book that says that this is your house, this is where the boundaries are, this is what the issues were last time, these are the planning permissions that have been approved, and so on? Is that something that has ever been discussed in association?

Broadlands:

It is a jolly good idea. Whether you would get someone to do it or not is another matter. Most people, if they have bought a house, will be able to refer back to the contract. They will have a copy of it somewhere at home and they will be able to refer back to who did the survey when they bought and stuff like that; they will have a copy of that as well. So, most people will have more details about their house and they should have kept them somewhere. But if they do not, then, if it is a simple transaction that is fine. If it is not, then you need to get people involved early to try to get things sorted out.

Deputy A.D. Lewis:

In most cases, you can access the data from the last lawyer to do the transaction.

Broadlands:

Yes, and I know that lawyers do ask – if it is a different firm, they can ask for the information to be released. That might not happen overnight, but it does happen.

The Deputy of St. Mary:

Going back to your point about doing your preliminary work with the vendor. I am pleased to hear that. Is that universal among agents, do you think?

Broadlands:

No. A lot of people do not know what they are doing. We have been doing it for a long time. With the greatest respect to Gill, she was working with me when she first started. I do know that there is a bit of history there, you see.

Hunt Estates:

Yes.

The Deputy of St. Mary:

Right. I did not realise the connection.

Broadlands:

No, it was a long time ago. However, there are an awful lot of people who have not got a clue what they are doing. They can sell something if they have something to sell but they do not know what they are doing, what the processes are. They do not have to pass anything before they are what they are. And they can literally one day decide to be an estate agent and walk through the door. So, you are going to find people who do not know what they are doing, but then that is down to people like us, who look after the negotiators.

The Deputy of St. Mary:

Yes, because there is a question of commitment on both sides and what you do means that –

Broadlands:

Absolutely. I keep a close eye on my team and Gill has 2 or 3 or whatever. I have more than that in my office but they all know what they have to adhere to. If they go past that, then that is wrong and we make sure that things are done correctly.

Deputy A.D. Lewis:

On the basis of that do you think that there is a case for some kind of regulation, licensing or something? Most other countries have a licensing regime for estate agents, bearing in mind that you are offering – I know that you are not advising, but you are offering advice and it is the biggest transaction anybody is every going to make. You are experienced agents and not everybody is qualified, not everybody is experienced. And you are experiencing that to your detriment at the other end of a stage. So, is that something that you think should be looked at?

Hunt Estates:

It has been looked at time and time again, and even UK agents are not registered, are they? They do not have to be licensed or anything.

Deputy A.D. Lewis:

But they are covered under the Consumer Protection Act.

Hunt Estates:

Yes. We are members of a national association, which sets out codes of conduct, which we abide by. We have our professional indemnity insurance. If we are handling client money we have client protection. We come under agency law. We also come under anti-money laundering law and we have to be registered with that body and that body anyway. So, there is already certain legislation in place. Maybe we need to say to the public, "Use an agent who does step up to the plate and adheres to these codes of conduct and looks after their clients and carries out best practice."

The Deputy of St. Mary:

Mr Trower, your firm is not registered, a member of that association, is it?

Hunt Estates:

It is.

The Deputy of St. Mary:

You are?

Broadlands:

I am a member of the national association.

The Deputy of St. Mary:

I am sorry. I had not realised that. I do apologise.

Broadlands:

Yes, yes, just not in Jersey. But I join in as and when but you probably will know that I am not a great fan of over-regulation, really. There are probably enough things in place, certainly with anti-money laundering and various other things that we really ought to belong to, just general business practice and the fact that if you are useless, you should not get the work.

The Deputy of St. Mary:

From what you said earlier, there are some agents over here whom you, perhaps, would not recommend to your best enemy.

Broadlands:

But they are not the busiest agents in the world, so I do not worry too much about them. What I worry about is what they might be saying to potential clients.

The Deputy of St. Mary:

What is the point? You might not worry from your own professional point of view but, for the public, if they were all brought under the same roof with –

Broadlands:

I think most people are reasonably switched on nowadays with regard to who they should and should not use and who they want to deal with. There are one or two out there at the moment in a race to the bottom as far as they are concerned. They charge lower and lower fees but you get what you pay for so if people want to do that then it is entirely up to them. It is their own free will. However, we are talking about –

Deputy A.D. Lewis:

But if you are part of a chain, then it does affect you, does it not?

Broadlands:

It can affect us but it is not something that I am going to lose sleep over. At the end of the day there is enough business out there to keep most decent agents busy anyway. As you said, it is about trying to improve the system. The trouble is that to try and get the processes in place does not sit well with the way in which the system is set up because of Jersey property law full stop. It goes through on a Friday afternoon and –

The Deputy of St. Mary:

Perhaps we can move on to that. Let us leave the regulation aside for a second. On that, the most common complaint, of course, is that, in the absence of preliminary contracts, it is all done on trust until court day. Have you views on not the most popular but the most common trigger event to stop a transaction going through?

Broadlands:

Yes. Lack of finance and bad surveyor's reports, and we cannot do anything about that; they are the two biggest things. It is very rare that we come across a legal problem at the last moment. It happens, of course, because lawyers do not normally go and check boundaries until the Thursday before the Friday, which can sometimes cause a lot of problems, but most of the time now, property will have transacted enough for people to know the flaws in the boundaries or whatever, so that part we can usually cope with. But if the surveyor turns round and says, "There is a

problem,” and something needs to be sorted out and he does not really know the boundary, then the mortgage will not be granted and the whole thing falls apart because of that. What are you going to do to change that? The answer is what can you do?

The Deputy of St. Mary:

Presumably you have had to allow sufficient time between a survey coming in and mortgage application and –

Broadlands:

The surveyors are very busy at the moment, so if it is a simple survey it might happen in a week to 10 days. But for something more serious it could be a lot longer than that. The banks use certain numbers of surveyors on their panel, and if they are not on the panel then they cannot prepare the necessary report for granting the mortgage. There are lots of different things that get in the way which are the fault of neither the vendor nor the purchaser, because those are just the nuts and bolts that have to be got right.

The Deputy of St. Mary:

Picking them off one by one? You said that the lawyers, looking at boundaries, last minute, that is not -?

Broadlands:

They tend to.

The Deputy of St. Mary:

That is not a very common issue for calling a transaction off?

Broadlands:

It can lead to delays, as opposed to failure all together. It can do but it is not the thing that – in lots of cases now, because a lot more transactions go on over the year if you are dealing with houses and estates and whatever, and that has already been looked at time and time again. You will always, as we know, if it was a French contract or whatever you get a difference of opinion as to what something meant to someone, but we are not seeing that many times that properties fall through because the boundaries are all over the place and that cannot be sorted because someone will not cover his party or whatever.

