



Economic and International Affairs
Regulation of Jersey Estate Agents
Witness: The Minister for Housing and
Communities

Wednesday, 27th October 2021

Panel:

Deputy D. Johnson of St. Mary (Chairman)

Deputy S.G. Luce of St. Martin

Deputy M. Tadier of St. Brelade

Witnesses:

Deputy R. Labey of St. Helier, The Minister for Housing and Communities

Ms. A. Le Bourcier, Head of Environmental and Consumer Protection

Mr. A. Scate, Director General, Infrastructure, Housing and Environment

Mr. W. Peggie, Director of Natural Environment and Acting Group Director of Regulation

[15:36]

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

Welcome, everyone, to this hearing of the Economic and International Affairs Panel regarding our review as to regulation of Jersey estate agents. To introduce the panel, on this side is myself, David Johnson, Deputy of St. Mary, as chair. I have with me ...

Deputy S.G. Luce of St. Martin:

Deputy Steve Luce, Deputy of St. Martin, panel member.

Deputy M. Tadier of St. Brelade:

Deputy Montford Tadier, Deputy of St. Brelade.

The Deputy of St. Mary:

Apologies for the absence from Senator Pallett who is not well today. Minister, could you introduce both yourself and any other officers you might have with you?

The Minister for Housing and Communities:

Yes, of course. Russell Labey, the Minister for Housing and Communities. I have invited along with me today William Peggie, the director of Natural Environment and acting group director of Regulation. Also Alison Le Bourcier, the head of Environmental and Consumer Protection for the Government of Jersey.

The Deputy of St. Mary:

Good afternoon to you all. Perhaps if I can start with a general question, if I may. Minister, you are the Minister for Housing and Communities. **This review into estate agents' conduct, to what extent do you believe that affects your department?**

The Minister for Housing and Communities:

First of all I welcome this review. It must be an odd position for you, Chair, because I guess it is a bit like déjà vu in respect of the previous work that was done in this area on the regulation of Jersey estate agents, which I was made aware of shortly after taking office, because I was answering a question about gazumping in the Assembly. Perhaps one of the first meetings I had after taking office as Minister for Housing and Communities was to meet with the Jersey Estate Agents Association, because they asked for a meeting and I was very happy to do so. I have met them again recently. I find them very useful for me as a sounding board for finding out what is happening at the coalface of property sales in Jersey. So it is always useful and inciteful for me to meet with them. On that first meeting, the representatives of the Association I met with made it very clear to me that they would welcome regulation of estate agents. I know you are speaking to them tomorrow. When I was asked that question in the States about gazumping, I brought that fact up that the estate agents themselves were calling for regulation along the lines of all the findings in, which I then became aware of, the previous work that you carried out. I have just been re-reading it today. So what is curious is that nothing has happened with these recommendations and I do not know why. The other thing I have to say is the regulation, if estate agents are to be regulated, that does not come under my area of responsibility. That would be the Minister for Economic Development, Tourism, Sport and Culture. But obviously there is a crossover in terms of what the estate agents do because it is so related to housing with me. But if they are to be regulated that would be work that would need to be carried out by the Economic Development Department.

Commented [B1]: This review into estate agents' conduct, to what extent do you believe that affects your department?

MH&C: The other thing I have to say is the regulation, if estate agents are to be regulated, that does not come under my area of responsibility. That would be the Minister for Economic Development, Tourism, Sport and Culture. But obviously there is a crossover in terms of what the estate agents do because it is so related to housing with me. But if they are to be regulated that would be work that would need to be carried out by the Economic Development Department.

The Deputy of St. Mary:

Thanks for that. Just not a correction, but modification of what you said. Yes, I did chair a review panel in the last Parliament. That was really more to do with the conveyancing process rather than estate agents per se. But we did not look into conduct of estate agents, although that did come out of it. Anyway, thank you for your overall situation. Despite what you say about your, not lack of accountability, lack of involvement maybe, are you aware that there is in the U.K. (United Kingdom) something called the Property Ombudsman, which is a U.K. Government-approved scheme to provide independent redress in relation to disputes between customers and property agents? In fact, some local estate agents are members of that. That is Government-approved in the U.K. Has that passed your desk at all or maybe you say it would not be your desk, it would be up to the Minister for Economic Development, Tourism, Sport and Culture?

The Minister for Housing and Communities:

I am aware of it and one has to point out that not all estate agents operating in Jersey are members of the Jersey Estate Agents Association. But if you are a member of the Jersey Estate Agents Association you are affiliated to Propertymark and therefore the guidance and advice of the Property Ombudsman in the U.K. But there must surely be a limit to the Ombudsman’s jurisdiction over another jurisdiction. Alison Le Bourcier knows this inside out, the situation, and I would call upon her at this juncture, Chair, I think you will find it quite interesting.

Head of Environmental and Consumer Protection:

Good afternoon, panel. Yes, if I could help you with the answer to that question, I have done quite a bit of extensive work with the director of policy for the Property Ombudsman, specifically around the introduction of new consumer protection legislation that came in 2018. The work was to revise their code of practice, which they have produced for the Channel Islands, to make sure that it was up to date and it reflected the regulatory framework, not just in relation to property sales, but also letting agents. Of course that, as the Minister has outlined, spans multiple Ministers having different responsibilities for different aspects of what essentially consumer protection. So, yes, we are well aware of the Property Ombudsman, have worked with them closely to ensure that code of practice reflects the legal responsibilities within Jersey.

The Deputy of St. Mary:

That code of practice, am I not right in saying, is only applicable to those who are members of the Estate Agents Association or similar?

Head of Environmental and Consumer Protection:

Yes, it is through the membership of the Jersey Estate Agents Association they therefore comply with that code. Also, consumers can apply for redress through the Property Ombudsman, so it has

Commented [B2]: Property Ombudsman, which is a U.K. Government-approved scheme to provide independent redress in relation to disputes between customers and property agents?

