



STATES OF JERSEY

Domestic Property

TUESDAY, 3rd October 2017

Panel:

Deputy D. Johnson of St. Mary (Chairman)

Deputy A. Lewis of St. Helier

Deputy R. Renouf of St. Ouen

Connétable M. Le Troquer of St. Martin

Witnesses:

Advocate Rose Colley, Chair, Jersey Consumer Council

Anne King, Executive Officer, Jersey Consumer Council

Bartley McNeela

Anthea Hall

Vivien Vibert

[09:04]

Deputy D. Johnson of St. Mary (Chairman):

Good morning everyone and welcome to this meeting of the Residential property Review Panel. Dealing first with the housekeeping, this is a public hearing which is recorded and perhaps I could read out the relevant code which relates to it. The proceedings of the panel are covered by parliamentary privilege to Article 54 of (Jersey) Law 2005 and the States of Jersey (Powers,

Privileges and Immunities) (Scrutiny Panels, PAC and PPC) (Jersey) Regulations and witnesses are protected from being sued or prosecuted for anything during hearings unless they say something that they know to be untrue. This protection is given to witnesses to ensure they can speak freely and openly to panel when giving evidence without fear of action although the immunity should obviously not be abused by making unsubstantiated statements about third parties who have no right to reply. The panel would like to bear this in mind when answering questions. Okay, thank you for that. For the record can we go round the table introducing ourselves? I am David Johnson, Deputy of St. Mary, Chairman of the panel.

Deputy A. D. Lewis of St. Helier (Vice Chairman):

Deputy Andrew Lewis.

Deputy R. J. Renouf of St. Ouen:

Richard Renouf, Deputy of St. Ouen.

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

Connétable of St Martin, Michel Le Troquer.

The Deputy of St. Mary:

And perhaps witnesses could then give your names as well please?

Executive Officer, Jersey Consumer Council:

Executive Officer, Jersey Consumer Council.

Chair, Jersey Consumer Council:

I am Rose Colley, Chair, Consumer Council.

Vivien Vibert:

I am Vivien Vibert. I was born in Jersey but I spent many years away and only came back 5 or 6 years ago and my most recent professional activity was as an attorney in South Africa and it is that experience I am bringing.

The Deputy of St. Mary:

Yes, we will come on to that later, thank you for that.

Bartley McNeela:

Bartley McNeela, private individual

The Deputy of St. Mary:

Thank you. Are you with us?

Anthea Hall:

Yes, I am Anthea Hall. My husband was manager of Midland Bank for many years.

The Deputy of St. Mary:

Okay.

Anthea Hall:

Harry Hall. I do not know whether you remember him.

The Deputy of St. Mary:

Yes, I remember him. Yes, okay.

Anthea Hall:

Yes, and I am a widow and I was trying to sell my house and...

The Deputy of St. Mary:

Okay. We will each witness in turn shortly, yes.

Anthea Hall:

I know, but I have to tell you.

The Deputy of St. Mary:

Okay. Thank you all for coming. Just to get a brief bit of background, this panel was set up in March 2016 to undertake research to establish if there were problems with the current domestic property transaction process in Jersey. There are wide terms of reference but it is essentially for the panel to determine things like the average length of time transactions take, whether there is evidence of widespread problems and specific bottlenecks and really to go through the process item by item to see whether there are problems and whether we can make recommendations to improve them. Since the panel was formed we went out to the public to ask for representations and various people, including your good selves, made those, for which we thank you, as did estate agents and lawyers. Since then we have met with various bodies and in a way these hearings mark almost the end of our taking evidence so, again, thank you for coming in and we will hopefully complete our review not too long after today. We have various questions here and I think to ensure we do not get into a debate, we will go through each witness in turn to give their

account of what their problems have been and then we can perhaps ask detailed questions of them so perhaps we could start with yourself?

Executive Officer, Jersey Consumer Council:

Can I just shift straight to Rose, from the point of view of the chairman of the Council to give evidence?

The Deputy of St. Mary:

Of course, indeed yes.

Executive Officer, Jersey Consumer Council:

As I think Rose has got the breadth of our points in there.

The Deputy of St. Mary:

Yes, my apologies. In fact, sorry to demote you, but maybe we could leave you ... not leave you but I am thinking about the end. You could probably sweep up a lot of the other problems as well. Is that all right? I will go to the individuals first or if you have a time factor?

Chair, Jersey Consumer Council:

I have a slight time factor.

The Deputy of St. Mary:

All right, fine.

Chair, Jersey Consumer Council:

The points that we are going to make are fairly general.

The Deputy of St. Mary:

Okay.

Chair, Jersey Consumer Council:

I am more than happy to sweep up at the end too if that is helpful.

The Deputy of St. Mary:

What time is your meeting?

Chair, Jersey Consumer Council:

I have a client at 10.30.

The Deputy of St. Mary:

Okay. We hope to be well clear by then, if that is all right?

Chair, Jersey Consumer Council:

Good, good.

The Deputy of St. Mary:

Okay. Perhaps then, if I have the pronunciation right, Mr. McNeela, would you like to start? Perhaps you would like to start by giving a general account of what your problem was and we can hone in on specifics thereafter?

Bartley McNeela:

Yes, I will start. Yes. Yes. This was the second sale of the property and the third purchase of the property since being in the Island. We arrived here in 2003. It was certainly the most problematic one. I think it is partly the constraints of the conveyancing system and sanctions system in Jersey which really amplifies. My big problem was that all the professionals that were involved in the purchase of the property, and to a lesser extent in the sale of the one we had, were really quite unrealistic in the timeframe which they had set themselves because it seemed to me somewhat arbitrary setting a completion date because it is not until you really start to look at the problems with the transaction, legal, condition, of course, surveyors and also in this case a lot of the issues with regard to the common elements of property as opposed to the private bit that you were buying that we could come up with anything as regards a realistic date, and these issues had not really been examined in any detail before.

Deputy A.D. Lewis:

So what timescale did they set for you?

Bartley McNeela:

I think they set about 3 or 4 weeks.

Deputy A.D. Lewis:

Oh right. Yes, that is funny.

Bartley McNeela:

Yes.

The Connétable of St. Martin?

And who set that, sorry?

Bartley McNeela:

The estate agent primarily but that was agreed by the lawyers as being a reasonable timeframe. I have no criticism of the lawyer I instructed but the problem was that the lawyer acting for the vendor's party really didn't do anything until 36 hours before the process was in court and it was only at that point that we realised the major shortcomings that were there in dealing with things.

Deputy A.D. Lewis:

And did both lawyers agree that 3 week timescale?

Bartley McNeela:

They complained repeatedly about the lack of response from the vendor's lawyers but when it came to the crunch and it was about 4:50 on a Wednesday afternoon when things that were supposed to proceed that I really could not do anything with this investigation because the time you responded to it they had all gone home so we had a day effectively to try and sort things out which was a completely unrealistic timeframe. Meanwhile of course we had made arrangements to move into the property, because everybody expected us to do this and we were told this was all going to be feasible so we ignored the advice of professionals who said: "This is going to work" and we said: "It is not" so we said: "We will make our own arrangements to go into temporary accommodation and to ask the removal company to move the bulk of our property into storage", which it did, and it then took almost 4 weeks for everything to be sorted out so the problem is I think that to set a completion date, to set a whole process whereby effectively the contract and the completion on a moment in Jersey on a Friday afternoon is just really not fit for purpose. I think acquisition of any item, even a car or something like that, you have to go along, you have to have all the questions answered to your satisfaction, the finance to be sorted out and you would then say: "I will collect it on a certain day" but this notion that you can have a date which has not at that point taken account of the complexities of the purchase and expect that to work for you, I think it does not work.

The Deputy of St. Mary:

This is a recurring theme but the interesting point is you are saying you were not the one who set the timetable. You are saying the professionals did?

Bartley McNeela:

Yes, well we were advised this was approximately how long it would take to occur but this is all done at a point where you really do not know what is involved.

Deputy A.D. Lewis:

Yes, but you are relying on professionals to advise you.

Bartley McNeela:

Yes.

Deputy A.D. Lewis:

And from what we know about this transaction process I would say it was quite unprofessional to suggest that you could do this in 3 weeks.

Bartley McNeela:

Yes.

Deputy A.D. Lewis:

And you know that now obviously.

Bartley McNeela:

Yes.

Deputy A.D. Lewis:

But what we know about this, we are looking at 6 to 8 weeks minimum.

Bartley McNeela:

Yes.

Deputy A.D. Lewis:

So it sounds like you had some poor advice.

