

States of Jersey
States Assembly



États de Jersey
Assemblée des États

Public Accounts Committee



An investigation into the sale of houses under the **Jersey Homebuy Scheme** Interim report

Presented to the States on 21st April 2011

P.A.C 1/2011

Vice-Chairman's Foreword

by Senator Alan Breckon

- i) I had previous knowledge of the Homebuy Scheme as Chairman of the Health, Housing and Social Security Scrutiny Panel. I can say that although the States were led to believe and indeed given assurances that the details would be approved – “signed-off” by Scrutiny, this was never done officially.
- ii) No policy or transparent process was presented to Scrutiny Panel by either the Minister for Housing or Planning. It appears that the whole process was triggered by an election manifesto promise made by Senator Freddie Cohen.
- iii) Whilst this may be commended on one hand it is condemned on the other because if a Scrutiny Panel is perceived to be using the process for an individual's political agenda, there are adverse comments.
- iv) Sadly, although having the best of intentions at the outset, the Homebuy Scheme as it has been progressed to date has proven to not be either fit for purpose or sustainable.
- v) Some of the planning matters were agreed retrospectively.
- vi) Legal advice given was that the scheme was not fit for purpose – this was ignored and not shared with either the States as a whole in the debate or Scrutiny later.
- vii) The States whilst debating P74/2008 were given a number of assurances that Scrutiny and others would “sign-off” the Scheme. Senator Cohen said, during his presentation for the Proposition:

“I have given an absolutely clear commitment that we will not proceed with the scheme until Scrutiny is happy with the mechanisms of operation.”¹

This raises two issues:

(a) It was not Scrutiny's role to shadow a policy that was being made up ‘on-the-hoof,’ and then ‘sign it off.’

(b) The group that was established consisting of other politicians was all but useless and played no significant part in the outcome – indeed I would say that Members of the Group were compromised.

¹ Hansard, 10th July 2008

- viii) The establishment of the Gateway System does not appear to be either transparent, fair to all and fit for purpose for future use.
- ix) The States were given the impression that there were families waiting and desperate to move in to these houses, this was not the case.
- x) Evidence now suggests that the Planning and Housing Ministers' intervention into the sale of Housing through the Homebuy Scheme was not timely because;
 - a) The house prices agreed were maintained in a falling market.
 - b) Deposits and funding for buyers were very difficult to achieve. To give comfort to lenders the Housing Department had to become the "not for profit" provider.
- xi) The price paid to the developer increased because housing that was intended for social renting was re-classified to Homebuy status, therefore the price was uplifted by up to £80,000.
- xii) There was and still is unmet demand for 3 bedroom rental properties. According to the States, rental waiting lists have since increased, which indicates that Homebuy has effectively increased waiting time for rental properties.
- xiii) The buyers have been left exposed to the market. Save for having lots of money themselves there is no short-term exit method because the full market value of the property would need to be paid to get out. This could be problematic for a number of reasons:
 - a) They could be exposed to negative equity and/or face a loss.
 - b) Another first time buyer may encounter problems raising finance for a deposit (up to 20% of the value) or for ongoing house purchase finance in changed financial markets.
 - c) There is no favourable legal clarity about due process for separation or inheritance, neither is there any Ministerial discretion.
- xiv) There is no adequate reason or explanation as to why there has been a variance of percentage discount – properties that were "valued" with £15,000 price differences have been sold at the same price.
- xv) The Public Accounts Committee has still to uncover some of the information, some of which appears to be undocumented 'who said what to who and when.' So we may never know. However, a final report will be produced.
- xvi) A request for a 'reference back' was defeated in the States with general calls to say 'for heaven's sake let's get on with it – we have people waiting and we are letting them down.' This was an emotive and ultimately inaccurate appeal which our Committee considers inappropriate for proper States debate.
- xvii) It appears that the Homebuy Scheme demonstrates the worst aspects of Ministerial Government. The States have approved an incomplete policy based on future assurances which have not materialised. There were no appropriate checks and balances from Scrutiny, the Working Group, or

anybody else. Neither the Minister for Planning or Housing the Assistant Minister for Housing appear accountable for the Scheme.



Senator Alan Breckon
Vice-Chairman, Public Accounts Committee

1. Key Findings and Recommendations

2.7 Key finding

There was a commitment made during the debate on P.74/2008 to hold off implementing the Homebuy policy until it was fully formed and Scrutiny content. However this was not adhered to. It is also important to note that it is not the role of Scrutiny to 'approve' or 'sign off' policy. As stated by the Comptroller & Auditor General *'it is not normal for a Scrutiny Panel to be asked to give approval to a scheme.'*

3.4 Key finding

The Solicitor General recommended as well that no homes should be sold by the developer until that Homebuy agreement had been formally put in place and yet a number of houses were sold by the developer prior to that.