Alison Le B: I have done quite a bit of extensive work with the director of policy for the Property Ombudsman, specifically around the introduction of new consumer protection legislation that came in 2018.

The work was to revise their code of practice, which they have produced for the Channel Islands, to make sure that it was up to date and it reflected the regulatory framework, not just in relation to property sales, but also letting agents (*Why does it does not reference Jersey AML provisions?*)

as the Minister has outlined, spans multiple Ministers having different responsibilities for different aspects of what essentially consumer protection

Commented [B3]: That code of practice, am I not right in saying, is only applicable to those who are members of the Estate Agents Association or similar?

Alison Le B: Yes, it is through the membership of the Jersey Estate Agents Association they therefore comply with that code.

Also, consumers can apply for redress through the Property Ombudsman, so it has extended the jurisdiction through that route.

There is also protection in place through the consumer protection legislation that we have if a member who purports to comply to a code of practice does not.

extended the jurisdiction through that route. There is also protection in place through the consumer protection legislation that we have if a member who purports to comply to a code of practice does not.

The Deputy of St. Martin:

I wonder if I could ask Alison - excuse me butting in - just to go back to the question asked by the Minister to himself almost rhetorically 5 minutes ago, **what vires would the U.K. Property Ombudsman have in the Channel Islands or in Jersey specifically?**

Head of Environmental and Consumer Protection:

It would be a contractual arrangement through the Jersey Estate Agents Association and the Property Ombudsman. The fallback position would be the consumer protection legislation that we have. Because, by signing up, they agree that their members can access that Ombudsman and, if they do not, then potentially that is a misleading action. So there would be some sort of redress through that route.

Deputy M. Tadier:

For Alison, that is really useful, I guess there are 2 questions. Are there comparable bodies, which might similarly be regulated outside of the Island in a voluntary way? Apart from the general legislation that you would have as the consumer body for the States, is it fair to say that the recourse is a reputational one, so that if a complaint is made against a member of the estate agents who have signed up to the body and who are regulated effectively by the U.K., that they can then be **investigated under the U.K. Ombudsman and, even if there is no legal recourse in Jersey courts, for example, there would certainly be a reputational potential damage for that company; is that a reasonable description or is it more complicated?**

Head of Environmental and Consumer Protection:

Absolutely. I think it is a little bit more complicated but there would be reputational damage. Potentially, if the Ombudsman was to deem the practice of that estate agent to be unfair, to the point that they had ordered redress, potentially that could breach our consumer protection legislation because obviously they would look at the same things that we would in that respect. So potentially there could be a criminal offence, and there are a number of sanctions that could be applied. But of course there are other codes of practice that apply to estate agents in slightly different areas. So, for example, the Advertising Standards Authority, they have a code of practice and their jurisdiction again does extend to the Channel Islands and Jersey. That is very much, as you said, a reputational issue as well. Because of course they also name and shame. That can be very powerful, particularly if it was to be utilised on a small Island.

Commented [B4]: what vires would the U.K. Property Ombudsman have in the Channel Islands or in Jersey specifically?

Alison Le B: a contractual arrangement through the Jersey Estate Agents Association and the Property Ombudsman (**what about enforceability for non-JEAA members that are members of TPO and Propertymark?**)

Fallback position would be the consumer protection legislation that we have. Because, **by signing up, they agree that their members can access that Ombudsman and, if they do not, then potentially that is a misleading action.** So there would be some sort of redress through that route.

Commented [B5]: investigated under the U.K. Ombudsman and, even if there is no legal recourse in Jersey courts, for example, there would certainly be a reputational potential damage for that company; is that a reasonable description or is it more complicated?

Alison le b: Potentially, if the Ombudsman was to deem the practice of that estate agent to be unfair, to the point that they had ordered redress, potentially that could breach our consumer protection legislation because obviously they would look at the same things that we would in that respect. (**would that be the case with non-JEAA members who are members of TPO and Propertymark?**)

are other codes of practice that apply to estate agents in slightly different areas. So, for example, the Advertising Standards Authority, they have a code of practice and their jurisdiction again does extend to the Channel Islands and Jersey.

Deputy M. Tadier:

I do have a further question if it is all right, Chairman. Without wanting to pre-empt the outcome of our review, in your opinion, do you think that it would be sufficient to have a requirement, if it was deemed necessary, for all estate agents to sign up to the Association so that they are regulated?

Or do you think that, if we were to go down a different route, we would need to set up a different apparatus and potentially legislation so that all our Jersey estate agents could be regulated?

Head of Environmental and Consumer Protection:

As I have outlined at the beginning, there is regulation of estate agents, in fact all businesses, when they deal with consumers through this very powerful and far-reaching consumer protection legislation.

[15:45]

If Government wanted to go that step further, which is what is in the report that has been produced in the U.K. in relation to property agents, my understanding and my belief at this time is that we would need a specific regulatory tool to set that framework, to ensure that they were members, to make it mandatory. So it would need a piece of legislation. That then leads on to obviously other issues around adequate resources and what the detail of that requirement would look like.

The Deputy of St. Mary:

Can I just go back to the reference to Consumer Protection Law, which this panel and the previous Parliament also looked at? Am I right in thinking that, while you have made the comment that a member of the Property Ombudsman would be in breach of what they committed to do in accordance with the Consumer Protection Law, that law applies to everyone, does it not? It is not confined to members of any association.

Head of Environmental and Consumer Protection:

No, it applies to absolutely every business-to-consumer relationship. It is not tied up to the Ombudsman. What I was trying to say, if I could be a little clearer perhaps, was that, if an Ombudsman was to investigate and find that perhaps the activities of an estate agent were lacking in some way, there is a potential that in itself would highlight a breach of the Consumer Protection (Unfair Practices) Law.

