



# **States of Jersey, States Assembly**

## **Economic and International Affairs Scrutiny Panel**

### **Regulation of Jersey Estate Agents**

Response from

# **The Property Ombudsman**

(11 November 2021)

## 1. About the Property Ombudsman

- 1.1** The Property Ombudsman (TPO) has been resolving consumer disputes against property businesses since 1990. TPO's skilled workforce provide an ombudsman service to consumers for property sales, lettings, residential leasehold management, search organisations, chattels auctions, buying agents, buying companies, landlords, surveyors, international and commercial property.
- 1.2** TPO is an independently governed 'not for profit' organisation. There is no cost to the consumer or the taxpayer and any surplus income is invested back into providing the additional functions required of an Ombudsman service and service improvement. Our credentials and information on our Membership is set out in Appendix 1.
- 1.3** In 2020, TPO:
- Helped 39,285 people (a 29% increase from 2019) – providing advice, guidance and signposting relevant to their issue
  - Resolved 5,707 complaint cases, 1,526 through facilitated early resolution
  - Made 2,473 financial awards totalling £1.9 million
  - Ensured a 99% business compliance rate with awards
- 1.4** As at December 2020, there were 40,097 TPO member businesses offering agency and property related services to landlords, tenants, buyers, sellers, leaseholders and freeholders. 99% of TPO agency members have voluntarily chosen to follow TPO's Estate and Letting Agent Codes.
- 1.5** TPO membership and complaint statistics for Channel Island Agents are included in Appendix 2

## 2. About our response

**Name:** (REDACTED)

**Email:** (REDACTED)

**Organisation:** The Property Ombudsman (TPO)

## 3. TPO Response to the Panel's Questions

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

Regulation as a framework can help improve and professionalise working practices resulting in greater consumer confidence and trust in estate agents and the properties they are marketing. The main elements of a regulatory framework will invariably include a requirement for training / qualifications, usually set against a regulator's code of practice and/or legal responsibilities. In respect of codes, these will also set out the standards of behaviour expected of agents.

While it is the interests of agents to have an excellent level of knowledge about the properties they market, not all will take a consistent approach to the manner in which they establish and conduct seller and buyer relationships – meaning consumers may receive a different experience depending on the agent. In practical terms, this could translate into buyers receiving inconsistent information about either aspects of the property itself or the details and status of the proposed transaction.

As a principle, the Property Ombudsman believes that all buyers and sellers should be equipped with the right information to allow them to make informed choices. This ensures all parties are treated fairly while actively reducing the number of failed transactions, saving consumers and agents time and cost.

The UK does not currently have a property regulator or a regulatory framework and concerns that consumers were not always being treated equally and/or fairly led to the establishment of the Regulation of Property Agents working group and its subsequent report. Underpinning these concerns was the increasing number of consumers raising

issues regarding their expectations of their relationship and the services provided by agents<sup>1</sup>.

Based on the cases referred to the Property Ombudsman, while we do not have a concern about agents' level of knowledge about the properties they market, we do see a significant number of enquiries and disputes where it is apparent that consumers have experienced communication shortcomings surrounding either aspects of a property, the transaction or the agent's services.

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

Adhering to a code of conduct which is owned by a regulator and which includes standards relating to ethical behaviour as well as legal requirements, would help to encourage a positive cultural change in the agency profession, especially in relation to the manner in which consumers such as buyers or tenants are dealt with.

In the absence of a regulator, membership of a body that requires its members to adhere to robust and accessible code of practice is helpful in encouraging consistent and professional behaviour. However, a key element that is missing is the ability for all consumers to access an independent third party which can provide redress measured against the standards set out in a code and, thereafter, provide insight to policy makers about emerging or systemic issues to assist identifying areas for consideration.

In this respect, as an Ombudsman, the Property Ombudsman provides the UK Government with a monthly data set for enquiries, complaints and membership to help them identify areas that require policy consideration. We are able to do this under the mandatory redress arrangements that exist for UK agents. Furthermore, we are also able to use this data and insight to provide appropriate consumer guidance, advice and signposting which, along with the requirement to feedback best practice recommendations to the sector, is a key service which only Ombudsmen are required to provide and which assists in preventing disputes from occurring in the first instance (Appendix 2).

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<sup>1</sup> [Annual Reports \(tpos.co.uk\)](https://www.tpos.co.uk)

We would therefore recommend that the Jersey government consider the benefits of recognising a single ombudsman, that it is mandatory for agents, independent from industry and which would use its data and insight to assist the Jersey government and the professional bodies gain a greater understanding of the issues consumers experience.