Bartley McNeela:

Well I would go further and say that I would not set any limit for completion, I would set a date where you agree to the sale but this is a departure from the way things are done in Jersey and I think I do have experience of this because in a previous property transaction we did have a contract of sale, a written document. However, I was warned by lawyers that there was no robustness in Jersey law and I was taking a significant risk in doing this. Whether that was good advice or not I do not know but I was told that this was not the normal way of doing things in Jersey and that there were express concerns that perhaps it was not the wisest decision to

proceed on this basis, even though I and the seller, the vendor, thought it was in our mutual interests.

The Deputy of St. Mary:

Without wishing to take sides on this, the system does allow for preliminary contacts in the way you described which is an English style system and that takes the heat out of it.

Bartley McNeela:

Yes.

The Deputy of St. Mary:

I am not saying that I understand that but as you say, some professionals say that in a way, going to court is almost equivalent to contract stage in England and if you reach that stage, why not go, but I will take your point.

Bartley McNeela:

Yes.

The Deputy of St. Mary:

So your general complaint is that you were pushed into a transaction in too short a time?

Bartley McNeela:

Yes, essentially.

Deputy A.D. Lewis:

And you are suggesting that pre-contracts could be mandatory?

[09:15]

Bartley McNeela:

I think they should be.

The Connétable of St. Martin:

Just one point. You said, I think, that you have completed property transactions in the Island before?

Bartley McNeela:

I have, yes.

The Connétable of St. Martin:

And that one went okay or ... one or more?

Bartley McNeela:

Well the first one was a share transfer which is a slightly different procedure and did not involved going to court, so that was the first property I acquired and then I bought a freehold property which is the one that involved the written contract. I sold that property and it was in the process of selling that property and buying our present residence that we encountered problems.

The Connétable of St. Martin:

Okay.

The Deputy of St. Ouen:

When the vendor was very late in providing you with the information, was it because he did not know the information, he had not asked for it or was it that he knew but it had been held up with his lawyer?

Bartley McNeela:

The vendor was a lady and did not want to deal with us directly, everything was to be done through a lawyer. My lawyer repeatedly pressed the other party's lawyer for information but did not get a response, as I say. It is standard, I believe, to submit a whole series of questions about the property which includes boundary issues and in this case because this was buying freehold property, there were issues regarding the communal paths of the development. In fact that was the majority issue with this property and we could not get any answer from the lawyer. No meaningful response was made until, as I say, the Wednesday evening before the property was due for completion in Royal Court.

The Deputy of St. Mary:

Which could be identified as a problem not with the system but with that particular lawyer for not having got on with it earlier.

Bartley McNeela:

Yes, but people still believed that in that very, very short timeframe, the date set, you could sort out all the issues. I think the agent was still saying: "This is going to happen", the removal man thought it probably would not. He was the one that warned me from his experience. It was in fact the removal gentleman who encouraged me to arrive this morning.

The Deputy of St. Mary:

Oh right, well thank him for us.

Deputy A.D. Lewis:

If there was such thing as an ombudsman, would you be taking a complaint against this professional advice that you received?

Bartley McNeela:

I could do. I think I was sufficiently wised up because, as I say, this is what professionals said, we did not believe them and we took our own decision but I think in other peoples' cases there would be serious consequences.

The Connétable of St. Martin:

I thought the 3 bullet points that you have really raised are unrealistic timescales, vendor's lawyers causing the problem and the Friday afternoon once a week was your other problem?

Bartley McNeela:

Yes, I think it is a nice traditional part of Jersey law but it does not seem fit for purpose and to choose a Friday, which is the worst possible day to try and sort things out. The utility company were not available. There are issues with getting a removal firm to work weekends. It is all very difficult to do things with having a decision made on a Friday afternoon. Surely it could be done on other days, perhaps every day, perhaps 2 or 3 days in the week to try and spread it out. That would make it a lot more user friendly.

Deputy A.D. Lewis:

Are you aware in the U.K. (United Kingdom) it is done any day and it is done in your solicitor's office?

Bartley McNeela:

I see no reason why not but that is for the people of Jersey to decide what they think would be sufficient.

The Deputy of St. Ouen:

Did you incur additional cost with your temporary accommodation or additional legal fees?

Bartley McNeela:

Yes. We were very lucky, we had alternative accommodation which we owned.

The Deputy of St. Mary:

Obviously there would have been almighty problems if you had not.

Bartley McNeela:

Yes, well it consisted of a boat in the marina, which we are lucky to have I suppose.

The Deputy of St. Mary:

Well everyone has those.

The Deputy of St. Ouen:

Were there additional professional's fees as a result of the delay?

Bartley McNeela:

No, no extra fees other than just the removal company, that is all. We had to pay to move, we pay for storage fees and we had to pay effectively for 2 moves.

The Deputy of St. Ouen:

Yes.

The Deputy of St. Mary:

I think possibly, on that, we have gleaned as much information as we can from Mr. McNeela and thank you for that.

Bartley McNeela:

Yes, fine.

The Deputy of St. Mary:

Can we go on to Mrs. Hall? Would you like to give your general account and we will fire similar questions at you.

Anthea Hall:

Yes, fine. Well I can just jump and say I have 2 complaints, major complaints, which I think you are discussing and is cropping up a lot. That is namely the day transactions go through, which is a Friday. As the gentleman said, it is very difficult to get anything done on a Saturday and a Sunday so you have to hand over your keys, you cannot go back to your house so what do you do? If you have not got another property to go to or you have an another property to go to, say,

even so removals are not going to do it on a Saturday and a Sunday, I know that, I have been through it and I am doing it again. I lost my house, I lost the little house that I was going to buy. Now, you see, stupidly, with this new house I was going to buy, I already put a floor down, because it was a new house and I thought: "Great, I will put a floor down so that the removals can come in on the Monday" but of course I lost the house because I reneged because the people who were buying my house, did not have the money and the agent was pressing because he wanted his commission and he told me he wanted his commission but I said: "No, if it does not go through". It was changing the date and I had everything all sorted. I had to change everything and that cost me. Changing the date and then the next Friday, the next Friday and the next Friday. I said: "If it is not the next Friday, finished, I am out".

The Deputy of St. Mary:

So going back how...

Anthea Hall:

This was 2 years ago.

The Deputy of St. Mary:

The length of transaction I mean. A, how long were you told it was going to take and B, how long did it take?

Anthea Hall:

I was never really told but it did not really matter to me, that is immaterial to me, how long it is going to take. It was up to me really to decide when it finished and I wanted to stay in my house for Christmas but I accepted the offer about October then the person who was going to buy had to go into hospital then it was all sorts of domestic things and I was quite happy to stay in the house as long as took and I found this other one and there was no question of time. It could have taken months really but it was just that I was told: "It is going to happen on that Friday" so great, I had it all sorted, I had the removals. I had to sign a paper to say that I would pay if it did not go through, the removal people.

The Connétable of St. Martin:

Pay who?

Anthea Hall:

The removals.

The Connétable of St. Martin:

To the removal people?

Anthea Hall:

Yes.

The Connétable of St. Martin:

Cancellation fee.

Anthea Hall:

If it did not go through I would have to pay the removals, which I did eventually because I said: "If it is not going to go through next Friday" ... I did not realise that they did not have the money till the last minute and then I said: "No, out" and then of course they did not have the money but I think what they were thinking is that perhaps I would drop it, the price, because the person who was going to buy the house came in tears to me that they did not have the money. That is by the by really but it was over then. I was left with bills from the lawyers and everything up to flooring. I got my deposit back for the house, which would pay the lawyers. Now I am starting again and, do you know, I think is going to happen again. I have a buyer, I have accepted the offer. I have not put it in writing yet but I have accepted the offer but I cannot find out whether they have the money and it is part of a film I gather. When I talk about a film I am talking about a joke. It is a joke that you say: "Have you got the money?"

The Deputy of St. Mary:

You are selling through an agent though, are you?

Anthea Hall:

Yes, this is Savills.

The Deputy of St. Mary:

Well I do not need names but do you think there is a responsibility on behalf of the agents to check out the...

Anthea Hall:

I do, yes. I believe that the agent should find out if the money is there.

The Deputy of St. Mary:

Okay.

Anthea Hall:

And also this contract, pre-sale contract, I think that should be central. Now, this is not the first time, this is the third time. The first time was 7 years ago when I accepted an offer and the pre-sale contract was written up by my lawyer. I signed my half but the purchaser did not sign his because, again, he did not have the money and he did not have a job.

The Deputy of St. Mary:

Well at least you found out at contract stage. You are aware that the system we have allows for pre-sale contract if you wish to?

Anthea Hall:

Yes, but you have to get a lawyer to do it and they...

The Deputy of St. Mary:

Yes, but you have to go to a lawyer in any case to sell the house.

Anthea Hall:

Yes, but you have to get a lawyer to get the pre-contract signed and everything and then if anything goes wrong you have to pay the lawyer and I had to pay the lawyer.