The Deputy of St. Mary:

I do understand the distinction, thank you. The other aspect about enforcement or who should judge on this, are you aware, if there is a breach by a member agent of the code to which he has

Commented [B6]: you think that it would be sufficient to have a requirement, if it was deemed necessary, for all estate agents to sign up to the Association so that they are regulated?

Or do you think that, if we were to go down a different route, we would need to set up a different apparatus and potentially legislation so that all our Jersey estate agents could be regulated?

Alison Le B: there is regulation of estate agents, in fact all businesses, when they deal with consumers through this very powerful and far-reaching consumer protection legislation.

If Government wanted to go that step further - would need a specific regulatory tool to set that framework, to ensure that they were members, to make it mandatory. So it would need a piece of legislation. That then leads on to obviously other issues around adequate resources and what the detail of that requirement would look like.

Commented [B7]: Am I right in thinking that, while you have made the comment that a member of the Property Ombudsman would be in breach of what they committed to do in accordance with the Consumer Protection Law, that law applies to everyone, does it not? It is not confined to members of any association.

Alison Le B: No, it applies to absolutely every business-to-consumer relationship.

if an Ombudsman was to investigate and find that perhaps the activities of an estate agent were lacking in some way, there is a potential that in itself would highlight a breach of the Consumer Protection (Unfair Practices) Law. **(but only insofar as it breaches the consumer protection law? It might breach an area of the TPO code which doesn't breach consumer protection law?)**

subscribed; is it the local Estate Agents Association through their officers that determine the extent of that breach and what should happen?

Head of Environmental and Consumer Protection:

Many codes of practice start with having an internal complaints procedure with the estate agent. So you could raise, in the first instance, that complaint with your agent. I believe that you could then complain to the Estate Agents Association and you would then have access to the Property Ombudsman. So there would be a route that you could go through, but of course you do not need to do that. A consumer could come directly to the Trading Standards Service, who provide a comprehensive and confidential consumer advice service, so we could provide the appropriate advice. We would be able to determine if they were a member of the Association or not and what avenues they would have for complaint and redress, including officers investigating for a potential breach of the Consumer Protection (Unfair Practices) Law.

The Deputy of St. Mary:

We will perhaps come back right at the end as to the ways you are doing it. Do you want to move on, Steve?

The Deputy of St. Martin:

We have reached what could be the conclusion quite early in this short meeting, Alison, but I guess what you are saying to us, if I understand it correctly, is if we could get some legislation in place quickly to mandate the estate agents to join the Association. We, at that point, then have all the necessary rules and regulations in place that we could do the job. So there is nothing more than a piece of legislation required to make estate agents join up. Is that correct?

Head of Environmental and Consumer Protection:

I believe so but of course, as I highlighted previously, it would also be a resourcing issue. But it would give access to the Property Ombudsman, and I believe consumers having access to an Ombudsman is a valuable service. But there is comprehensive guidance available to Jersey estate agents on the consumer protection legislation to give them advice on how they should conduct their business and many aspects of that, which covers estate agents and property agents, whether they are members or not.

The Deputy of St. Mary:

Steve Luce has put his finger on it. But just taking it to the ultimate aim then, if legislation were introduced to compel anyone offering themselves out as an estate agent, however defined, perhaps this is again not for you, would you anticipate that the department would need to take a close look

Commented [B8]: The other aspect about enforcement or who should judge on this, are you aware, if there is a breach by a member agent of the code to which he has subscribed; is it the local Estate Agents Association through their officers that determine the extent of that breach and what should happen?

Alison Le B: you could raise, in the first instance, that complaint with your agent. I believe that you could then complain to the Estate Agents Association and you would then have access to the Property Ombudsman.

Or a consumer could come directly to the Trading Standards Service, who provide a comprehensive and confidential consumer advice service, so we could provide the appropriate advice.

We would be able to determine if they were a member of the Association or not and what avenues they would have for complaint and redress, including officers investigating for a potential breach of the Consumer Protection (Unfair Practices) Law **(Does the Jersey Trading Standards have sufficient estate-agent specific knowledge or do they only follow breaches in relation to general consumer protection law?)**

Commented [B9]: if we could get some legislation in place quickly to mandate the estate agents to join the Association. We, at that point, then have all the necessary rules and regulations in place that we could do the job. So there is nothing more than a piece of legislation required to make estate agents join up. Is that correct?

Alison Le B: I believe so but of course, as I highlighted previously, it would also be a resourcing issue.

would give access to the Property Ombudsman, and I believe consumers having access to an Ombudsman is a valuable service.

But there is comprehensive guidance available to Jersey estate agents on the consumer protection legislation to give them advice on how they should conduct their business and many aspects of that, which covers estate agents and property agents, whether they are members or not. **(Where is this guidance?)**

at those rules? Because if they are going to have legislative effect rather than voluntary effect then it is something for the Government to get much more involved in than they are at the moment.

Head of Environmental and Consumer Protection:

Definitely. We would have to look very carefully at those rules. Deciding whether or not that is in fact the code of practice and that is the route that Government wants to go down, and to what extent. Because of course the review in the U.K. looks at many other aspects beyond signing up to a code of practice and regulation. It looks at licensing and qualifications and other aspects.

The Deputy of St. Mary:

That is another point. We have various questions about qualifications, et cetera. But, again, without going into the minutiae of it, you would expect any code of conduct to cover minimum qualifications and standards as well, would you not?

Head of Environmental and Consumer Protection:

If we were wanting to improve the sector, the professional practice of the sector, then qualifications is absolutely a really fundamental route to go down. It will be for the Jersey Estate Agents Association in your briefing with them, but on another occasion they have been working with Propertymark in looking at how qualifications could be provided that have been tailored to the Jersey property transaction process.