The Deputy of St. Ouen:

Okay, so not fall through, but do they lead to delays?

Broadlands:

They can do, yes, but it is not a regular thing.

The Deputy of St. Ouen:

Can they be last-minute delays?

Broadlands:

It can be but most of the time, if someone says they are looking to complete within 4, 5, 6 weeks or whatever, you can usually get your ducks in a row in that amount of time, providing there is not a problem. If there is a problem because they have not got money or the survey is wrong, then that is obviously going to delay the process unless you can come to a deal on what sort of numbers are involved. However, invariably, a large percentage of property transactions are fairly sensible – when someone commits, it happens. It goes through, so the completion part of it is not a problem. The trouble is, you do not hear about those because that is how life goes on every week. We had 12 for last Friday and 7 went through. The other 5 were a combination of paperwork not being quite in place, someone has fallen out with a neighbour, whatever. There was a combination of all sorts of things. Invariably, though, there is not a massive problem. You will only hear the bad stories, which is why you -

Deputy A.D. Lewis:

But that is 2 out of 3 did not go through, 5 out of 12.

Broadlands:

You can juggle the numbers. Seven did, 5 did not. The 5 that did not go through this Friday.

[11:30]

Purely a delay. I think in at least 3 instances, someone was not quite ready and then the lawyers had not done something.

The Deputy of St. Ouen:

Is that a fairly usual?

Broadlands:

Yes. You live with that, as long as everyone knows. Our job, as an agent is to make sure that everybody is kept in the loop from day one; they all know that if there is going to be a delay then they can sort it out.

The Deputy of St. Ouen:

But is that not going to be a problem, because it is still on your list for Friday but it has been put off.

Broadlands:

Yes.

The Deputy of St. Ouen:

So that would suggest that it has been put off during the week.

Broadlands:

Yes.

The Deputy of St. Ouen:

And has that caused problems for both parties in terms of arranging their removals, utility changes?

Broadlands:

No, because they are talking to their lawyers and family and whatever; they are moving on. They know that it is going to happen, it just happens to be a week later that is all, so they can organise themselves accordingly. I have – this is purely from a personal point of view – I have walked through the Royal Square many years ago to see a friend of mine in floods of tears. She was selling a house that afternoon and 10 minutes before it was due to transact, the woman walked away, the purchaser. Now she must have known that she was not going to buy it before that happened. I have not seen anything quite as tragic as that, and it was fairly tragic, cos she was in buckets of tears and it was awful, and she a friend as well. I have not seen that happen for quite some time. When someone tries to knock someone on the steps of the court, we all hear about that. Once again, I have not heard about that. If someone is going to try and still buy something but they want it for less money, then that transaction is being discussed two or three days before it goes through on Friday, not in the Royal Square a few minutes before court.

Deputy A.D. Lewis:

Nevertheless, on average, 5 out of 12 would not be an unusual situation not going through on the date that you had expected?

Broadlands:

That is right. Normally, we get a better success rate than that. In this particular instance –

Deputy A.D. Lewis:

But it is not that unusual?

Broadlands:

It is not that unusual, no.

Deputy A.D. Lewis:

It is not a tragedy because you will just go through the next Friday or the one after? No. Can I ask Gill, do you think that is a normal sort of scenario as well?

Hunt Estates:

On every property transaction, on that last week or 10 days before it is due, you are speaking to everyone every day, you know where you are with the lawyers; generally you will be calling them. You do not want to be badgering them because you have to give them time to do their jobs, but by the same token we will know whether the lawyers have walked the boundaries the week before, we will know a few days later if there is going to be an issue. And if we do not ask the lawyer, then we will say to the client, "Give your lawyer a call. Let him know – has the boundary been walked okay? Are we okay for that?" Then ring the mortgage adviser, "Where are we with this? Are the monies ready?" That is our job. We do not have any control over that. We might be able to help and make a call or advise or that type of thing, but ultimately that is out of our hands at that point, so it is just for us to smooth it through. And, also, if it is not going to happen this week, are we okay for next week? They are not going on holiday, or can they sign power of attorney or what other arrangements can they make? Generally, if it is just changing the utilities, that is just a phone call to say, "We are not moving now. It is going to be next week," and the electricity board is completely used to that type of thing and prepared for it. Yes, there are the removals. Most people may have packed up most things other than the bare essentials. Obviously, the other thing we need to be mindful of is if there is a longer chain; it is not just through our office but other people are involved. Then, we would give a courtesy call to the rest of the chain and say, "Is that all okay?" Again, we would not know the full situation, due to client confidentiality and data protection. That happens with the mortgage advisers as well. They can tell us a certain amount but not absolutely everything because they have their own client confidentiality, as do they lawyers. They do not have to tell us anything. Sometimes the vendor has told them, "Do not do any work until the survey has come through because we do not want to incur any costs," and that type of thing.

The Connétable of St. Martin:

Going back to the initial cause of the scrutiny review, that was gazundering and gazumping, was it not? From what you are saying, none of those last week –

Broadlands:

It is very rare. At the moment it is very much a sellers' market because, in certain parts, there is a lack of stock. At the lower end of the market, say from 250 to 500, there is an acute shortage of stock. So, if someone finds a house that suits them and they really want to buy it, they will buy it no matter what. Gazumping, very rare; gazundering, very rare as well.

The Deputy of St. Mary:

Let me correct you on that. There was some fortunate publicity that gave focus to that. That was never the view of this panel. We were much broader spread. So, I want to put that in our context.

Broadlands:

Yes. Publicity in the paper at the time.

Deputy A.D. Lewis:

Roger, you were saying that you have to work with the system that you have. A system is a system. However, if you were looking to make improvements to the system, what would your recommendations be?

Broadlands:

The most important thing is supply of surveyors and panels and who can and cannot do. At the moment – it is not their fault; they are very busy and over-worked.

Deputy A.D. Lewis:

So, the banks could do with a longer list, for example?

Broadlands:

They could do with a bigger and more comprehensive list. They are genuinely very busy. The other one is proof of funds. The purchaser needs to provide proof of funds and in most cases they are happy to do that. It is not as if we are trying to find out their exact family situation or whatever. However, if someone has the money or they can say, "We have been for a preliminary chat with the bank and we will go back to them because we have seen something," obviously we will go and get a report from the mortgage shop or whatever. We need to have that proof as soon as we can. Then, if the offer has been made subject to finance contract and survey then we try to remove those hurdles as quickly as we can.