The Deputy of St. Mary:

I understand. If the other side does not sign, I agree that there is always going to be a period of uncertainty until the other side has signed.

Anthea Hall:

Yes.

The Deputy of St. Mary:

Yes, okay.

Deputy A.D. Lewis:

You are probably aware in France that they have pre-contracts and every estate agent has a copy of that and they can present it themselves and both parties can sign it and there is a deposit normally.

Anthea Hall:

As far as I am aware...

Deputy A.D. Lewis:

So there are no lawyer fees.

Anthea Hall:

Can I just say that Savills told me they have nothing to do with pre-sale contracts.

Deputy A.D. Lewis:

It is a matter of the lawyer.

Anthea Hall:

Then I have to go to a lawyer?

Deputy A.D. Lewis:

That is correct, yes, whereas in other countries the agents can do the pre-contract so it is already agreed in the first place.

Anthea Hall:

This one does not do it.

Deputy A.D. Lewis:

No, you cannot do that way here now.

Anthea Hall:

If they do not want to it they do not do it and, as I say, it is really sufficiently able to carry on through, if you understand what I mean. It is not a proper law in Jersey, this pre-contract.

Deputy A.D. Lewis:

Well once both parties have signed the contract it is but what you are saying there is no guarantee the other side will sign the contract, which is what happened in your case.

Anthea Hall:

Oh, yes.

The Connétable of St. Martin:

Can I just ask what happened to the people with the home that you were going to buy? How did it effect them? Did you pull out?

Anthea Hall:

Well no, it was a new house, a brand new house so nobody else was involved but I had to pay for lawyers for the searches and everything else and I was left with that but I was lucky, I had the money to be able to do it. I am just concerned that people who have not got the money get in a terrible debt about it, especially in things fall through at the very last minute and it frightens me that it is going to happen again.

The Deputy of St. Mary:

So you are entitled to ask your lawyer to go the pre-contract route if that is what you want.

Anthea Hall:

Well is it not right that there should be some deposit put down to show that they are...

The Deputy of St. Mary:

On a pre-contract there would be, yes.

Anthea Hall:

Yes, but should you not have a deposit put down anyway as part of the law, once you have agreed to sell or buy, so that you know it is going to go through.

The Deputy of St. Mary:

We are here to take evidence rather than advice but lawyers will say, and I think Simon will want to come in on this at some stage, that if a deposit is paid it will be subject to conditions and the lawyers will say there are so many conditions attached it is not really worth it.

Anthea Hall:

Oh, they love it, yes, the lawyers. I have been told by a lawyer that they are very happy with the situation because it is money for them.

The Deputy of St. Mary:

I think that is by the way, anyway.

Anthea Hall:

Well it is not by the way, it is very clear that there is a vested interest in this. There are 2 things that I want to change, not just personally, but I think it is a change of date for a transaction to go through. This Friday business is quite clearly...

The Deputy of St. Mary:

And you say that is mainly for the practical aspect of moving, do you?

Anthea Hall:

Yes, I am thinking about when you move house.

The Deputy of St. Mary:

Okay, yes.

Anthea Hall:

That you have during the week, either Wednesday, Thursday or 7 days in the week but not on a Friday.

The Deputy of St. Mary:

Okay and the other thing?

Anthea Hall:

And the other thing is to have a deposit that is covered by law that you do not get back if you renege, either party.

The Deputy of St. Mary:

Okay. Richard, anything else?

The Deputy of St. Ouen:

No.

The Deputy of St. Mary:

Well thank you for that and we have made notes and it is all recorded. Mrs. Vibert, would you like to go?

Vivien Vibert:

Yes, thank you. I am going to move to South Africa but if can just briefly comment on things?

The Deputy of St. Mary:

Please do.

Vivien Vibert:

The 6 years that I have been back in Jersey I have sold 2 houses and I had the good fortune in not living in any of them at the time so the whole issue of moving did not occur because it was done at different times. There was not a great delay but in both cases the lawyers said it would be 4 or 6 weeks or whatever number it was always longer. It was going to be on the 21st and then it was the 28th and then it was something else, that sort of thing and in one of them we suggested a pre-contract because it was a fairly major property and difficult if it did not go through and so on and we were advised by our lawyers, and it has been mentioned by other people, that it was not worth the paper it was written on. Now, I am not a Jersey lawyer so I do not know but that is what our advice was so we did it by the seat of our pants and it went through but the delays, yes, there were.

[09:30]

The Deputy of St. Mary:

Okay.

Vivien Vibert:

It did not affect us materially or in any way but there were delays. We were told it would go through on such and such a date and it was 2 or 3 weeks later in both cases.

The Deputy of St. Mary:

If I pick you up on that, are you saying that...

Vivien Vibert:

I am just confirming what these people said, that is all I am saying.

The Deputy of St. Mary:

I understand, yes.

Vivien Vibert:

Like I say, that is 2 properties, I am not complaining, it was not a problem et cetera. One was a major transaction, one a modest townhouse in St. Helier so completely different types of property but in both cases it was later than it was meant to be and because the purchaser's lawyers did not ask questions and so on. I only got the questions on the townhouse from the purchaser's lawyers from my lawyer, not at the last minute but pretty late in the day so if there had been any issues, it ... anyway, one way or another it all went on: "It is not going to be this day, it is another day".

The Deputy of St. Mary:

Yes, okay but to go on to your points?

Vivien Vibert:

It was not going to be this day, it was another day.

The Deputy of St. Mary:

In general terms, agents are optimistic of the timescale?

Vivien Vibert:

In general terms that is what happened, yes.

The Deputy of St. Mary:

Yes, okay.

Vivien Vibert:

The other thing...

The Deputy of St. Ouen:

Could I? Yes, go on.

Vivien Vibert:

Yes, I just wanted to confirm that. I did 2 transactions in the last year and a half, they were...

The Deputy of St. Ouen:

You talk about questions from the purchaser's lawyers. If you had had those questions at the beginning of the transaction and were asked to provide that information far in advance, do you think that would have helped?

Vivien Vibert:

Well I do not know whether the lawyers had that transaction at the bottom of their pile or what, goodness knows. All I know, that I, as the vendor in that property transaction, whilst a relatively simple one, they only asked the questions about various stuff at a fairly late stage. I think it was the Monday or the Tuesday of the Friday that it was meant to go through and I think there was some other question so it did not go through.

The Deputy of St. Ouen:

I am thinking if there was a standard questionnaire that could be put to all vendors of property before it was ever marketed perhaps, or to provide to the estate agent, could you have seen that working with the sort of questions you were asked?

Vivien Vibert:

I do not know, I am not qualified to comment on that. I really think Jersey properties are all so different it might be difficult. Some of them have septic tanks et cetera . You do not want to have a whole string of questions that are not relevant.

The Deputy of St. Ouen:

I think where Richard is coming from is that if a vendor provided certain basic information at the beginning: "We have a septic tank" et cetera, they would be a good start.

Vivien Vibert:

Yes, maybe it would, I do not know. I have not had enough experience of that really. Maybe Rose Colley or somebody would know more about that.

The Connétable of St. Martin:

Sorry, before you carry on, the criticism then, or the concerns, is against the lawyers, not your estate agent?

Vivien Vibert:

Yes, not my estate agent, I did not have any problems with the estate agent and I have not really got a major problem with the lawyers, all I am saying is that they said it was one day and it was not that day. The other minor point I want to make is you probably know my sister Christine, she ran the Good Moves removal company for a number of years and she said this whole Friday and changing the day, just as these 2 people have said, is a problem. I am not trying to start on a new subject, I am just going to say it is an absolute nightmare and when as Mrs. Hall said, it is cancelled, she, my sister, because she wanted to be professional, used to just find something else for her guys to do but she said a lot of companies did not do that and so the moving person, whoever it was, would either have to pay or a pay a retainer or something and she said the whole business about people changing their minds and it not going through on Friday et cetera is a nightmare and the stress of it for the removal people, the vendors and purchasers et cetera is unbelievable. There is that practical aspect.

The Deputy of St. Mary:

Yes, but if the practicalities of the situation could be organised so that you still completed on the Friday but there was a bit of leeway and you could move on Tuesday, you would be happy with that?

Vivien Vibert:

I think that is right, that is where I am coming to, it is the uncertainty of it. If everybody says: "You are going to move on Friday the 7th" and then lo and behold there seems to be some glitch and it is not Friday the 7th, it is Friday the 14th et cetera.

The Connétable of St. Martin:

Would it be different if it was a Tuesday or Wednesday? Would you not have the same thing?