The Deputy of St. Mary:

Thank you. As Steve Luce said, that has reached our conclusion more quickly than we thought. There has been a very good response to a survey, which our Scrutiny officer sent out in July, which had a fair number of responses. Not unreasonably, most of them referred to gazumping, which I know the Minister himself has made a comment on. How much of a problem do you see that as being at the moment? In fact, do you see any regulations being in force as necessarily curing that?

Head of Environmental and Consumer Protection:

Is that a question for me, Chairman?

The Deputy of St. Mary:

For the Minister, unless he wishes to push it sideways, then it is up to him.

The Minister for Housing and Communities:

I will just say that I have had, since taking office, 2 people complain to me - and that is since February - of being gazumped. One was a really classic nasty gazumping on the steps of the Royal Court. The other was a succession of people backing out and perhaps one gazumping. It is just absolutely

Commented [B10]: if legislation were introduced to compel anyone offering themselves out as an estate agent, however defined, perhaps this is again not for you, would you anticipate that the department would need to take a close look at those rules?

Alison Le B: We would have to look very carefully at those rules. Deciding whether or not that is in fact the code of practice and that is the route that Government wants to go down, and to what extent.

Because of course the review in the U.K. looks at many other aspects beyond signing up to a code of practice and regulation. It looks at licensing and qualifications and other aspects.

Commented [B11]: you would expect any code of conduct to cover minimum qualifications and standards as well, would you not?

If we were wanting to improve the sector, the professional practice of the sector, then qualifications is absolutely a really fundamental route to go down.

JEAA have been working with Propertymark in looking at how qualifications could be provided that have been tailored to the Jersey property transaction process.

awful if it happens to you. When I was talking to Mr. Nick Dodsley, who I think you will be speaking to tomorrow, who was chairman of the Jersey Estate Agents Association, his view was that this sort of thing, in a 30-year career, he had only ever witnessed one, because he knows what he is doing. With an estate agent who does know what they are doing, it should not happen. That is part of their call for regulation of estate agents in terms of them having a qualification, even an A-level sort of qualification, before setting up. In a previous life, I have had this with the advent of computers in the theatre, we had a lot of people with a bedroom and a laptop setting themselves up as talent agents, actors' agents. Of course it led to all sorts of difficulties because a lot of these people did not know what they were doing and they did not realise the complexity of what is a profession, which you need to have experience in and qualifications for to do it properly, even though those qualifications might have been through experience. Alison has some interesting statistics on complaints. Do you want to fire those off now, Alison?

Head of Environmental and Consumer Protection:

Yes. Thank you, Minister. We have relatively low numbers of complaints in relation to property sales through our advice service. That is not to say that complaints do not go elsewhere. There may be a number that go to Citizens Advice. But I have looked back over the last couple of years and we receive about 900 complaints a year. We are looking at the region of between 1 and 3 per cent of those complaints relate to property sales and property transactions. However, it is very difficult to get any particular theme out of those because they are such low numbers. So you are talking in the region of between 12 and 20-odd complaints a year. I would say of those complaints I do not think we have any on gazumping. My experience over many years would tell me that people probably do not come to Trading Standards to complain about gazumping because they probably appreciate there is very little they can do. The other point that might be useful is to mention that it is the responsibility of a professionally diligent estate agent to be open and transparent and to pass on information about offers. So, arguably, if somebody gazumps and wants to go through the estate agent, the estate agent would be dutybound to pass that information on. It would be down to the person selling the property to decide whether, if they had previously accepted an offer, to go ahead with it or whether they would change their mind. So maybe that is more about the process of property transaction rather than the behaviour of estate agents.

The Deputy of St. Mary:

Yes, that is absolutely right. The previous review we did was very much on the property transaction process and, as you say, at the end of the day it is largely in the hands of the vendor and the purchaser. I have metaphorical hands being raised for questions. Deputy Tadier, I know you are there, but can I put you on to Deputy Luce first of all?

The Deputy of St. Martin:

Commented [B12]: Alison has some interesting statistics on complaints. Do you want to fire those off now, Alison?

Alison Le B: We have relatively low numbers of complaints in relation to property sales through our advice service.

There may be a number that go to Citizens Advice.

But I have looked back over the last couple of years and we receive about 900 complaints a year. We are looking at the region of between 1 and 3 per cent of those complaints relate to property sales and property transactions.

difficult to get any particular theme out of those because they are such low numbers. So you are talking in the region of between 12 and 20-odd complaints a year.

There were 2 words in one of your sentences there that got to me. I just wanted to ask you about qualifications versus experience. Certainly in some of the representations and letters that the panel have had from estate agents this comes to the fore. Where some estate agents are telling us: "I have been in the marketplace and worked for decades, I have no qualifications but I am hugely experienced. I have done major transactions. Why should I become qualified?" Where do you sit on this? Do you think there is a case for grandfathering here or should we be insisting that everybody who has some sort of interface with the general public when it comes to property has at least shown that they have some basic qualification?

The Minister for Housing and Communities:

There is a definite case for grandfathering and the Jersey Estate Agents Association also believe that. There are highly-reputable men and women who have been working in this industry for decades. It would be an insult to suggest that they need to take an A-level exam to continue work however long until their retirement. It is for new start-ups that it would be reassuring if they had just done the basic qualification. I floated the idea with the Jersey Estate Agents Association of, instead of bringing in a regulator and a new regulation - bearing in mind the capacity that we are at and how law drafting - there would need to be some, but there is a long queue. I wondered if there was merit in giving the Jersey Estate Agents Association a statutory status perhaps so that those who were operating as estate agents would have to be members of the Jersey Estate Agents Association. That would bring them under all the Propertymark and the Ombudsman that we have been talking about. But also the Jersey Estate Agents Association I thought were quite interested in that idea. They would also like to help with training and skilling-up people, conveyancers or estate agents, and to be like a trade body trying to help new people coming into the industry and training them up and apprenticeships and what have you. I am not sure there is anything around at the moment of that ilk. So it was not just to make it difficult for people. It seemed to me there was a general feeling among the Estate Agents Association to see what they could do to make the industry as professional and the best it could possibly be in Jersey and that other estate agents might benefit from that.