Deputy A.D. Lewis:

But in the current legal system, in the actual process of buying and selling, is there anything that you would like to see changed?

Broadlands:

I do not think you can change –

Deputy A.D. Lewis:

Oh yes, we can change anything you like. We have the power of that. It might be 500 years before we can do it.

Broadlands:

I know, but the legal processes, the actual transfer of property ownership, has been the same for many years. At the end of the day, no deal is done until it goes through the law court on a Friday afternoon.

Deputy A.D. Lewis:

But is the system good enough?

Broadlands:

I would like to see more than one day a week, perhaps.

Deputy A.D. Lewis:

That is the kind of thing we are getting at.

Broadlands:

Just on a Friday afternoon, I think probably the lawyers - perhaps a Wednesday and a Friday. It would just take a bit of pressure off everybody, so they know where they are.

Deputy A.D. Lewis:

What about any day?

Broadlands:

I do not think that we will get that but –

Deputy A.D. Lewis:

Well, no, anything is possible.

Hunt Estates:

There was a discussion about whether people do still want to go through the standing up in court and the whole traditional side of it. In Guernsey they transact on a Thursday and a Tuesday. Most people go for the Thursday anyway, because they know that they have the weekend, then, to

move and have a little bit longer, rather than a Friday afternoon and the weekend to move out. I understand that the Tuesday is more of a back-stop date, in case it does not happen.

Broadlands:

Two days a week would be a much better way to deal with it.

Deputy A.D. Lewis:

We have a shortage of court time at the moment so that sounds eminently more sensible if you stick to court. However, as you know, in the UK it is not done in court, so then you have a free choice.

Broadlands:

I know. If you change the system, so that it does not have to go through the law court, then –

Deputy A.D. Lewis:

Would that be preferable for you? Is that something that you would like to see so you would have more control?

Broadlands:

It is however the legal people think it improves the process for them. We are not legals.

Deputy A.D. Lewis:

We are interested in the consumer, here.

Broadlands:

If there is more choice for the consumer, then it has to be a positive thing, so yes is the answer to that if there are more opportunities to transact than just on a Friday afternoon.

Deputy A.D. Lewis:

So, from your point of view, it is not a good thing to say that everything is focused on Friday, therefore everybody has to get their ducks in a row, therefore it is a good process. Because everybody has to get their ducks in a row, there is a degree of certainty, whereas it could just drift if it were any day of the week. Which would you prefer, the certainty of “It is always going to be on a Friday,” or the flexibility of “We will set the date that is realistic to the process that we adopt in our agency”?

Broadlands:

It is a good question. Do you have that back-stop? I think that two days a week, to offer them two alternatives, would probably take a bit of pressure off.

Deputy A.D. Lewis:

Would that be your preference to “any day you like down in your lawyer’s office”?

Broadlands:

Yes. I would say a Wednesday and Friday or Tuesday and Thursday.

Hunt Estates:

You do have to put some markers in because at the moment everybody knows that they have to try to go for a Friday, so we can say, “It is this Friday,” so people try to do as much as they can for that date. If we had any day, someone might say, “Oh, not Friday. Let us go for the Monday, or what about the Tuesday?” and then, if there is a chain and someone is saying, “No, no, this or that or the other,” it might be even more difficult.

Broadlands:

That is right, yes. If you start giving options to people then suddenly you will not get – if everyone knows it is going to go through on a certain day –

Deputy A.D. Lewis:

But if you have a pre-contract and you agree a date, a date is a date. It would be bizarre to say to you, “You can only buy a car on a Friday.”

Broadlands:

Yes, I know.

Deputy A.D. Lewis:

Bonkers. We do this because we have become conditioned to saying, “We do it on a Friday.”

Broadlands:

What about supply of funding as well as the register of loans and things like that? It all has to be done at the same time. We do need the flexibility of more than one day. That would probably improve it. I do not know what the lawyers say but that is my concern.

Deputy A.D. Lewis:

That would be an improvement but would it be even better if you had complete flexibility?

The Deputy of St. Mary:

Coming back to the surveys, you mentioned the shortage of surveyors. When a mortgage is involved, do most purchasers instruct their own surveyor as well as relying on the bank one?

Broadlands:

They have to go with whoever is on the bank's list. If they get the mortgage, the bank has to agree.

The Deputy of St. Mary:

Yes, but what I am asking is whether that is the only one they have. They do not bother with their own survey?

Broadlands:

Yes, normally.

Hunt Estates:

It never used to be like that. It used to be that a buyer could instigate a survey pretty much straight away. That was a really good thing because it would verify with the vendor that that buyer had intent and the buyer was starting to spend some money and they would have a survey in advance so that when they had their final offer from the bank they could hand the survey over and would not be waiting another 10 days for the surveyor to go out, book it, come back and give his report. That is stalling the system. Every finance person says, "No, buyer, we will instigate that survey for you. We will tell you when you can do it and we will instigate it. You have to pay for it but we will control it and tell you when it can be done." That has probably led from the fact that they see that as being responsible to their client, the buyer, so not to advise irresponsibly for them to spend when they should not. They feel that they should be doing the best thing for the buyer, because of all the tight regulation, so that they do not spend until they have that money sanctioned. It never used to be like that. It is not like that now in Scotland. They get their survey done first and then their offer is firmed up and then they are on the starting block. In fact, I had a case just this week of somebody not relying on the bank. They said, "Let us get the survey done first. I we are happy with that we will go to the lawyers." That is fine, because nobody is under any illusion.

The Deputy of St. Mary:

But you know from your experience which surveyors are approved by each bank.

Hunt Estates:

Yes.

Broadlands:

Mostly, yes.

Deputy A.D. Lewis:

They are quite short lists, though, are they not?

Broadlands:

Yes, very short lists because there is a small number of names.

The Deputy of St. Mary:

Are you saying that, whichever bank they are borrowing from, we know they use so-and-so, and if the purchaser wanted his own survey would the bank not accept it, even if it were done by its own surveyor?

Hunt Estates:

They would say, "It would have to be from our panel," but you might want to speak to the finance people about why they wait. Is it purely because it is not deemed to be giving best advice to the client to spend money in advance? There may be a little bit of a timing issue. For example, the surveyor, under their codes of conduct, can go out one day and do a survey for one buyer and then, if that buyer does not go ahead but we have a back-up buyer who wants a survey done, that same surveyor can go out the next day or the next week and do exactly the same survey but still charge for it. Their reasoning behind that is, "How do we know a tree has not fallen on it overnight?" That is how their insurance works and how they work. So, I guess, a bank would say, "Here is our panel," but you need to speak to the finance people as to why they will not let the surveyors go in sooner rather than later, as they used to do. It might be that, with the survey happening now and the mortgage offer coming a week or two later, the bank might say, "No, we need it done as close as possible to the date." I do not know.