Vivien Vibert:

That has been mentioned by these people, I do not want to comment on that really but I am going to suggest another solution, that is why I am here. I am not here to say all that, I am here to suggest a South African solution which perhaps you have read on the second page of my submission.

The Deputy of St. Mary:

We do have it, we have it here.

Vivien Vibert:

The first page of my submission summarises what happens in Jersey, there is no need to go into that, and basically what I say is in South Africa there is a pre-contract system which is compulsory, that is how you do it, that is how it is done, you sign a piece of paper. I suppose it is similar in a way to in England where of course by the land laws you have got to have a written agreement before the transfer is allowed and that would probably help. As I say, in Jersey you have to have a written agreement of some sort and here we have a contract but the clever thing that they do in South Africa and which would be wonderful if it could come into place here is that they separate occupation and ownership. Now occupation and ownership or possession and ownership are 2 completely different legal things that we recognise in leaseholds and tenancies and all sorts.

The Deputy of St. Mary:

Freeholds. Sorry.

Vivien Vibert:

Life interests and so on. We recognise that there is a difference between the concepts. We even have 2 sets of rates, one for the foncier and one for the occupier so it separates out the 2 and so you write your contract with an occupation date that suits everybody so you say that the property is going to be taken over by the purchaser on October 1st for example and it does not matter then, because you have made that date when the legal stuff and all of that administrative thing goes through. The other thing that nobody has mentioned in these cases is there is often a mortgage involved as well so you get another whole pile of questions coming from the mortgagee

and a separate lawyer as well so you have another lawyer involved often, so by separating up the occupational aspect from the registration of ownership, as I briefly summarise on the second page here, all of these problems disappear. Okay, you get a few other problems but you get rid of all of that practicality and then you can go on doing Friday afternoon because they moved the week before or the week after and the financial compensation is what is called an occupational rent in South Africa, which is written into the pre-contract which is pro-rated so you have a market related rate. You pay a deposit of course, a 10 per cent deposit. It is not always 10 per cent but normally, so you have a market related rent, something which is pretty much what you would be paying on the market which should be similar to what people would be paying in interest on a mortgage. Of course that rather depends on all kinds of things like Bank of England rates and things. The person who is in occupation pays that rent for however many days it is to the person who is not in occupation while registration is delayed.

The Deputy of St. Mary:

You say a different system, I sense there might be problems here.

Vivien Vibert:

There might be. I am making the suggestion, I am throwing the idea out .

The Deputy of St. Mary:

The problem there is that you allow someone into occupation of your house without having got their money.

Vivien Vibert:

That is right, you have not got their money but you have got this agreement and you have their 10 per cent deposit and most people are not going to pay the 10 per cent deposit if they are not going to go through with it at the stage of the agreement, which incidentally either always has or is likely to have a suspensive condition with a date limit on it for the obtaining of a mortgage or some other means of money and sometimes it says: "Suspensive upon my own house being sold by the 30th of September" or something like that. You have to have a date limit on it but you have a suspensive condition when there is a mortgage involved, or a bond as it is called in South Africa, so yes, you do let somebody else in but that is how it works in South Africa.

The Deputy of St. Mary:

Okay, thank you for that.

Vivien Vibert:

That is how it works in South Africa. Looking at this schedule or terms yesterday about insurance, the insurance of the house has to go with the occupation for obvious reasons as the person in occupation is the one who is going to smoke in bed or something whereas I think possibly the owner still has to maintain insurance against something like earthquakes or floods from a dam upstream, that sort of thing so one must organise that but the thing is, the risk generally in all normal things will go with the occupation.

Deputy A.D. Lewis:

So separating occupation then from ownership?

Vivien Vibert:

That is right, that is what it is doing.

Deputy A.D. Lewis:

Almost separating the contracts and arrangements, which does make sense to me, and that can be done under a contract here anyway so you can agree a date of occupation in the contract. It is an interesting concept that could be accommodated within the existing law we have.

Vivien Vibert:

You could but what I have been told by fairly senior legal people, without any mentioning any names, is that it is not worth the paper it is written on, these pre-contracts and whether you are going to get your 10 per cent back and all sorts of stuff, I do not know. What I was told also that because putting up your hand in court is an oath effectively, you cannot have specific performance because you cannot force someone to take an oath. Now I was told that from a very high authority, of course I am not going to say who.

The Deputy of St. Mary:

I have a couple of lawyers in here. I know specific performance is recognised in English courts but this is a problem area.

Vivien Vibert:

Well we recognise specific performance in Jersey but not specific performance in something where you have to make an oath.

The Deputy of St. Mary:

Okay, I take your point.

Vivien Vibert:

That is the point so I would think that in order to ameliorate all these various problems, and perhaps Rose Colley will have a better idea about this, somehow or other we have to get rid of that oath.

The Deputy of St. Mary:

That might be a step too far but anyway...

Vivien Vibert:

Well I would have thought you have to get rid of the oath because otherwise you have this problem with specific performance.

The Deputy of St. Ouen:

Can I ask, is it the case therefore in South Africa that people are prepared to move in and occupy a property which they do not yet own before they are sure of their mortgage and perhaps before...

Vivien Vibert:

No, they are sure of their mortgage by then. They have got to be because the agreement has a suspensive condition that the mortgage must be met and you will get the documents saying that: "Yes, okay", that sort of stuff. I never did a lot of the mortgage side of things. They do it all the time, that is how it works in South Africa.

The Deputy of St. Ouen:

So the mortgage is in place?

Vivien Vibert:

Yes, and the mortgage is in place, well, the mortgage does not get into place until the ownership does.

The Deputy of St. Ouen:

Yes, that is true but it is ready to go.

Vivien Vibert:

It is committed. It is all ready to go and the financial credentials and all that have been dealt with by the mortgagee, the bank or whoever, that will all be in place so you sign the contract, the pre-agreement or pre-contract or the agreement of sale, as it is called there, and it has a suspensive condition saying that the mortgage must be acquired within 30 days or something and then once that is acquired, that means that that contract is then valid. Sometimes there is an extension, say

there is some kind of glitch and they need another 2 weeks or something, but then it becomes a firm, enforceable contract.

The Deputy of St. Ouen:

So if the mortgage is in place that must mean all the legal checks have been done, all the surveys have been done. What is the reason for delaying the legal completion?

Vivien Vibert:

Well the legal reason is a whole other administrative activity and the way it is done in South Africa, it is registered in something called the Deeds Office, of which there are 9 or 10 or 12 in the country, so there are not that many of them, so when I was practising law in George about 500 kilometres east of Cape Town I had to send all my conveyancing transactions to Cape Town where I had a correspondent, so you do not do it yourself, there is someone you instruct who has an office round the corner and so on, and there are a whole lot of things that need to be done. The Deeds Office basically check that everything is in order and they check it with a very fine tooth comb and so sometimes they bounce it back and they say: "You have done something wrong, you have misspelt somebody's name", all kinds of stuff and you have also to get the stamp duty paid, which over there is called transfer duty, which is another little exercise and I will tell you a little story. Until about 2011, transfer duty was paid at your local tax office. It was done by the tax people with their various bits of paper and a cheque for the transfer duty and you left it there 2 or 3 days and then went back and got it and then you had your bit of paper saying you had paid and you could send it to the Deeds Office. You see, you had to do all that. Anyway, in either 2010 or 2011 the S.A.R.S. (South African Revenue Service) as it is called, decided they would do transfer duty only online. You could only pay online, you had to get registered and goodness knows what and that is how it was going to be, and they decided to implement it over Christmas. Anyway, of course it was a nightmare. There were attorneys all over the place with transactions not going through and everything, an absolute nightmare. I had a transaction which had a little glitch in it. I will not go into the details but there was a technical aspect which was not the normal buying and selling, it was not just buying and selling this house, it had a little twiddle on it and the system did not recognise it. I could not do it, my correspondent in Cape Town could not do it, nobody could do it, nobody knew. It took 6 months so we had the buyer in that property for 6 months in occupation, paying occupational rent and he did pay occupational rent so it was fine and we had his deposit as well which we could have used but it went on for 6 months.

The Deputy of St. Ouen:

Could I just say...

[09:45]

Vivien Vibert:

That was an extreme situation but that was the type of thing that stops ownership being registered.

The Deputy of St. Ouen:

Can I ask, do you still run up against the problem where you are trying to organise a date for the occupation and the lawyer is trying to get the mortgage in place and trying to carry out the checks and presumably a survey needs to take place for the mortgage? Are you not still subject to the same sort of delays because you have fixed a date and you are trying to get an amount of work done before that date?

Vivien Vibert:

No, you fix your date a reasonable time ahead and if you have not met your mortgage situation within 30 or 60 days, you know that it is not going to work so your occupational date is some reasonable time in the future and if the mortgage is not in by then, the agreement is not enforceable anyway because it has not met the suspensive condition.