[16:00]

The Deputy of St. Martin:

Thank you for that.

The Deputy of St. Mary:

I have Deputy Tadier first and then the director general of I.H.E. (Infrastructure, Housing and Environment) wants to come in. So, Deputy Tadier, you have been very patient, would you like to come in first please?

Commented [B13]: Experience vs quals Do you think there is a case for grandfathering here or should we be insisting that everybody who has some sort of interface with the general public when it comes to property has at least shown that they have some basic qualification?

MH&C: There is a definite case for grandfathering and the Jersey Estate Agents Association also believe that.

It would be an insult to suggest that they need to take an A-level exam to continue work however long until their retirement. It is for new start-ups that it would be reassuring if they had just done the basic qualification.

I wondered if there was merit in giving the Jersey Estate Agents Association a statutory status perhaps so that those who were operating as estate agents would have to be members of the Jersey Estate Agents Association.

That would bring them under all the Propertymark and the Ombudsman that we have been talking about. But also the Jersey Estate Agents Association I thought were quite interested in that idea.

Deputy M. Tadier:

Thank you. There are some good questions and answers there. Alison covered the point I was going to ask or make, which is that gazumping is not something that the experience of an estate agent can control. So I would question the person who gave that anecdote to the Minister. Because it is not within an estate agent's control to manage gazumping. But that said, I am interested in this notion about whether or not qualifications should be introduced versus a code of conduct. A question I suppose I would have is: if qualifications were to be introduced for new entrants into the estate agents market, could that not be seen as a form of protectionism if it was not applied to the ones that already exist? In fact, the Minister touched on it anyway in his answer saying that, if you have lots of people out there who might be very experienced and they might be really good salespeople and they do not need to have a qualification in the same way that journalists do not have qualifications per se, but it does not mean they are not good journalists. But the protection element for the public in all of this is to have a code of conduct, which applies to all estate agents, irrespective of how much experience they have and indeed where they might be practising. So there will be estate agents who are not necessarily based in Jersey but who might sell property in Jersey as well. So could the Minister just maybe talk a little bit more about the potential ways forward?

The Minister for Housing and Communities:

All of that and also you would not want to create a cartel with a trade industry body like that. Protections against that and everything that you have said, Deputy, need to be built in. You will find your briefing with the Jersey Estate Agents tomorrow, they will put it very much better than me, and you will find that illuminating.

The Deputy of St. Mary:

We have had preliminary discussions with them but we look forward to seeing them tomorrow. Again, can I ask the director general, I.H.E., to raise his point?

Director General, Infrastructure, Housing and Environment:

Thank you, Chair. The point I was going to add was really about protected titles. **Because, if you are looking at registrations of various professions, it strays into the area of whether this profession is worthy of a protected title to be an estate agent or practice as an estate agent and you need to pass the following things; you need to be formally registered, formally qualified.** **It might just be** worth the panel looking at other professions that we have got in the Island, whether it be architects, we have obviously got a lot of clinical professions. There is the Regulation of Care Law, which sets out a lot of professions there which have protected titles, whether you are a psychotherapist or whether you are an architect, whether you are a lawyer, whatever it may be. But I guess it sort of opens up a similar sort of line of thought and the purposes, I guess, of those protected titles and protected professions are to ensure a level of quality and standard to the consumer, effectively, so

Commented [B14]: Because, if you are looking at registrations of various professions, it strays into the area of whether this profession is worthy of a protected title to be an estate agent or practice as an estate agent and you need to pass the following things; you need to be formally registered, formally qualified.

It might just be worth the panel looking at other professions that we have got in the Island, whether it be architects, we have obviously got a lot of clinical professions. There is the Regulation of Care Law, which sets out a lot of professions there which have protected titles, whether you are a psychotherapist or whether you are an architect, whether you are a lawyer, whatever it may be.

purposes, I guess, of those protected titles and protected professions are to ensure a level of quality and standard to the consumer, effectively, so you know what you are buying. It might just be worth just a cross-reference or a double check into some of those and whether there are any parallels that might be worth adopting in this case.

Again, the other point I was just going to make on regulation is just, I guess, being clear what sort of behaviours we are trying to regulate out of the market.

you know what you are buying. It might just be worth just a cross-reference or a double check into some of those and whether there are any parallels that might be worth adopting in this case. Again, the other point I was just going to make on regulation is just, I guess, being clear what sort of behaviours we are trying to regulate out of the market. What are the poor behaviours and, therefore, the regulation can be targeted over those actions? If it is a gazumping issue it is very often a point that the vendor gets to or indeed the purchaser. The purchaser behaves a certain way on the steps of the court and so can the vendor. I think it may be appropriate for that to be controlled in a different way by how properties are transacted legally rather than estate agents. I guess I will urge a focus on, what is the problem trying to be fixed? Therefore, the regulation would be quite targeted then to solve the problem.