The Deputy of St. Mary:

Sure, right.

The Deputy of St. Ouen:

Is that a problem with the idea that a seller could commission a survey and have that available for the purchaser to look at?

Broadlands:

It is a nice idea but it cannot be used. That is the problem.

The Deputy of St. Mary:

That is why the home pack thing fell away, is it not?

Broadlands:

Home pack is a nice idea but you cannot put it to any use.

[11:45]

The Deputy of St. Ouen:

Because that is the current state of the law?

Broadlands:

Yes. If the surveyor is doing a report to a bank then he is duty bound, he has a client and his PI comes in or whatever, so if he makes a mistake then it is down to him. However, we could do with a few more and we could do with the panels being slightly longer.

Deputy A.D. Lewis:

Do you know why the banks have such small numbers of surveyors on their panels?

Broadlands:

I have stopped wondering why banks lend money at all. Most of them do not want to.

The Deputy of St. Mary:

Is the panel too small because there are not enough surveyors to go on the panel?

Broadlands:

There are not enough surveyors and who want the aggravation and trouble to do it, either, in lots of places.

Deputy A.D. Lewis:

There are a lot more surveyors than there are on the panels. Most banks seem to have 2 or 3. There are probably about 16 or 17 –

Broadlands:

They should have – anybody who is a Chartered Building Surveyor with a PI insurance working for a reputable firm should be able to go on to a panel to be able to give advice to a bank. That is what they do, and I wish they would.

Deputy A.D. Lewis:

It seems odd that the banks – maybe they go for their own fulfilment exercise, so they can say, “We have done the tick box on those two. We do not want to do it on another six.”

Broadlands:

It is all ticking boxes and I would love to know why they choose to ask someone who lives somewhere else what the value of a property is in Jersey and why their practices are elsewhere and why they do not use people locally. That is why a lot of other lenders have now sprung up. They are more expensive but they are putting down the local banks because they can give an opinion straight away because local people know what they are talking about.

The Connétable of St. Martin:

I have to go shortly – I apologise – but I am just wondering, what do you provide for clients when they come in? I am going to sell my house, I come to see you, do you give me a pack or is it just the advice that you spoke about at the beginning?

Hunt Estates:

We visit their property and we walk around it with them and you ask them pertinent questions.

The Connétable of St. Martin:

Not just the property, the whole procedure. A new person comes to you who has a house that he may have inherited or whatever and he is going to sell this house, has never sold a house before. I want to know what they have when they come to see you. Do you explain the procedure?

Broadlands:

Every property is different. If it is me, I will go out and I will sit with you and if there are things that you want to know I will either confirm the process by email or by letter. Each deal is different. We cannot just say, “This is what we do,” because every single thing is a bit different.

The Deputy of St. Ouen:

You were suggesting before that with estates having been built, it is all very normal, problems do not arise, it is fairly standard.

Broadlands:

A lot of stuff can be standard. If it is an estate that was sold in the 1970s or 1980s, it is going to be fairly straightforward, or perhaps not because they might have extended and they might not have asked the right people, but every single person is different so we advise accordingly. I would like

to be able to say that I turn up with a pack and go, "There you are," but I do not, because that is not what we do, or not what I do, anyway. I am sure some people do but I certainly do not.

The Connétable of St. Martin:

Thank you. Apologies.

(Connétable leaves)

The Deputy of St. Mary:

Just so that you are aware – you may already be – the Jersey Law Society has produced a form of conveyancing sub-panel. I am not suggesting that it has been motivated by our existence but it is talking about various things.

Broadlands:

So that they can improve on what they are doing.

The Deputy of St. Mary:

That is right. One of the things that they came up with is a form of enquiries that are bog standard right from the beginning. That, presumably, would reduce delays by purchasers' lawyers. I take it that you would be in favour of that?

Broadlands:

Any more information that we can get when the process starts, the easier it is, because we can ask for all the relevant information and use it accordingly. I can only quote from various things that I have been involved with recently but right at the last moment, on a house that was built in the 1990s on an estate – one of 8 similar houses – there was a parking area that was for everybody and I had not bothered to go and look over the end of where that is. However, there were gabions in place and quite a fall. The purchaser buying a house on that estate, which had a small part of its wall near there asked whether the wall was safe. An engineer had to be brought in, which delayed the process, as you can imagine. So, just as it was due to go to court, suddenly an engineer was called to see whether the wall was falling down. It was not, but that is the sort of thing that happens when a purchaser suddenly looks and says, "You know what? I must ask someone about that," as he is perfectly at liberty to do. All sorts of curved balls get thrown in at the last moment that we are not aware of and we just have to do what we can. As the agent, it is always our fault.

The Deputy of St. Mary:

It would be useful for me to know whether they have been – you touched on it earlier – questions about planning application or whether something else was built – from your point of view, would it be useful for you to have a standard question to give to your client vendor? Maybe you do on your initial tour?

Hunt Estates:

We do. Even if someone says it is fine and they have equine, they have so many vergées, I will still go and double check because –

Broadlands:

Everything is different, as Gill said. If they have a bit of land, there is domestic curtilage, is that an orchard, is that equine over there, how is it used? We just ask these things at the time, because we do not know until we go out there. If it is a house on an estate, was everything put in place with planning before that extension was done? We make sure the fence is where it should be. We ask the questions when we go there.

The Deputy of St. Mary:

On day one?

Broadlands:

Yes, we ask straight away. That is what we do as agents; we try to find out as much as we possibly can.

The Deputy of St. Mary:

Maybe not all agents. Probably my final question is are all vendors, purchasers sufficiently educated now to know what is involved in the process? Would it be helpful if there were not quite a fool's guide to the process but a layman's guide, maybe, produced by the Law Society or an association here, or jointly?

Hunt Estates:

Yes. That is a good idea. If you have bought and sold before, you are aware of it, but there are a lot of new people coming through, first time buyers etc., and they do not know how it works. They are not sure what questions they should be asking. That is where an agent comes in and will help them through the process. That is what we will do – inform them, help them as much as we can – but generally, if they have not engaged with an agent, a lot of people do not know. That might be useful. It might be put on one of the States of Jersey websites that this is what to expect. There are a lot of booklets and pamphlets. Nearly all lawyers produce something to say, "This is what

you can expect,” whether transfer, freehold, buying freehold. Agents often have all that information on their sites anyway about the process. I know I do. Some law firms even bring their pamphlets in and we put them on the side, or clients can take them away.