The Deputy of St. Ouen:

Right, okay so there is plenty of time allowed?

Vivien Vibert:

There is plenty of time. It all depends on the situation. You might have a cash buyer and they do not need a mortgage and say: "Right, I want to buy it now and I want to move in tomorrow, here is the money, occupational date 3rd of October".

The Deputy of St. Mary:

Okay.

The Deputy of St. Ouen:

Yes.

Vivien Vibert:

That is a bit extreme but in theory...

The Deputy of St. Ouen:

It appears also that those involved are doing all their checks, getting all their paperwork in good time and organising it in sufficient time?

Vivien Vibert:

No, but even if they are not doing it in good time, the mortgagee is sorting it out before the agreement becomes an enforceable full agreement because of the suspensive condition. Until we have that mortgage assured, the suspensive condition has not been fulfilled so it is still a non-enforceable contract.

The Deputy of St. Ouen:

Yes.

Vivien Vibert:

If the time lapse is to the extent that you go past that date, the contract lapses and you can extend it, and people do, but by and large you look at 30 days to get that mortgage in place but it can be a bit longer and you put your occupational date as some other time in the future.

The Deputy of St. Mary:

Understood.

Deputy A.D. Lewis:

Is there a Land Registry in South Africa?

Vivien Vibert:

Yes, it is what they call the Deeds Office, so it is the equivalent of the Land Registry, if you like, and as I did mention here, you only have one attorney dealing with the thing. You have another attorney for the bond or the mortgage, unless the attorney has got various credentials with the banks, you have to be on the bank list, so you might have 2 attorneys but as between the vendor and the purchaser, you only have one attorney and part of the reason for that, I do not know if you could do that in Jersey, is that the system is that everything is surveyed... because it is a new country. We are not talking about the granite wall that went round to the left and on the south of the ditch .

Deputy A.D. Lewis:

Bearing in mind it is a relatively new country and it is a vast country, is all land registered?

Vivien Vibert:

Yes.

Deputy A.D. Lewis:

So the whole country is mapped?

Vivien Vibert:

100 per cent so you can look up a plot, you can look up portion number 123, or farm number 8.

Deputy A.D. Lewis:

It is all digital?

Vivien Vibert:

Yes. You will always have it, you have your system.

Deputy A.D. Lewis:

The whole country?

Vivien Vibert:

You can look it up for the whole country, yes.

The Deputy of St. Mary:

Right. That is where we are not at.

Deputy A.D. Lewis:

It is not privately owned, it is owned by the government?

Vivien Vibert:

I can also look up Andrew Lewis in South Africa and if we do not have...

Deputy A.D. Lewis:

You will find quite a few of my relatives there.

Vivien Vibert:

Well maybe, but everybody has an I.D. number because it is a very useful thing. You can look up Andrew Lewis and then it says: "Andrew Lewis owns this, that and the other" and I could do it as a South African attorney when I was one, you can do that in 5 minutes.

The Deputy of St. Mary:

I think we are probably far away from that I am afraid.

Deputy A.D. Lewis:

Agreed.

Vivien Vibert:

Well maybe you are but it is not an essential aspect of it.

The Deputy of St. Mary:

No, okay.

Vivien Vibert:

The essential aspect I am concentrating on is the separation of occupation and ownership that is the point.

The Deputy of St. Mary:

Okay, the point is taken.

The Deputy of St. Mary:

Okay, well thank you for your input there. Mrs. Colley, thank you for your patience in waiting.

Vivien Vibert:

Sorry about that.

The Deputy of St. Mary:

No, I did not mean that rudely to anyone at all.

Chair, Jersey Consumer Council:

No problem.

The Deputy of St. Mary:

You have probably had lots of matters brought before you?

Chair, Jersey Consumer Council:

Well obviously I am primarily looking at this from the point of view of a consumer through the Consumer Council. Obviously, as I think most people know, I am an advocate here, I am not a property lawyer although very early on, and this is I think relevant, in my career in England as a solicitor I did do some property work so I am fairly au fait with the English system. We really wanted to make a number of points. A number of them have been mentioned already. Perhaps I could touch first on the things that have not been mentioned that may or may not be within your

remit, because we were not asked, as we normally are by Scrutiny, at a much earlier stage to put anything in writing.

The Deputy of St. Mary:

For which I apologise and should have been included.

Chair, Jersey Consumer Council:

No problem. Anyway, the first thing I think you really want to look at from the point of the consumer is the actual documentation which people are being asked to sign or agree to. The actual conveyancing documentation in Jersey is, even though it is now in English where it has been translated, incredibly complicated. It uses very complex legal language that many people simply do not have the ability to understand and very often do not like to ask their lawyer for fear that it will potentially complicate things or cost them more and I think it is because so much has been translated from the French, no one has thought, or perhaps the ability is not there to do this, from a point of view of plain modern English: "How should this be described?". Now, one is not going to change that overnight but I think thought should be given to that because I think one of the difficulties for people, and I think one of the things that do eventually mean that there are delays built into the system is people think: "What does this mean?" and as we all know, I think, there are huge complications, even in St. Helier, over boundaries within Jersey, which also, I think, build in a lot of delay but I think if thought could be given to how the ordinary person looks at this documentation and thinks: "What does it mean? What are the essential things that I am signing up to?", I think that could be quite important.

The Connétable of St. Martin:

How soon before would they see that, while you are on that point? Sorry to interrupt you. I look at quite a few obviously for the Parish things and I find them difficult and I read them and read them and read them but there is a period of...

Chair, Jersey Consumer Council:

Relatively late on and I think it probably impinges on the point that I think other people in terms of this idea, particularly if you are the vendor, of whether you should be answering a whole series of questions at an early stage because of course in England now they have what is called the 'property buyer's pack' which is a pack that has to be available that the vendor has to pay for where the vendor has answered all of the questions in advance and has had all the searches undertaken in advance, which certainly they are now beginning to find in England really does speed up the process so just to give you an example, yesterday, in terms of a case that we have been involved in, someone who was supposed to be selling this Friday only yesterday was given by their lawyer a whole series of questions which, as vendor, they were expected to answer for

this Friday and I think that bears out some of the points that were made earlier. Now, she went back to her lawyer and said: "I cannot answer these questions" because they were incredibly complicated questions which the lawyer had simply cut and pasted from some document without, again, any thought to: "How is a layperson going to answer these questions with no assistance from me, the lawyer?" and the lawyer was then quite affronted by the fact that this client was saying: "I do not understand these questions" but it is really, really late in the day and that sale is going to be postponed probably, in my view, for another 4 weeks because the information has not been asked at the beginning and in England you would now deal with all those questions before you even found your buyer.

The Deputy of St. Mary:

I am not picking you up on it but I am an English solicitor and did conveyancing many years ago and recently was involved in a sale, though not acting for her, of a relative's house. Two things, one is that in England they certainly get that out of the way. It is the lawyer who sends their client a form...

Chair, Jersey Consumer Council:

Pack.

The Deputy of St. Mary:

Well, not a pack but certain questions: "Where is the septic tank? Where are the drains?", that sort of thing and that can come in helpful and just to whistle on in a way back to what Richard was saying, as you are probably aware that is a Jersey Law subpanel on conveyancing and we have been in touch with them and they are talking about this very point, about having a series of question upfront as it were.

Chair, Jersey Consumer Council:

Yes. Quite frankly, from a consumer's point of view, we are 2017. This should have been done by the lawyers here years and years ago.

The Deputy of St. Mary:

I am not going to comment on that.

Chair, Jersey Consumer Council:

No, but quite frankly, it does not take a genius to compile a group of questions which will apply to most properties. All properties are different, I take Mrs. Vibert's point on that but I think it is really essential.

Deputy A.D. Lewis:

Do you think Government should intervene and get on and legislate?

Chair, Jersey Consumer Council:

Yes, I think quite often, with respect, in this jurisdiction, some of these things need to be pushed from Government and not left to...

Deputy A.D. Lewis:

Those with a pecuniary interest.

Chair, Jersey Consumer Council:

Those who necessarily decide to change things.

The Deputy of St. Mary:

I hear you. I am not saying for one moment that this panel has any influence on that but we have got to the stage where the Law Society here are doing something about it I think. Sorry, I interrupted your flow.

Chair, Jersey Consumer Council:

Sure, my train of thought.

Deputy A.D. Lewis:

But we are legislators so we can legislate.

Vivien Vibert:

Oh can you? There are another 40-something of them, that is the only problem.

Chair, Jersey Consumer Council:

From a consumer point of view, only because this point was also made earlier, I would flag up with caution, anything being dealt with more than it is now by estate agents unless and until they are regulated because lawyers are regulated, estate agents, in this jurisdiction, are not regulated. Any of us could set up as an estate agent tomorrow.