The Deputy of St. Mary:

Thanks for that and, again, my apologies for misnaming it at the beginning. Yes, again, it is inevitable, I think, on the initial survey that many of the complaints came in about gazumping, and I will take the point but it is maybe the overall procedure which needs amending there. Also taking on board the last point made, the term of estate agent, we are looking at it primarily as regards transactions as to sale and purchase. There is also in the equation the occupation of a letting agent, which maybe will bring in other forms of regulation too. But as to the areas we are looking at that might need monitoring in some ways, we do hear stories of, for instance, agents acting for a vendor and refusing to accept an offer from a purchaser unless the purchaser instructs that same agent to sell his property as well. There are also stories, and one can never verify them, about agents sort of favouring some potential purchasers rather than others. I do not think there is anything we are focusing on which would not already be in a sister set of regulations in the U.K., so that is the sort of area we are looking at in the main, I think.

The Deputy of St. Martin:

I think the other less important but still relevant issues might be the way properties are described, whether they are described properly to the potential purchaser and also just sort of general professional advice as to whether the estate agents offer either the vendor or the purchaser enough proper professional advice that they would normally be expected to do or whether they are just out to get the sale concluded as quickly as possible, no advice needed, just sign the cheque and give it to me sort of attitude. I think it is across the board really.

Commented [B15]: To consider as part of the report

The Deputy of St. Mary:

Yes, on a further point because it keeps on coming up - just a procedural point - we have had allegations of the agent not fully knowing where boundaries are or that a right of way might be going through a drive and things like that. I am not sure of any sure way of encouraging it but certainly it will be useful if lawyers and the estate agents got together before the property is marketed to iron

out some of these problems but, there again, I can appreciate that vendors do not want to go to the expense of instructing a lawyer until they know they have got a purchaser there. There are any number of associated problems I think but it is sort of more procedural more than anything else.

Sorry, it should not be me that is commenting but going back to the consumer protection side and the marketing which the Deputy has just mentioned, I think it is the case that if you falsely market a property that that will be a breach of that particular Act. Am I right in saying that, Minister, Alison?

The Minister for Housing and Communities:

Alison will know but I just wanted to mention that I had a recent absolutely irate email from a woman who had been to see a property and it looked nothing like the photographs and the amount of work that had to be done to it to make it habitable was really not good. This woman was very, very cross about it, so that is something that does exist.

Head of Environmental and Consumer Protection:

Yes. We have comprehensive legislation. I know I am over-selling it a little bit but it is really quite fundamentally powerful legislation and it is very strong on misleading information that is provided to consumers. In fact when it was introduced in the U.K. - and we have an almost identical copy - it led to the repeal of the Property Misdescriptions Act because all of the tools are available in the new legislation to repeal the entire Act in itself. It is very strong on what we call misleading actions but also misleading omissions where perhaps an estate agent fails to give you really important material information that you need to make a transactional decision. There is quite a lot of discussion about to what extent should an estate agent go to discover information or check information out when things do not seem quite right? Within the consumer protection legislation it talks about the fact that if things are not right or alarm bells are ringing, then you should check it out, you should probe, you should challenge. You will find some really good reputable estate agents in Jersey use templates to gather information from the property seller and they will record and get that signed off but they will also check out anything that they are concerned about. There is a line to be drawn though, one does not expect an estate agent to go to the extent of stepping into the areas of becoming a surveyor. But certainly if they received information about a problem with a property and perhaps the deal fell through and they were marketing that property again, it would be incumbent on them to bring that to the attention of prospective purchasers. You cannot hide something that has been revealed.

The Deputy of St. Mary:

Yes, that last point is certainly very good; if they have got actual knowledge of it. But going back to the more general point, some estate agents will presumably argue that estate agents have a reputation of perhaps using more flowery language than you or I might and that that in itself does not ... it might get the purchaser on the hook to start with but that is not a commitment in itself. I just wonder how much loss could be proved by a purchaser aggrieved, they have not been drawn

Commented [B16]: Sorry, it should not be me that is commenting but going back to the consumer protection side and the marketing which the Deputy has just mentioned, I think it is the case that if you falsely market a property that that will be a breach of that particular Act. Am I right in saying that, Minister, Alison?

Alison le B: Yes. We have comprehensive legislation. I know I am over-selling it a little bit but it is really quite fundamentally powerful legislation and it is very strong on misleading information that is provided to consumers.

In fact when it was introduced in the U.K. - and we have an almost identical copy - it led to the repeal of the Property Misdescriptions Act because all of the tools are available in the new legislation to repeal the entire Act in itself.

It is very strong on what we call misleading actions but also misleading omissions where perhaps an estate agent fails to give you really important material information that you need to make a transactional decision. There is quite a lot of discussion about to what extent should an estate agent go to discover information or check information out when things do not seem quite right?

Within the consumer protection legislation it talks about the fact that if things are not right or alarm bells are ringing, then you should check it out, you should probe, you should challenge.

You will find some really good reputable estate agents in Jersey use templates to gather information from the property seller and they will record and get that signed off but they will also check out anything that they are concerned about. There is a line to be drawn though, one does not expect an estate agent to go to the extent of stepping into the areas of becoming a surveyor. But certainly if they received information about a problem with a property and perhaps the deal fell through and they were marketing that property again, it would be incumbent on them to bring that to the attention of prospective purchasers.

into a transaction, which he subsequently finds out on inspection is not quite what he thought it was. It is a grey area I think but I do wonder whether there is much financial recompense a sort of disillusioned purchaser can get in those circumstances.

Commented [BW17]: whether there is much financial recompense a sort of disillusioned purchaser can get in those circumstances.

Head of Environmental and Consumer Protection:

Consumer protection legislation is predominantly around criminal offences, so it goes beyond the losses of perhaps a consumer who had made an offer or had decided to instruct a surveyor and, therefore, immediately becomes out of pocket if it all goes horribly wrong. But action could be taken against an estate agent where they have misled consumers to go and even view. It is such an incredibly broad piece of legislation, it covers the end to end. You could commit an offence by misleading a number of people to just view a property and even if there was no offer ever made.