The Deputy of St. Mary:

So there is no excuse for a client not knowing about the process already?

Broadlands:

Not really. If they have been watching some of the property shows on TV, they might have some ideas. Maybe that is not good.

Deputy A.D. Lewis:

We spoke earlier about pre-contracts and that does happen here occasionally. In other countries it is usually a mandatory requirement. Would there be any advantage – I am sure that there would be – but would you favour a pre-contract mandatory process so that you, as agents, knew where you stood and so did your customers and then there was recourse if something went wrong so that you were not getting kicked for it? The person selling the house who caused the problem would lose out, or the person buying it would lose their deposit. Do you think that that would be a benefit to you and to the clients?

Broadlands:

A preliminary agreement of sale – I bow to Richard’s superior knowledge but I think, from a legal point of view, it is known as a specific performance guarantee, which is what we are looking at.

Deputy A.D. Lewis:

Yes. We discussed that earlier today.

Broadlands:

You have penalties on either side, so it is not a contract as such. Lawyers will tell you that nothing is sold until it goes through the Royal Court on a Friday afternoon. I genuinely do not think that, just recently, lawyers like doing them, because they have to do all the work and they still cannot be sure that anything is going to happen in the end.

Deputy A.D. Lewis:

You are saying that lawyers do not like them. Do they advise against them, do you think?

Broadlands:

In some cases, I am sure they must. If someone has agreed to pay damages, effectively, if someone else does not do something, we have to prove loss to get those damages.

Deputy A.D. Lewis:

Unless we had some legislation that covered it.

Broadlands:

If you could tidy that up a little bit so someone could get there. With most contracts, if they are going to be delayed for some time but both parties are happy about that, then they are happy to sign a preliminary agreement of sale and commit to paying the deposit or have the penalty written into the thing. Fine, if you have something like that, but to get one from day one, from the moment that you say, "I want to buy your house," to "it is going to go through in 4 to 6 weeks' time," is not bad.

Hunt Estates:

Ordinarily all the work is done up to the date of the prelim getting signed save that the completion date – the checks and everything have to be done on the preliminary sale of agreement. The pros and cons of a general agreement, which they have in Guernsey, are that the buyer is able to walk away, which is not brilliant, but it does focus that buyer's attention to take it seriously. A lot of the time we are still going only by what they are saying to us. Yes, we will do our checks, check with the bank, this, that and the other. "Yes, I am using these lawyers," but have they really engaged them and are they starting the work, or is that buyer bidding on another property and not telling the lawyer?

Deputy A.D. Lewis:

They could have put offers in on 3 or 4 houses and not told the agents what they had done.

Hunt Estates:

Some people do do that.

Deputy A.D. Lewis:

But in other countries they would have to have a preliminary contract. If one makes an offer there is a pre-contract of some sort.

Hunt Estates:

And that type of thing. So, there is that. One little thing that used to happen was that they had to sign a housing consent and pay £75. They were actually paying and signing something and it did flush them a little bit to think, "I am now –" but now they do not.

Deputy A.D. Lewis:

That is a good example. So, if there were a pre-contract of some sort – it might not be a percentage, but a reasonable fee that the buyer would lose if he started mucking things about – if he suddenly decided that he did not want to proceed, then there would be a cost to him, because there would clearly be a cost to the seller who would probably have taken it off the market.

Broadlands:

That is right. It is difficult to be all-encompassing, though, because most young people buying for the first time cannot afford to make a mistake in what they are buying. They cannot afford to get involved with signing a contract that is going to cost them money; they just do not have the spare cash to do it. It is a lovely idea in theory but in practical terms I do not think it works. We ask for preliminary agreements of sale to be prepared if we know that someone is looking for a completion date which is quite a long way off, then we go for it. However, if someone is going to look to complete in 4 to 6 weeks then we do not bother with it.

The Deputy of St. Mary:

Extending Andrew's point, if, as you say, the lawyers have to do the same amount of work in any case, we could have going through court on the same day – the court date being adhered to at the same time as they sign the preliminary – whatever people like to call it. It would at least cover the 5 out of 12 situations that you have for delay and then it would not be – there would be some remedy there and they would know that.

Hunt Estates:

That would be similar to an exchange.

The Deputy of St. Mary:

Yes, it would be an exchange but even in England, sometimes, I have dealt with exchange and completion on the same day. Just in case something goes wrong, that –

Hunt Estates:

There is that but then one needs to think about whether there is a chain further down the line. Are all those people ready as well? It is about speaking to the lawyers about the nuances of that. If you are all ready, do you just go and happen?

The Deputy of St. Mary:

That is what they say. If it were standard practice, almost, then –

Broadlands:

It will be interesting to see what the lawyers say about that. Anything that makes the process easier or simpler for us –

Deputy A.D. Lewis:

The current pre-contract arrangement, which you can do with a lawyer, is nevertheless a reasonably complex document and will not necessarily stand up in court in quite the same way as the oath. We would need to change the legislation to create a pre-contract arrangement, which would be a proforma form that you would all have; it would be the same for the every transaction and a very simplified process, as well. A pre-contract could be several pages long, it could be full of legal jargon, and your purchaser and your seller will look at it and think, “Oh, crikey, I need to get my lawyer all over this,” whereas if there were a very simple pre-contract, which is what they do in France, literally ripped off a carbon-copy pad, to sign, but once you sign you are committed for 7 days. You have a 7-day cooling off period and after that you lose your deposit. That is a very common process throughout Europe. It focuses the mind and stops the time wasters when people are making a commitment early and both the buyer and the seller know where they stand. I know that you are suggesting that you would not want to do that, but if it were really simple and it were legislated for, rather than a contract that you can currently do, which can be challenged later and is expensive – if it were a simple, short form, easy to understand, pre-contract, is that something that would help?

Hunt Estates:

It would need to be discussed further because we would need to know what the connotations were and whether there would be a financial or other penalty and what would be the get-out clauses.

Deputy A.D. Lewis:

There are still reasonable get-out clauses, even in France.

[12:00]

Hunt Estates:

Yes, but it would be nice to have something focused.

Deputy A.D. Lewis:

It does focus the mind to have £75 for the housing consent, because people think, “Oh, I am signing something. This is serious now. I am not just putting bids in on houses and hoping for the best.”

Broadlands:

I said to you before, most people, when they come and they want to buy something, are fairly committed to what they want to do so invariably they will hang in there unless something turns that that means that they cannot buy it. The old housing consent form was an application form. It was a good case in point.

Deputy A.D. Lewis:

A bit of a triage process.