The Deputy of St. Ouen:

So what problems does that give rise to?

Chair, Jersey Consumer Council:

Anne will have comment on this, I know. Like any unregulated industry, clearly for the whole reason that we have a financial services ombudsman, which again took years and years and years in this jurisdiction, because all sorts of awful things were happening with people being involved in financial transactions and there was nowhere for them to go.

The Deputy of St. Ouen:

The agents will say they do not handle the money so in what areas do they need to be regulated?

Chair, Jersey Consumer Council:

They are supposedly serving the public and my view and the view of the Consumer Council is that anyone serving the public in such an important way should be regulated in some way, I do not know if Anne would agree with that.

Executive Officer, Jersey Consumer Council:

I think certainly, bearing in mind even our local estate agents do not necessarily have to be part of the local Jersey Estate Agents Association, nor do they have to be part of a U.K. association which gives them any form of governance or code of conduct or practice, which does mean the consumer, if you like, is vulnerable because there is no process of proper redress, there is no governance mechanism in there at all so it does mean that you are taking their word. Other people have mentioned the timeline. I think you indicated earlier that was created by the estate agent saying: "This will happen by this point", which clearly means a lot of money being exchanged and a lot of goodwill at this point, whether putting floor down or spent on a date we have heard is unlikely.

Anthea Hall:

Money had been spent.

Deputy A.D. Lewis:

Acting on poor advice.

Executive Officer, Jersey Consumer Council:

Yes.

Deputy A.D. Lewis:

3 weeks is poor advice in my view.

Executive Officer, Jersey Consumer Council:

Yes, and I think that is the point, that we need some process to even the playing field. The financial ombudsman is there to even that playing field between the little guy and the big guy and we have the same scenario whereas now, if you have a complaint, where do you go with it, what do you do? There is no formal process involved there, which does mean the consumer is vulnerable. There is no process at all of buying a property. How do we know what the stages are? It is very confusing, there is lack of transparency, we do not know what costs we are facing, what the key turning points are. If you do a project at work, you know what the critical milestones are, they are mapped out for you and you work to those whereas if you are thinking of buying a property, which is probably the most expensive thing you will ever do, we do not know what they are.

[10:00]

The Deputy of St. Mary:

Departing from my agenda, picking up a point, would it be helpful if there was a layman's guide to the property transaction, showing each side and where we are at?

Executive Officer, Jersey Consumer Council:

I think as long as everybody involved in the process adhered to it, yes and I think it is combined with, as Colley was saying, those pre-questions being sorted as well.

Chair, Jersey Consumer Council:

At the right stage.

Executive Officer, Jersey Consumer Council:

I think we are no surely at the turning point where these pre-questions should worry about energy costs. Consumers are being more and more squeezers on food costs. Energy costs are right up the top there yet we do not even consider that. Surely that should be in these sort of questions now, so it is far more complicated.

Chair, Jersey Consumer Council:

Which it is now in England, they do have to provide all the energy criteria for the property.

Executive Officer, Jersey Consumer Council:

We are a long way behind.

Deputy A.D. Lewis:

We have interviewed the Estate Agents Association on a couple of occasions now, members of the association and people that are not members of the association and they would say they self-regulate rather well.

Chair, Jersey Consumer Council:

Yes, but then lawyers probably said that many centuries ago.

Deputy A.D. Lewis:

Playing devils advocate of course, and you mentioned it already, this is probably the biggest transaction you will ever make in your life so to have that protection and understanding of exactly what is required of that adviser, because effectively an estate agent is often acting as an adviser. If you are a financial adviser you have to be regulated, licensed, qualified so are you saying that because this is such a big transaction, that person should be qualified and regulated so that if something goes wrong there is recourse?

Chair, Jersey Consumer Council:

Certainly regulated, because they are the first person very often that people go to.

Deputy A.D. Lewis:

And qualified as well? How far do you want to go?

Chair, Jersey Consumer Council:

The estate agent is obviously the person who signposts you to a particular lawyer, often in fact to a particular mortgage provider.

Deputy A.D. Lewis:

So they are acting as a key adviser here? That is your point, that they are acting as a key adviser?

Chair, Jersey Consumer Council:

They are very key, yes.

The Deputy of St. Mary:

Sorry, is that right? We have had this debate before. The estate agent would say: "I act for my client, which is the vendor. I am not advising the purchaser". That is what they would say.

Executive Officer, Jersey Consumer Council:

That is very interesting. Maybe that is where we need to define what the role of the estate agent is because clearly they are fundamental in the final sale price.

Chair, Jersey Consumer Council:

I am not sure the purchaser would agree with that.

Executive Officer, Jersey Consumer Council:

No.

The Deputy of St. Mary:

I am just putting the point, and they are in correct in law on that too possibly.

Executive Officer, Jersey Consumer Council:

That is where there is a lack of transparency because as a collective in this room, we cannot define what their role is. Are they an adviser? Are they just helping us market our property?

Chair, Jersey Consumer Council:

Conduit.

Deputy A.D. Lewis:

Honest brokers.

Executive Officer, Jersey Consumer Council:

What is their fundamental role in this? Where does their responsibility start and stop? I think if we could get to the bottom of that you would probably be able to answer your question, should they be regulated or not.

Deputy A.D. Lewis:

Bearing in mind they are in most other places.

Chair, Jersey Consumer Council:

Yes, and the vendor will end up paying them an awful lot of money.

The Deputy of St. Mary:

Well as long as you get the vendor his sale.

Chair, Jersey Consumer Council:

It is still coming from their pocket.

Executive Officer, Jersey Consumer Council:

I think people do mind those costs, people are budgeting, evaluating every element of the purchase of a property or a sale of a property because it makes a big difference. All these costs we have mentioned, whether it is just the removal company, changing utilities, all of these add up and often people are then putting it on to their mortgage as the only way they can do it. That is another chunk you are paying off.

Vivien Vibert:

Can I make a point upon the estate agents' commissions and the amount of them? They get the commission, usually it is a percentage, 1.5 or something but lawyers, now they have taken away the tariff fee for the conveyancing, which was done for competitive reasons or goodness knows what, do not, so they are having to compete and they are sometimes doing an enormous amount of work for not a lot of money compared to how much the agents cost.

The Deputy of St. Mary:

Oh, I know. I have lawyer friends, yes, I know that.

Vivien Vibert:

Yes, I have lawyers saying that sort of thing. I just thought, as it so happened, I just thought I would mention that because the estate agents basically charge what they like.

Deputy A.D. Lewis:

That is if the lawyer is working on a fixed fee basis, which many of them do but of course if it becomes a complicated conveyance and they have criteria whereby they can charge more for it, suddenly that legal bill will creep up, because they are doing more work, why should they not get paid for it?

Vivien Vibert:

Well quite, yes.

Deputy A.D. Lewis:

The consumer, being perhaps not quite as savvy, does not realise, does not realise how much this is clocking up until the end.

Chair, Jersey Consumer Council:

Does not understand, and this is why there are all these delays. There are inevitably delays, and I think that is right.

Deputy A.D. Lewis:

I know there is an obligation now for the lawyers, under the Lawyers Society Code of Conduct, to advise clients always as to what bills are going to be at the end but because this is sometimes fast moving, despite the delays, is there an issue there that people do get caught out with high legal bills because there is simply is not perhaps time to advise clients: "We are here now"?

Chair, Jersey Consumer Council:

I think the problem with legal bills from a consumer point of view is not so much where the transaction goes through. If it becomes more complicated, some lawyers will not necessarily bill for that separately, some will but I think on the whole it is explained. I think the difficulty arises where purchases and sales are aborted for whatever reason and then the poor purchaser or the vendor finds that they potentially have 2 lots of legal fees to pay.

Deputy A.D. Lewis:

And they cannot take out a mortgage.

Chair, Jersey Consumer Council:

Certainly my experience is that there far more aborted sales and purchases in Jersey than, in my experience, London and the south-east.

Deputy A.D. Lewis:

The lawyers are telling us that is not the case. In fact, I have a lawyer here saying that do not remember one happening in 30 years.

Chair, Jersey Consumer Council:

As a family lawyer dealing with lots of families who need to sell properties, I would say 2 out of 3, for whatever reason, fall through.

Deputy A.D. Lewis:

The court do not make a record, they only make a record of what gets passed.

The Deputy of St. Mary:

They will not know.

Chair, Jersey Consumer Council:

They will not know.

Deputy A.D. Lewis:

But the lawyers are something else.

The Deputy of St. Mary:

We have deflected you from your point, sorry.