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

The proposed framework for regulation includes a regulator, enforcement and an ombudsman which, working together, underpin the objective of professionalising the agency profession to the extent that the focus is placed on prevention before enforcement. If implemented, this framework would encourage a cultural shift within the sector in the UK to encourage better agency services and behaviours and improve consumer trust and confidence in the industry.

In relation to the Channel Islands and specifically Jersey, the level of complaints (Appendix 2) indicates that although some people may experience what they perceive as bad practice, often these are communication or education shortcomings arising out of mismanaged expectations.

In the absence of full regulation, access to Ombudsman redress can provide both a safety net and necessary intelligence to identify where targeted intervention – either regulatory or enforcement – might be required, allowing a proportionate response based on the nature of the issue.

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

When agents are appropriately qualified they gain the professional skills they need, provide a level of competence and reassurance to customers and fellow agents, and show their commitment to the profession by investing themselves within it.

While every day skills can be developed ‘on the job’, the standardisation afforded by set qualifications can help prevent bad practice that may develop in a less formal learning regime and/or through self-certification.

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

The Property Ombudsman operates codes of practice for all UK agents and estate and letting agents in the Channel Islands. The Ombudsman has these codes because there is currently no regulator for the industry. It is normal for the regulator to hold the codes and the Ombudsman to act as a critical friend.

Our experience of running the codes and ensuring they remain updated and relevant has been extremely positive, especially as professional bodies and individual agents are always keen to contribute.

The fact that the codes are not enshrined in statute has enabled amendments to be made without imposing on government time, allowing them to be reactive to changes within what is often a dynamic sector. However, as stated earlier, in an ideal world, the codes would be held by a regulator with stakeholders such as professional and consumer bodies, along with the ombudsman and trading standards, feeding into their development. In this respect, the Property Ombudsman would be open to discussing the potential of transferring our Channel Island Codes to a potential regulator, should the Jersey Government consider this of benefit.

**4. Further commentary**

Throughout the 30 years that the Property Ombudsman has been in operation, we have been supportive of the view that a sector regulator equipped with a robust and balanced code of practice and underpinned by an enforcement body and an independent ombudsman would bring significant benefits - not just for consumers but for the businesses that operate in the sector itself. The Regulation of Property Agents report crystallises the collective view of how a consumer protection framework should operate for the biggest purchase a consumer is ever likely to make.

The Property Ombudsman was a key contributor to the Regulation of Property Agents Working Group and has since convened a steering group made up of industry and consumer representation to oversee the drafting the recommended Overarching Code. This is co-created with agents, consumers and other stakeholders and has had cross party

support for its development. The code is currently being considered by the UK Government for implementation.

With the above in mind, the Property Ombudsman would be happy to assist further in providing additional insight into the different aspects of potential regulation, a code of practice and further statistics and insight into the sorts of issues consumers in the Channel Islands refer to the Ombudsman.

## **Appendix 1: The Property Ombudsman credentials:**

- Validated by, and a full member of the Ombudsman Association
- Approved by the Department for Levelling Up, Housing and Communities (DLUHC) as a provider for letting and managing agent redress under the Enterprise and Regulatory Reform Act 2013
- Approved by the National Trading Standards Estate and Letting Agency Team (NTSELAT) under the Consumers, Estate Agents and Redress Act 2007
- Approved by NTSELAT and Chartered Institute of Trading Standard's (CTSI) as an ADR body under the Alternative Dispute Resolution for Consumer Disputes (Competent Authorities and Information) Regulations 2015
- Codes of Practice approved by CTSI's Consumer Codes Approval Scheme (CCAS)

TPO has been successfully operating Codes of Practice for 20 years. TPO's Codes set out the professional and other standards expected of agents who have agreed to follow those obligations. TPO's Letting Agent (England) and Estate Agent (England, Wales and Northern Ireland) Codes are the largest codes approved by CTSI's CCAS.

## **Appendix 2: Membership and Complaint Statistics for Channel Island Agents**

### **Ombudsman Membership:**

- As at 10 November 2021, there were 27 Channel Island agents registered as TPO members.
- Of these agents, 22 are located in Jersey and 16 have stated that they are members of the JEAA / PropertyMark.
- Alongside residential sales, 16 of the 22 Jersey agents also undertake residential lettings.
- All Channel Island agents have voluntarily agreed to follow the appropriate TPO Code of Practice.

### **Complaints:**

In 2020, five consumers contacted the Ombudsman about problems concerning property sales. In each case, our front-end consumer service provided assistance to enable the consumers to resolve the issues without the need for a formal complaint to be accepted for investigation.