Hunt Estates:

You would be changing the law for the few rather than the many in some ways. The vast majority of people have honest intent when they make an offer. They know that it is serious and, as agents, we tell them what preparations we are making and what it means to them and we have to check out their situation.

Deputy A.D. Lewis:

I am sure that they have honest intent but they might not have put all their ducks in a row so they might not have had the conversation with the bank, for example, that you want them to have.

Hunt Estates:

That is where we come in and where we try to push that through and try to find out how serious they are and where they are by asking the relevant questions.

The Deputy of St. Mary:

One final point from me, you have been speaking as though you are a sole agent in total control. That is great; you can administer the thing. Now, where there are joint agents, does that give rise to problems? Between you, could the vendor be –

Broadlands:

Playing one against the other? So long as you have an honest vendor then you are okay. If you do not, you are in trouble.

The Deputy of St. Mary:

As simple as that? Is there a code, when there is a joint agency, that one agent is obliged to tell the other that he has an offer in from someone else, or –

Broadlands:

Not necessarily. Not straight away. It all depends whether it is a multiple instruction or a joint sole agency or a sole agency. The joint sole agency or 2 or 3 agents all work together.

The Deputy of St. Mary:

And an exchange of information is then going on?

Broadlands:

We exchange information and whatever. However, if it is a multi-agency then we are fighting against another firm, effectively, so –

The Deputy of St. Mary:

How many of the multi-agencies are there, as opposed to the joint sole?

Hunt Estates:

Loads.

The Deputy of St. Mary:

There are, are there?

Broadlands:

Yes. I would say probably 95 per cent. of instructions will be to multiple agencies.

Hunt Estates:

Yes, vendors put their houses on with lots of agencies.

The Deputy of St. Mary:

So, despite your best efforts massaging the problems etc., if there is relegation down the road with somebody else, you do not know?

Broadlands:

Someone could step in at the last moment, take a deal over, come in with more money and then it is all over and out, so we have to start again.

Deputy A.D. Lewis:

And you might not even know about it until it is too late?

Broadlands:

We might not know until it is too late.

The Deputy of St. Mary:

Would that give credence to the idea of having some sort of code, as between agents?

Broadlands:

There is a code but lots of people ignore it.

Hunt Estates:

The difficulty is that, as agents, we have to do the best for our clients and get them the best offers and we have to put every offer forward. At the end of the day, it is down to the vendor what he chooses to accept and whom to go with. It is not up to us.

Broadlands:

Yes. It is down to the honesty and integrity of the client, the vendor. If they choose to play the field with more than one person, that is entirely up to them. It is a free world. However, we would like to think that most people we are dealing with, if we have a deal and have agreed something, will not go back on their word.

The Deputy of St. Mary:

So there is no way you can protect the purchaser, number one, from incurring a surveyor's fee unnecessarily if you know that someone is –

Broadlands:

Not necessarily, but we can only go on the information we have in front of us and the person we are dealing with, and hope that they have the integrity to go forward. Greed is a funny thing and it makes people do funny things. So, if someone comes along with more money and suddenly they look and think, "I can get another 5 grand there," or whatever, there is nothing that an agent can do. We can go back and say, "If you have a better offer do you want to try and do something about it or do we just cut and run?"

The Deputy of St. Mary:

And if you tried to impose conditions such as the client would authorise you to tell the purchaser if there were someone else in the game, the client would not come to you, presumably?

Broadlands:

That is right. It all comes down to the integrity of everybody but we are still down to whether the client/vendor is being honest and free with information.

Deputy A.D. Lewis:

That is, again, where a pre-contract can come in. In France, they are on 7 or 8 per cent. commission, so they are very happy to share commission and so on. Lots of agents get involved with transactions and there are usually multiple agencies. But once that prix compris is signed, that agent has the deal. There is no question about that; that is with them, and there are at least 7 days in which they have the client to themselves. Would that not help you?

Broadlands:

It probably would.

Hunt Estates:

We need to think about the dividing line and the commission.

Broadlands:

The trouble is that you are talking about scenarios which, the majority of the time, do not exist. We are dealing with clients who are people of their word and they have agreed with the arrangement. Jersey is a small place. People do not want to get information out there that is - if you are not particularly nice about how you do things you get a reputation; people will not deal with you. I would like to think that most of the people I deal with, the majority of the time, will say something and stick by it. We can only go by what is in front of us. I do not know whether it will work to try to then get them to sign yet another piece of paper to say, "This is what you have to do." I will have to chat with my guys and see what they think about the situations that they find themselves in.

The Deputy of St. Ouen:

From a consumer's point of view, the purchaser is now going out to spend a lot of money.

Broadlands:

Yes. From a purchaser's point of view it would be not a bad thing.

Hunt Estates:

Some form of agreement, a contract between them.

Deputy A.D. Lewis:

They would not be able to be gazumped then, even though they occasionally are gazumped on the steps of the court. Once that contract is signed, that is it. That is not going to happen.

Broadlands:

It often happens well before court date.

Hunt Estates:

It is a hard one because a vendor is thinking, "I am going to sell to them but how do I know that they can get their mortgage?" or – there are caveats in that – "Why should I go with them or sign something until I know that they are good for it?" It depends on the stage as well. Sometimes, we might, as agents, have a back-up buyer and say, "I am sorry. An offer has been accepted. Do you want to have a look on the basis that you are a back-up buyer and only if there is a slip twixt cup and lip can you step in?" Then, if the buyer knows that, we might have someone else standing ready. However, by the same token, they could easily go elsewhere. So, all the time, it is nuances; we are asking ourselves, "How can I make sure that I shore this up for my vendor as much as possible?" So, at what point does that come in, what are the caveats and what is around it? Is there a financial aspect?

Deputy A.D. Lewis:

Because your client is the vendor, you are saying?

Hunt Estates:

Yes, that is right.

Deputy A.D. Lewis:

So, do you not view somebody who is engaging with you to buy a house as a client as well?

Hunt Estates:

Not necessarily, because they are not paying our fee.

Broadlands:

No, they are not paying our fee, they are an applicant. But we do share information and we use our ability and experience to make sure that the deal stays together. That is what an agent –

The Deputy of St. Ouen:

Can I ask, if there was that –

The Deputy of St. Mary:

You have no contractual relationship, have you?

Hunt Estates:

We have no contractual relationship.

The Deputy of St. Ouen:

No, you have not. But if you had entered into the sort of contract we have been talking about and took a deposit from the purchaser, would you be authorised to take that deposit?

Hunt Estates:

We would not take it. We would not handle any money whatsoever. It would have to go through the lawyer.