Chair, Jersey Consumer Council:

The other point I wanted to mention, which may or may not be within your remit, because I have only got your letter, is of course share transfer. It was briefly mentioned earlier. Huge numbers of the population of course, buy a share transfer property and I just wanted to make a couple of points which I have noticed do course problems. One of the things I think at some point needs to be looked at, and this ties in with the law on wills and succession, is of course that share transfer property is treated within your moveable estate if you die and that means that is subject to légitime which means that you cannot leave your share transfer property to whoever you want.

The Deputy of St. Mary:

Do you want to intervene here now Richard?

The Deputy of St. Ouen:

I do not think so, if you want to continue.

The Deputy of St. Mary:

No, sorry.

Chair, Jersey Consumer Council:

I think some people, they do not understand that and I think potentially for some families that does cause a problem. What I discovered the other day, because I do not usually need to do this, is you cannot easily trace who owns a share transfer property.

The Deputy of St. Mary:

It is held through a nominee, is it not?

Chair, Jersey Consumer Council:

There are circumstances where, from the consumer's point of view, they may well cause complications.

The Deputy of St. Ouen:

Why?

Chair, Jersey Consumer Council:

Because it almost like a sort of little secret. I do not know. This, again, arose where someone's estate was being argued about by a family and they need to know, in order to sort out the problem, when a particular share transfer property was sold and the lawyer on the other side is refusing to give that information so the obvious thing would be: "Is there a register where you can trace even the dates of when a share transfer property is sold?" and the answer is that without incredible complications, you cannot because it is all through shares in a company.

The Deputy of St. Ouen:

You can trace the shareholders of a company through the companies registry.

Chair, Jersey Consumer Council:

You can eventually but not easily and of course the companies register is not necessarily going to tell you the information that you want.

The Deputy of St. Ouen:

It will tell you on an annual basis who are the shareholders.

Chair, Jersey Consumer Council:

It will tell you on an annual basis so if you have missed the wrong cycle ... we wanted this information that day, not in several...

The Deputy of St. Ouen:

I understand.

The Deputy of St. Mary:

People deliberately defer their transfer till the 2nd of January so it is a year out of date, I know that.

Chair, Jersey Consumer Council:

Yes, so that is just a small point.

The Deputy of St. Mary:

Okay.

Chair, Jersey Consumer Council:

There is a general point I wanted to raise. This is really me not just talking as a family lawyer but for people in the Island generally. Many people in this Island who are married are not joint owners of properties. Often the property is held in the sole name of the wife or the husband. Very often, in fact, the husband for all sorts of reasons to do with the housing law. There is no ability within this jurisdiction to place, what is called in England, a Matrimonial Homes Act Notice on a property which acts as a notice to any potential purchaser that there is a matrimonial dispute for example.

The Deputy of St. Mary:

Okay.

Chair, Jersey Consumer Council:

That, to a lot of people, causes real uncertainty come divorce proceedings because there is no easy way of placing any ... there are things caused cautions within the Island but without court proceedings they can be really difficult to obtain because the current Bailiff changed what he considered to be circumstances in which the previous Bailiff was willing to give cautions on properties so it is all left to the judiciary, there is no statute based legislation that says if you are involved in a divorce and the property is in the sole of your husband or wife, you can place a notice on, obviously in England it is on the register, you can place a warning on any potential purchasers, but also of course, it means that your husband or your wife cannot potentially sell the property and not tell you about it, because you might be living there, you may have moved out because very often he or she will say: "Get out of my property" and that again is a small point but I think it is quite an important point and that really leads on to the wider general issue of why it is so difficult in Jersey to have a system or begin to have a system of registration, a property register. It is not a big jurisdiction. In England and Wales I was a solicitor where some areas were still unregistered but slowly, as property passed to a new owner, they started to register it, as you know. I simply do not understand why they cannot be done here and I think it would make the whole process of conveying land, as it did in England, much, much quicker and easier with much more transparency than there is here. For example, here it can still be difficult, because it is not done in really a timely way, to find out whether there are still mortgages registered on properties and again, within family law proceedings, that can be a problem. Someone says: "I paid that loan off" but it is still showing as being registered on the property, but they may have paid it off.

The Deputy of St. Mary:

Yes, I have come across that as well.

Chair, Jersey Consumer Council:

My last point is really to do with the points that have been raised. From the point of view of someone having come to the Island now quite a long time ago, I still do not understand why, and it is a lovely Jersey thing, but all sorts of things are lovely Jersey things, you have to go to court to convey a property and even if you do have to go to court, why does it have to be on Friday? Lots of people have made that point and it is the most inconvenient day of the week for people, and people have explained all of that and why that is a problem and I, on the part of the Consumer Council, would absolutely agree with that. The main point that hopefully your panel will be able to do something about is this difficulty of pre-sale contract. It should not even be a difficult area. Again, I simply do not understand why people do not have to go through a contract stage and pay a deposit, which may or may not be at the same time as the completion stage, because once you have the contract stage, certainly in the process in England and Wales, it is of course that you have your mortgage, you are committed to the property, you have to pay a 10 per cent deposit and the vendor knows that it will go through and the timeline is then very quick.

[10:15]

The Deputy of St. Mary:

I accept all that. Obviously it is the merger, the completion. Jersey lawyers would say your contract stage in a way is equivalent to going to court here because you can rest assured that it is going to go through at some stage.

Chair, Jersey Consumer Council:

But it is not separated and it breeds huge amounts of uncertainty for people.

The Deputy of St. Mary:

I understand that.

Chair, Jersey Consumer Council:

I have certainly known of cases where it is the Domesday scenario where on the Friday that you are due to complete, the purchaser changes his or her mind or the vendor does.

The Deputy of St. Mary:

That is what started of this review I think, yes.

Chair, Jersey Consumer Council:

That is terrible for a modern Island, to have that sort of situation.

The Deputy of St. Mary:

I think your colleagues in law would say it works most of the time.

Chair, Jersey Consumer Council:

Well they may. It does work most of the time but it does not work all of the time and I do not think the changes that would be involved would be necessarily that complicated.

The Deputy of St. Mary:

Well it is not a change, is it? The system allows for that, even now.

Deputy A.D. Lewis:

It is not mandatory.

Chair, Jersey Consumer Council:

It is not mandatory, and then there is this debate as to whether a pre-contract sale is enforceable because it is a potentially a contract for the sale of land which has to go through court so there are all of those sorts of debates. Our view is that there do need to be some changes to the system because most of the time it does work but even if it does work, I think it causes a lot of stress and heartache along the road.

The Deputy of St. Mary:

Even those that go through, they are still biting their nails at the last minute, I know that.

Deputy A.D. Lewis:

If I get that right Colley, you were saying that you thought that as many as 2 out of 3 transactions were problematic in terms of delay?

Chair, Jersey Consumer Council:

Are problematic in terms of delay.

Deputy A.D. Lewis:

Have you got any evidence of that? The courts are saying it is not, the lawyers are saying it is not and the estate agents are saying it is not so it is fascinating that you should say it is.

Chair, Jersey Consumer Council:

I have not got any statistical evidence. This is not even me as chair of the consumer council, this is me as a family lawyer over many years in Jersey now doing lots of these cases and there is, I would say, in 2 out of 3 cases, delay that has been caused.

Deputy A.D. Lewis:

We have lots of anecdotal evidence that suggests exactly that, we have no hard evidence. When we talk to the professionals, the courts, the lawyers, the estate agents, they are saying: "No" so it is quite hard for us, without hard evidence, to make the legislative recommendations that we can make upstairs, if we had the evidence to support it.

Chair, Jersey Consumer Council:

But the lawyers will say: "No". I do not know where you would get that hard evidence.

Deputy A.D. Lewis:

At the moment, that is the noise we are getting from consumers in particular but it is not the noise we are getting from the professionals so it is really interesting you should say that. I am just wondering how we can evidence it.

The Deputy of St. Mary:

I am not challenging you on your view at all but would it be fair to say, given the area of work you are involved in, that the cash register is likely to be more in that area than others?

Chair, Jersey Consumer Council:

Not necessarily, these are normal houses where people are divorcing, separating. I think it causes much more stress because you have 2 families that you need to rehouse.

The Deputy of St. Mary:

Yes. What I am saying is that where there is a matrimonial situation, there might be more problems more likely to occur in those.

Chair, Jersey Consumer Council:

It is normally, in my experience, the purchasers who are not in a matrimonial situation where they are changing their mind or causing delay.

The Deputy of St. Mary:

Okay, right.

Chair, Jersey Consumer Council:

I think from the vendor point of view, if they were asked all the questions upfront then I think that would cut out some of the delay. I think that delay is definitely there but I do not have, as Deputy Lewis asked, any hard statistical evidence. The lawyers must have.

The Connétable of St. Martin:

The 2 out of 3, that 2 thirds relate to what?