Alison Le B: Consumer protection legislation is predominantly around criminal offences. *(what about redress awarding financial compensation? Can agents be penalised for not following the TPO redress process?)*

The Deputy of St. Mary:

Okay. But presumably it may be that an unfortunate purchaser in those situations might not trouble to take it too far, given that they are not going to get anything out of it, apart from the satisfaction of seeing the estate agent duly disciplined but that is by the way.

The Deputy of St. Martin:

I do not want to prolong this particularly further but we do know, Alison, that we have been informed that in a similar sort of vein under the Financial Crime Strategy that there has been for many years a client due diligence requirement of estate agents. But we know anecdotally that the level of compliance is very, very low and some estate agents see it almost as putting them at a competitive disadvantage because obviously they have much more work and expense, resource to throw at it. It is interesting that we only have 70 estate agents in Jersey that are registered with the Association. I guess it must be incumbent upon us, if possible, to try to get everybody up at least to the same speed. We know that the J.F.S.C. (Jersey Financial Services Commission) are going to tighten up on this and all estate agents are going to be up for the same sort of level of scrutiny. I think what I am saying is in the past, in the same way that you were just talking about on a slightly different subject, we know that some estate agents have certainly been up to the mark and others have not. It will not be long, certainly as regards financial crime regulations, that they will not have any option. They are going to have to meet these proceeds of crime money laundering laws and orders and they will not have any option; they will be taken to court otherwise.

Commented [BW18]: error

The Deputy of St. Mary:

Okay. I think we are getting towards the end of our questioning. Just a couple of general points, if I may, I suppose the main one is to which Deputy Tadier referred to earlier.

[16:15]

We cannot anticipate what our review might include but if we did come down to the conclusion that some code of conduct was required, I think you have said, Minister and Alison, that this would need legislation, then where would it feature in government work streams as a priority? Is it feasible it could be done during the course of this term?

The Minister for Housing and Communities:

The legislation would not be within my department, it would be Economic Development, would it not, Alison?

Head of Environmental and Consumer Protection:

It would seem to fit with Economic Development, yes.

Commented [BW19]: Letter sent to EDD Min

The Minister for Housing and Communities:

That is maybe a question for that Minister, yes ...

The Deputy of St. Mary:

The director general would like to intervene here, thank you.

Director General, Infrastructure, Housing and Environment:

Yes, if I can help just on timings. I think it probably is more Economic Development-related, rather than Housing, although ...

The Deputy of St. Mary:

I appreciate that, yes.

Director General, Infrastructure, Housing and Environment:

... agents work in both residential areas, as well as the commercial property field. It would be, I guess, again just a question back to the panel as to whether this is about residential estate agents or some agents also work in the commercial property field and also some agents also act as property landlords or property agents on behalf of landlords. I guess some of them have multiple hats. I think just on a legislative perspective, if a proposition was brought then obviously then there would be a, is it likely in this term of Government? I think it is very unlikely in this term of Government due to just the timescales of getting propositions agreed, the law is drafted and agreement thereafter into sort of Privy Council. I think probably the shortest period of time that would be, with a fair wind it is probably an 18-month window to get something agreed in the Assembly and then on the statute books. At the very quickest I would have thought it is about that time, sometimes it is a bit longer than that as well, depending on debates and amendments and re-workings of the law sort of thing.

Commented [BW20]: Consider timescales/objectives further

Commented [BW21]: DG estimated timescale

The Deputy of St. Martin:

But would it be fair to say, Andy, in the precursor to that 18-month period Government could indicate they want all estate agents to sign up to the Association and they could issue them a nice sticker to go in the window of the shop to say we are ...

Commented [BW22]: Recommendation?

Director General, Infrastructure, Housing and Environment:

Yes, exactly, I was going to say that. Yes, the Eat Safe is, effectively, a self-regulatory standard that we have introduced something around food standards that we inspect but, effectively, to get that mark on the door is it becomes a self-regulatory thing in the industry and people can vote with their feet, effectively. That could be the start of a journey towards regulation and I guess it could be staged in that way.

Commented [BW23]: Look at Eat Safe scheme

The Minister for Housing and Communities:

Yes, like A.B.T.A. (Association of British Travel Agents), for example, I mean few of us would book our holiday in the past without it being an A.B.T.A. travel agent. I think there is work to do as well on informing the public if we went down that line because we know what the market is like and we do not want vulnerable people to be taken advantage of and that might be a safeguard. I think it is probably fair to say that estate agents are regulated in the majority of jurisdictions throughout the world. For instance, in small-island jurisdictions I believe Bermuda, for example, have legislation that would fit well here, something to learn from. As I say, you will get more information on that from the Jersey Estate Agents' Association when you meet them.

Commented [BW24]: Recommendation to gov about ensuring adequate comms goes out in relation to upcoming changes.

Commented [BW25]: Look at Bermuda estate agent regs

The Deputy of St. Mary:

Thank you. Just to almost back up what has just been said, presumably it is not inconceivable that a proposition could be approved during the course of this Government, basically announcing the skeleton plans, making provision for regulations to be brought in at a later date; that would be a message to the public, would it not?

Commented [BW26]: Plan for the Panel's review

The Minister for Housing and Communities:

Yes.

The Deputy of St. Mary:

Right. In my part I have got no more questions. Deputy Tadier, sorry, if I have not been able to see your hand from time to time but is there anything else you wish to ask?

Deputy M. Tadier:

I did, yes. I think the question 3 I have been allocated has largely been asked, has it not, so I do not need to ...

The Deputy of St. Mary:

I am afraid, yes.