Deputy A.D. Lewis:

But then you have a contract with the buyer.

Hunt Estates:

No, the vendor and the buyer have a contract. We cannot have a contract. We still would never hold money. We can only have a relationship with one person, otherwise we can be deemed – we cannot act for both sides.

Broadlands:

You are conflicted straight away. You cannot do it. You have one client, the one who is paying your fee, who is selling their property. You cannot have any deal at all with the applicant unless you make it quite clear that you are acting on behalf of the applicant to buy something.

The Deputy of St. Mary:

But then you are not acting for the vendor.

Broadlands:

Then you are not acting for the vendor. Your client is then the applicant. That does not happen very often. But no, you would be conflicted.

Deputy A.D. Lewis:

Again, in France, it is not uncommon to use the same notaire, which I always think is a bit bizarre.

Broadlands:

It is completely wrong. It is totally and utterly wrong. But, there again, it is France, so –

Hunt Estates:

But the buyer is paying the fee in France as well, not the vendor.

The Deputy of St. Mary:

The present system, at least, does away with the prospect of contract races, which happens in England, does it not? First person to sign a contract.

Broadlands:

Yes, absolutely. Sometimes we do get a contract race here but I have not seen one for a long time. We used to get them, when there was a shortage of stock and stuff like that. People were running around trying to buy things and two contracts would be issued. First one back was –

The Deputy of St. Mary:

Then you are talking about contracts at that stage, or preliminary agreements, rather than just going to court.

Broadlands:

Absolutely, yes, and they were produced by the lawyer so we kept well out of the way.

The Deputy of St. Mary:

Very wise.

Hunt Estates:

Could I ask a question?

The Deputy of St. Mary:

Please do. Fire away.

Hunt Estates:

From the start of the scrutiny on the housing market and how it works and everything, where have you come to now? What are your feelings about it? What is the time scale and what are you still hoping to find out from it?

The Deputy of St. Mary:

We are leaving the best till last so that is why you are here. We have sent out press releases, got representations in, written, we have seen some estate agents, conveyancers, law society, consumer council. We are getting towards the end of it, we might see the lawyers again, I do not know. You have raised certain points that might go back to them. So we are getting towards the end but just to – I should not say this but the initial publicity was all about gazumping or whatever. That has been but a small part of the overall process.

Broadlands:

That is right. Now that you have gone into the process you realise that it is nowhere near – it made good headlines. It was not this panel that created the – it made a good headline at the time by whoever it was.

The Deputy of St. Mary:

Back to your question, I would think that – the scrutiny officer is looking at us now – yes, within the next month or so we will be drafting our review.

Deputy A.D. Lewis:

You have probably seen scrutiny reports that have consisted of findings, so we will derive key findings from everybody who has presented to us, submitted to us, they are our findings. Then we will come up with some key recommendations. It is not, “The States have decided to do this,” it is a report that has some recommendations that may require legislative change, which means that the States would get involved at a much later stage.

The Deputy of St. Mary:

That could boil down to saying that really we need land registry but we know that that is not going to happen tomorrow, so –

Broadlands:

We have contracts in English. That is quite a big step.

The Deputy of St. Ouen:

It took hundreds of years.

Deputy A.D. Lewis:

It took hundreds of years so people like me can read. The land registry that you mentioned, we have had lots of conversations about that. Obviously, we would want to press a button and say, “That is it. You do not need to worry so much because you can see it and it is all very transparent.

The technology is there to do it but there is a big cost to getting there and there is guarantee of title as well, so how that is done – we were not going to go into much detail in our report but there has now been so much feedback on it, so it is now looking as though we may well put something in the report.

The Deputy of St. Mary:

Did you ask your question out of general interest or have you something else that you want to -?

Hunt Estates:

No, it is just because I came along earlier in the year when you first engaged with agents and I wondered how things were progressing and what you were feeling.

The Deputy of St. Mary:

Not letting our scrutiny officer down, we lacked the scrutiny resources at times, so it was put on the back burner for a while but we have picked it up.

Hunt Estates:

It is not a criticism.

The Deputy of St. Mary:

No, no, so we are trying to push it through.

Hunt Estates:

I wonder if there is a place for something – whether it is needed. Say I am a vendor and I am selling my house and I want to sign on a rental. Can I pin my buyer down a little more and is there something in there that, while it is not solid, it is focusing everyone's attention a little bit more. I would say, as an agent, "Our vendor is requesting this because they have to then sign a lease or something like that." Maybe it just needs talking through a bit more, I am not sure, but –

The Deputy of St. Ouen:

Could that something a little more solid be agreed between the industry, involving the agents and the lawyers, could you come up with some sort of standard process that allows people to sign, subject to whatever caveats might be agreed, but a standard form of document? Or do you think it would not be possible for so many practitioners to agree something?

Broadlands:

It is almost like the English system, is it not, when you have a preliminary notification afterwards? That would help enormously because people could then plan what was going on. Having seen

some of the issues when people have rushed out houses at the last moment because suddenly it was not going through, then it did, “My God, here we go. We have the removal people turning up.”

The Deputy of St. Ouen:

Exactly. But do you think that it is possible for the agents and the lawyers to get together and put that sort of system in place?

Hunt Estates:

Logistically, yes, if we get together. If that is the agenda, it is worth a discussion. We would have to talk through how we get there. At the moment, if a property goes under offer, the agent officially writes to both parties’ lawyers. But in fact neither the buyer nor the vendor signs anything and sometimes the lawyers do not see their client until the week when it is due to go to court.

The Deputy of St. Mary:

Or the day of court, sometimes.

Hunt Estates:

At least we have engaged with them, we can understand, we can gauge some intent, how intent they are on it, as opposed to, maybe, a lawyer who does not really know. When they instruct them, they do have to sign to pay the bill, of course, and to instruct them to do the work for them, but –

Deputy A.D. Lewis:

An enormous amount is done on trust, is it not? The integrity of your client and you are trusting that the people making the offer are genuine. Unfortunately, in this perhaps over-regulated world we now live in, that is unusual. And for you to try and do it yourselves, bearing in mind that you are established, experienced agents, you have already said that there are a number out there who are not befitting that category, so to get you all to agree to signing up to best practice would be difficult, would it not? If someone intervened and said, “Look, okay, let us agree what best practice looks like, and then go from there and have some light-touch legislation to make it happen,” otherwise everybody is not going to sign up, are they, would you accept that that was a possible way forward?

Broadlands:

I think that you would get a majority of the experienced agents quite happily looking at something like that.

Deputy A.D. Lewis:

You are doing it already to a certain extent. The advice that you are giving is good advice. It is not then followed up with a paper trail that is legally binding.