Chair, Jersey Consumer Council:

Delay and problems.

The Connétable of St. Martin:

It is not 2 thirds of all transactions?

Chair, Jersey Consumer Council:

No, these are my clients who are selling properties and of those, I would say 2 out of 3 encounter difficulties with the process.

The Deputy of St. Ouen:

What proportion would you say fail as you go through?

Deputy A.D. Lewis:

They eventually go through presumably but there is just a delay?

Chair, Jersey Consumer Council:

They go through but then you get this whole area of all the additional costs because of that. I would say a small number, 5 per cent.

The Deputy of St. Ouen:

5 per cent, okay, so 5 per cent fail, and is the delay because the purchaser has not got mortgage arrangements ready or because the purchaser's lawyers are not ready or any other reason?

Chair, Jersey Consumer Council:

I think it is often to do with the mortgage and I think that is partly because the estate agent is not necessarily sign-posting the person wanting the mortgage in the right direction. Often, for example, they might send them to one of the mainstream lenders, when if they delved a little bit more into the purchaser they would know that a mainstream lender probably would not be willing to lend to them so they may be better to go to one of the mortgage brokers, so I think there is something there that the estate agents can do but I think it is also because the system does not

say at an early stage: "You, the purchaser, need to have your mortgage in place, at least in principle".

The Deputy of St. Ouen:

From the point of view of the Consumer Counsel, is there any improvements to the mortgage process that we could try and engender in Jersey?

Executive Officer, Jersey Consumer Council:

That is a very complicated area in itself. We are heavily involved at the moment at really looking at the code of consumer lending, because obviously that whole area of consumer credit, of which a mortgage is one, again, is unregulated. There is no comeback for anyone other than the ombudsman at the moment. There is no code of conduct for the way people lend money and that is an area we are working on with the Chief Minister's department and the Financial Services Commission because you have unregulated lenders.

Deputy A.D. Lewis:

Well that has blossomed because of banks not lending, the peer to peer lenders now.

Executive Officer, Jersey Consumer Council:

Peer to peer lending is an issue and it is not going away because it is obviously...

Chair, Jersey Consumer Council:

More people need it.

Executive Officer, Jersey Consumer Council:

Yes, and so that is a real worry, but nor do we want to drive it underground, we have to be careful what we wish for clearly so it needs to be done in a very constructive practical way but we still have unregulated lenders which means they fall outside the remit of the commission and, to a degree, the ombudsman so that is a whole area that we really should be looking at as an Island.

Chair, Jersey Consumer Council:

Often the unregulated lenders are people that have come to their lawyer and have said: "I have some money, can you find someone?".

Deputy A.D. Lewis:

That has been going on in Jersey for decades.

Chair, Jersey Consumer Council:

That has been going on for decades.

Executive Officer, Jersey Consumer Council:

Yes it has, but people, again, do not quite know what they are getting themselves into.

Chair, Jersey Consumer Council:

It is incredibly expensive.

Executive Officer, Jersey Consumer Council:

People will do it in the short term with a view to it taking 18 months, 24 months.

Chair, Jersey Consumer Council:

Then interest rates go up.

Executive Officer, Jersey Consumer Council:

And they have not got them.

Deputy A.D. Lewis:

Yes, so just to recap Colley, you are suggesting more regulation in terms of estate agents or potentially having them regulated, pre-contracts you would favour, simpler contracts.

Chair, Jersey Consumer Council:

Simpler contracts, absolutely.

Deputy A.D. Lewis:

Removing the need for Friday as a mandatory date for court or having no court at all potentially? Is that something you favour?

Chair, Jersey Consumer Council:

I favour no court at all but that is just my personal view.

Deputy A.D. Lewis:

Yes, so done in your lawyer's office for simplicity, it is less daunting and it can be done any day, is that what you are suggesting?

Chair, Jersey Consumer Council:

Yes.

The Deputy of St. Mary:

2 throwaway points. You mention légitime. We are familiar with that and the contrast between and I think another panel is looking at that and should have looked at it earlier possibly.

Chair, Jersey Consumer Council:

I am sure they are. Yes.

The Deputy of St. Mary:

I take it you will be in favour of abolishing that, would you?

Chair, Jersey Consumer Council:

légitime?

The Deputy of St. Mary:

I will withdraw the question.

The Deputy of St. Ouen:

There may be a consultation in the near future, you can give your view.

The Deputy of St. Mary:

Yes, okay.

Chair, Jersey Consumer Council:

Yes, certainly I would be in favour in terms of share transfer property.

Deputy A.D. Lewis:

With a proper registry, Companies House type situation?

Chair, Jersey Consumer Council:

A proper registry, but also some of the share transfer properties are also people's biggest purchase and they should have a choice as to who they leave it to in their will.

The Deputy of St. Mary:

Yes, okay, fine.

Chair, Jersey Consumer Council:

I know they have choice...

Deputy A.D. Lewis:

I know there are lots of share transfers in existence historical but am I right in understanding that new build properties now tend to buying freehold rather than share transfer, so it is changing but obviously you have lots of legacy properties that could be converted to freehold, all covered by applying freehold and you would not have these issues, would you?

Chair, Jersey Consumer Council:

It is changing. Some of the most bizarre properties are share transfer.

Deputy A.D. Lewis:

Yes, I know.

Chair, Jersey Consumer Council:

It is not just flats and apartments.

Deputy A.D. Lewis:

It goes back to the housing regulations, that is why.

The Deputy of St. Mary:

There are a few odd ones, yes. The other thing on this question of registration and protection of the spouses et cetera, are you doing any work of your own on this? I am not saying you should, I am just wondering.

Chair, Jersey Consumer Council:

Well we are not. This is something that came up. This was one of the Jersey family lawyers' criticisms of the Law Commission Report on divorce reform, that no real thought have been given to protection in this quite simple area. It used to be the case that you could apply to the court for the notice to be registered and, as I said, it is really the whim of the judiciary as to whether they allow it or not.

Deputy A.D. Lewis:

If those shares are held by a nominee, for example, that really complicates the process of divorce, is that what you are saying?

Chair, Jersey Consumer Council:

No, this is where it might be a freehold property.

Deputy A.D. Lewis:

Right, okay.

The Deputy of St. Mary:

Has the Law Commission ever looked at this particular aspect?

Chair, Jersey Consumer Council:

Not really, no.

The Deputy of St. Mary:

Have you asked them to do anything? I am not saying you should, again. Is it something they could usefully look at?

Chair, Jersey Consumer Council:

Well the Law Commission takes a long time to do most things. It should not be difficult to look at a system. Often those are made on the mortgage but not on the property so they are responsible for the mortgage but they do not have rights over the property, which is completely bizarre.

The Deputy of St. Mary:

Yes, it is.

Chair, Jersey Consumer Council:

I think some of it is consumer education but I do not think it should be beyond the will of any of us to have a system whereby if you are a divorcing spouse you should not be able to register your interest on that property to give yourself some protection.

The Deputy of St. Mary:

Yes, I understand your point.

Deputy A.D. Lewis:

Are you saying that the banks do not insist on joint ownership if they are giving a joint mortgage?

The Deputy of St. Ouen:

Sometimes they cannot.

Chair, Jersey Consumer Council:

Sometimes they cannot because of housing.

The Deputy of St. Ouen:

It is not about the person, it is about qualifications.

Deputy A.D. Lewis:

That is why it happens, is it? Right, okay.

Chair, Jersey Consumer Council:

That is why it happens. There are thousands of mortgages in the Island where they are not joint owners of the property.

Deputy A.D. Lewis:

Because of the housing qualifications?

Chair, Jersey Consumer Council:

Yes, and it does cause real problems when they split up.

Deputy A.D. Lewis:

It will do, yes.

The Connétable of St. Martin:

I think something you said quite early on, that maybe Government should be leading this, not others, the estate agents or the lawyers.

Chair, Jersey Consumer Council:

Otherwise these things will not happen.

The Connétable of St. Martin:

Exactly. It will not happen unless Government push it.

Chair, Jersey Consumer Council:

Yes, I think we would agree wholeheartedly with that.

Executive Officer, Jersey Consumer Council:

Yes, very much so.

Chair, Jersey Consumer Council:

In all the sorts of areas that we have been involved in, it has been the push from Government that has made things move. Not necessarily legislation but just the political will to say: "Yes, things do need to change and if you do not get your own house in order then we will legislate". It can be really powerful.

Executive Officer, Jersey Consumer Council:

Absolutely.

The Deputy of St. Mary:

I take the point, yes. That is very helpful, thank you all of you. Thank you for your contributions and we have a lot to go on and we shall report in due course.

Chair, Jersey Consumer Council:

Thank you for listening.

[10:28:32]