Deputy M. Tadier:

I did have something I just wanted to follow up quickly with Alison or whoever wants to answer it, is that I guess the question again is to ask: **to what extent the general consumer protection that covers all consumers for all businesses is sufficient?** I guess the question also about where the line is between the principle of *caveat emptor*, so buyer beware in terms of buying a property versus the obligation to disclose, bearing in mind that these are sales people. I am not comparing them to car salesmen but they are trying to sell products and they are not trying to tell you that their product is bad when you might have certain problems with it. I guess that is one question. Then to do with the manoeuvrability of the law, if you like, from a consumer's point of view, how easy is it for people to make a complaint about an estate agent if they wished to through your body? Does that happen very often? In terms of the burden of proof, the defences and then the penalties, do you think it is a feasible methodology to pursue or does it need a separate system, do you think? Sorry if that is a bit verbose.

The Deputy of St. Mary:

That was directed to or has been to Alison.

The Minister for Housing and Communities:

It is definitely one for Alison.

Deputy M. Tadier:

I think so, just from I presumed the Minister ...so, yes, it makes sense.

Head of Environmental and Consumer Protection:

Okay. I do not know if I have got all of the questions down there but I will try and have a stab and then if there is anything I missed out let me know. I think that it is very easy to make a complaint to the Consumer Advice Service through numerous ways; telephone, email, whatever. In terms of moving through the legislation, it was designed in a way that there were various routes, without having to go straight to full criminal or nothing. We introduced a number of other layers, so one of which is our powers in the legislation for the chief trading standards officer to enter into undertakings with businesses, effectively, where they will admit that they have done something wrong and they will cease and desist the course of conduct. That can be shared with the Attorney General and, if

Commented [BW27]: to what extent the general consumer protection that covers all consumers for all businesses is sufficient?

how easy is it for people to make a complaint about an estate agent if they wished to through your body?

Alison Le B: I think that it is very easy to make a complaint to the Consumer Advice Service through numerous ways; telephone, email, whatever.

do you think it is a feasible methodology to pursue or does it need a separate system, do you think?

In terms of moving through the legislation, it was designed in a way that there were various routes, without having to go straight to full criminal or nothing.

We introduced a number of other layers, so one of which is our powers in the legislation for the chief trading standards officer to enter into undertakings with businesses, effectively, where they will admit that they have done something wrong and they will cease and desist the course of conduct. That can be shared with the Attorney General and, if necessary, it can also be published.

Effectively, there is a name and shame provision and that is quite a relatively easy route to go down to come to a satisfactory resolution if the business is willing to admit and change their course of action.

There is another alternative route where the Attorney General can take an injunction against that business to cease and desist that course of conduct, which is incredibly powerful because then if you breach a court order then there are some very serious penalties within the court.

The third route of course is taking criminal action and it being an offence, which is a level 3 fine under that legislation. But there is quite a lot to prove in terms of the legislation because we have to look at transactional decisions and you have to look at the behaviour of consumers to determine whether the action of the business altered the behaviour of the average consumer and that can quite often be a challenging point to prove, should I say?

Consumers would also be able to take action, for example, in the Petty Debts Court and if there was evidence of a breach of the consumer protection legislation, then I think that would make their civil case stronger and easier to prove, as would a published undertaking or an injunction

necessary, it can also be published. Effectively, there is a name and shame provision and that is quite a relatively easy route to go down to come to a satisfactory resolution if the business is willing to admit and change their course of action. There is another alternative route where the Attorney General can take an injunction against that business to cease and desist that course of conduct, which is incredibly powerful because then if you breach a court order then there are some very serious penalties within the court. The third route of course is taking criminal action and it being an offence, which is a level 3 fine under that legislation. But there is quite a lot to prove in terms of the legislation because we have to look at transactional decisions and you have to look at the behaviour of consumers to determine whether the action of the business altered the behaviour of the average consumer and that can quite often be a challenging point to prove, should I say? I think the other point that I would make is that the legislation does not offer any provision for redress to consumers, it is about the business and the practices of the business, so, arguably, there is a hole there. If a business had entered into an undertaking, then you would expect them to provide redress to the consumers affected by that practice. Consumers would also be able to take action, for example, in the Petty Debts Court and if there was evidence of a breach of the consumer protection legislation, then I think that would make their civil case stronger and easier to prove, as would a published undertaking or an injunction. That answers some of your questions. I think there was another question, was there not? Have I missed one?

Commented [BW28]: Key: The TPO is an approved means of redress

Deputy M. Tadier:

No, I think that is the main part really and I guess the other bit, I suppose, is just a rhetorical one, which I think you touched on anyway, is the balance between the duty of care. When they are trying to sell properties they want to sell a property for the maximum price and human nature will want to try and gloss over some of the less palatable parts of any sale.

Head of Environmental and Consumer Protection:

That is a really good question and a point that you have made because the legislation is about ensuring that consumers make informed decisions; that does not mean that the legislation is there to make sure they make good decisions and of course you can be a brilliant salesperson and you can be very persuasive. There are mechanisms in place where we can look at aggressive practices, so the way in which they are selling, for example, being persistent or targeting groups of vulnerable consumers. But we cannot regulate for in this legislation with consumers making poor decisions.

Deputy M. Tadier:

Thank you, very helpful.

Head of Environmental and Consumer Protection:

Thank you.

The Deputy of St. Mary:

I think, Minister and Alison, we are all done at this end and Mr. Scate. Thank you all for your contributions; that has been most helpful to us and you are the first witnesses in our hearing. That will store very well, thank you, and we will follow that with our estate agents and others. Again, thank you for your contributions and I am sure we will be in touch in due course.

The Minister for Housing and Communities:

It is our pleasure, Chair, and thank you for inviting us. As soon as I saw this I knew that Alison would be the right person to bring along with me and I am grateful to her and to Andy and William, who we did not hear from but obviously he did not need to interject. Thanks to all of them.

The Deputy of St. Mary:

Yes, well my thanks to them too. Thank you all and I formally declare the meeting closed. Thank you.

[16:26]