Broadlands:

That is right. There is nothing regulated and there is no official piece of paper. It has got to be worth talking to the lawyers about that. It then comes down to your recommendations, really.

Deputy A.D. Lewis:

So, would it help if there were some light-touch Government intervention to assist your industry, to make things better, and obviously the consumer would benefit as well? Or would you prefer us just to leave it to you guys to sort out among yourselves?

Broadlands:

If it is of benefit to the consumer. I am not a great lover of over-regulation, as I am sure you are aware.

Deputy A.D. Lewis:

I know.

Broadlands:

And I would like to think that most people are honest and straightforward and will do what they say they are going to do.

Deputy A.D. Lewis:

And, of course, we know that that is not always the case.

Broadlands:

That is not always the case but in most cases I would say it is and if someone is not going to be as straightforward and honest as we would hope – we normally know straight away, we know the sort of people we are dealing with, we get a feeling as an agent, when talking to someone, that perhaps it is not going to go according to plan. However, some light-touch regulation is probably not a bad idea.

The Deputy of St. Mary:

So, is your concern on behalf of the client who was selling his house, or hoping to sell his house, on one particular Friday and he wants to enter into a rental agreement from that moment and if one falls through he does not – yes, that is what – but goes both ways, does it not?

Hunt Estates:

They have to commit before their house goes through because a landlord will not say, "Oh, yes, I will wait until your house goes through." That is a really difficult one, I think. Most other people are moving at the same time if they are in a chain.

The Deputy of St. Mary:

Yes. But it works the other way because if someone has given notice on their lease on the premise of buying a house and they have nowhere.

Broadlands:

Yes, that is right. It certainly does happen and then they are stuck.

Hunt Estates:

Yes. Perhaps in those instances something needs to be signed so the person has some certainty. If your scrutiny findings come down to saying that, perhaps, there is a need for something to be written, it is difficult to say, "Yes, we definitely need it," and suchlike, because one needs to know the whys and wherefores and really hammer through the situations to see how and when that would slot in as opposed to just sitting here today and saying so. It needs further talking through.

Deputy A.D. Lewis:

If that were a route that we were to end up going down, there would be full consultation, as there always is with this type of legislation. We have that at the moment with CILs, for example; highly unpopular with developers but you can see where this is coming from and we consulted to death on it. So if that were a recommendation here, clearly you would be consulted. It would not happen tomorrow but it might end up as a recommendation.

The Deputy of St. Mary:

Thank you both for your time. I hope you have not lost any transactions in the interim.

Broadlands:

There is just one thing that I would like to ask very quickly. When the system was changed for people purchasing normal residential property, we had to make an application to the housing department and a consent paper was issued.

The Deputy of St. Mary:

It was "subject to", was it not?

Broadlands:

Yes. Until we got that consent, we could not transact through the Royal Court and we could not rent either. The new system, where there is no photograph on the card or anything like that when we get our registration cards to be able to transact, has led to a situation in which, I think, the system is being abused quite badly. This is not the right forum in which to discuss that with you but it needs to be flagged up. I went onto Airbnb Jersey today – I have never done that before – Googled it this morning and there are 131 properties available in Jersey. I know of a lot of anecdotal evidence of a number of first-time buyer homes that are being rented out by people who do not have qualifications. The same goes for three to four-bed houses as well. They will always find someone who has a registration card who does not necessarily live at the property. So, the system has weakened considerably and I think it is being abused badly. I thought I should throw that into the pot because it needs to be looked at.

The Deputy of St. Mary:

Are you saying lots of people are leaving their places permanently on Airbnb without any form of estate agency qualification?

Broadlands:

I am told that that is what is happening.

The Deputy of St. Ouen:

The arrangement is with the owner. It might be on Airbnb but you can still negotiate through an agent.

Broadlands:

That is right. So everything is done and an awful lot goes on there.

The Deputy of St. Mary:

But you are going beyond Airbnb are you not?

Broadlands:

Yes. I know that a lot of people are living in places who do not have qualifications but they have a job or whatever. I am saying that the system needs to be tightened up. We are sitting on an island that is gradually being over-run by great numbers of all sorts of people. We keep saying that the population is expanding. It is, but we do not know how many are actually here because that part of the housing figures is being abused to such a degree that an awful lot of people –

The Deputy of St. Ouen:

And how is it that the cards have abused that? Could the same have happened under the old system of needing a consent for people moving –

Broadlands:

We needed to make the application to get the consent before the lawyer had it. We just say, “I have a registration card,” and show it to the lawyer. That is it. Job done.

The Deputy of St. Ouen:

And it might not be their own?

Broadlands:

It might not be their own.

The Deputy of St. Mary:

I assume that is the point. It is linking the two.

Broadlands:

If there is no photograph on it. This now gets to the work permit stage and all sorts of other things that are needed.

The Deputy of St. Ouen:

But there would be a name on that registration card and that person would have to produce a passport and –

Broadlands:

But it is not done through an agent. It is done over the web. If it is Airbnb it is through Jersey Insight and other things, and if the landlord/owner says, “I am just going to do it,” and someone turns up and says, “It is okay. I have a friend who will do it,” and it is happening a lot, apparently, I am told by my people, it is something that ought to be looked at. Back in the day we had good old Bill Sugden who would go out and raid somewhere at 4.30 a.m, 5.00a.m. and catch them all living illegally.

The Deputy of St. Mary:

You are revealing your rugby credentials there.

Broadlands:

That is right. Do not forget that I have been doing this for a long time. Bill was part of the housing department, so we had someone who actually used to go out there and make sure that people were not living illegally. That does not happen any more and that is a shame. I know that the various departments have been scaled down and they have all changed now and a lot of people are not working and housing is different and – but I think that part of it is being abused massively.

The Deputy of St. Mary:

Okay. Wearing my hat as Chairman of the Housing Scrutiny Panel I take it on board.

Broadlands:

Yes. I thought I would just let you know. I pinged an email round to all my guys at the end of last week, beginning of this and asked if there was anything they wanted me to talk about. They did not want me to talk about the domestic property transactions and what we have discussed, but it was this part of it that was really of concern. In fact one person said –

The Deputy of St. Mary:

Can you ping something off to me on that basis?

Broadlands:

I will, and I will condense it a little.

The Deputy of St. Mary:

Yes. Thank you. That will be useful.

The Deputy of St. Ouen:

Thank you very much.

Broadlands:

Thank you, David. I will do that.

The Deputy of St. Mary:

Thanks again. That has been most useful.

Broadlands:

Pleasure.

ADJOURNMENT