4.8 Key finding

Therefore it could be said that these property transactions were made without the consent of the States Assembly, because the terms of the transaction agreed were at odds with what was put before the States and the information supplied was opaque and confusing.

5.2 Key finding

The Homebuy Scheme was never formally put to the States Assembly in a transparent and comprehensive manner. What was envisaged as a 'pilot' or trial scheme seems to have been implemented in full without proper checks and balances.

6.9 Key finding

The discount was increased from 35% to 42% without a Ministerial Decision being made. There was a significant breakdown in the decision making process, and there is no transparency as to how decisions were arrived at. Altogether this would appear to represent a clear breach of Ministerial guidelines.

7.3 Key finding

To date, our Committee is unclear of exactly how or when, or by who, the valuation or discount was arrived at. It is unlikely that a fair, objective or transparent formula was applied when establishing the price of the properties.

8.5 Key finding

There was no clear or defined process for Ministerial discretion in regards to potential purchasers' credentials.

8.9 Key finding

It is uncertain whether all of the individuals who benefited under the Scheme actually required financial assistance in the shape of preferential terms for house purchases.

9.4 Key Finding

The definition of first time buyer is less than transparent.

10.5 Key finding:

The inflexible contract could potential result in hardship for the existing purchasers and their heirs in the future.

11.4 Key finding

The Homebuy scheme stretched the existing legislation to its very limits.

12.11 Key Finding:

Homebuy purchasers were exposed to financial risk with insufficient warning.

13.1 Key finding:

It was confirmed to the Committee during the hearings that no serious thought had been given by Housing to the possibility of a fall in house prices and the implications that would have on the end purchaser.

13.5 Key Finding

There was a fall in the value of three bedroom houses between quarter 3 of 2008 and quarter 2 of 2009, yet the Housing Department did not see the need to stress test for falls in property value.

14.2 Recommendation

If further transactions under the Homebuy Scheme are envisaged, new primary legislation needs to be introduced to establish the framework for a true shared equity scheme. This would mean that the public would have increased control over its interest in the equity of a property. Not only does this echo the opinion of Dandara's legal representative, it also is in line with Solicitor General's original advice in December 2007.

14.3 Recommendation

The quantum of deferred payment on offer (essentially the discount offered) should be based on an objective formula rather than through discussion with the developer.

14.4 Recommendation

The Gateway policy should be tightened up in order to eliminate unfairness and ambiguities as far as is possible.

14.5 Recommendation

A comprehensive Homebuy or shared equity policy should be put to the States Assembly for approval (set within the proper context of legal advice) before the scheme is extended to any other properties.

14.7 We are concerned that fundamental decisions such as the price of the properties and the discount settled on were reached without any formal Ministerial Decision. In future, all significant matters of policy involving public funds must be subject to Ministerial Decision and / or approval of the States.

2. Introduction

2.1 Subsequent to a report by the Comptroller and Auditor General entitled 'Asset Disposals by the States of Jersey during 2009' in December 2010, the Public Accounts Committee held public hearings in January 2011 in order to gather further evidence.

2.2 This paper is an interim summary of the Committee's current position on the Jersey Homebuy Scheme, pending further work by the Comptroller & Auditor General.

2.3 The comments on the amendment to the Island Plan Policy H1 (P.74/2008) by the Health, Housing and Social Security Scrutiny Sub-Panel (presented to the States on the 9th July 2008) made it clear that in their view, the Homebuy Policy had a long way to go before it was ready to be implemented. *'It is clear that that much more work needs to be done before this policy can be presented to the States as fully formed and ready for implementation.'*

2.4 Most notably:

The Ministers for Planning and Environment and Housing offered an unconditional undertaking to the Sub-Panel that if the principle of Jersey Homebuy was accepted by the States, they would commit to submitting the detailed plans for Scrutiny approval before taking any further action.

Scrutiny could thus reserve sign-off on the proposals until it was satisfied with all the details that remain to be developed, to include the Gateway mechanism, legal arrangements, allocation procedures, etc.

2.5 However, in the event, the Scrutiny Panel **did not** receive detailed proposals of the Homebuy Scheme before the transactions went ahead. For example, the Gateway Policy was never shown to the Scrutiny Panel, and this Committee have only had sight of it in January 2011, well after the transactions had been carried out.

2.6 There was no policy for Scrutiny to approve and no formal record of the scrutiny sub panel having been satisfied that their concerns had been addressed, or any minutes or records kept to substantiate this.

2.7 Key finding

There was a commitment made during the debate on P.74/2008 to hold off implementing the Homebuy policy until it was fully formed and Scrutiny content. However this was not adhered to. It is also important to note that it is not the role of Scrutiny to 'approve' or 'sign off' policy. As stated by the Comptroller & Auditor General *'it is not normal for a Scrutiny Panel to be asked to give approval to a scheme.'*²

3. Legal Advice

- 3.1 On 2nd August 2006 the Solicitor General wrote to the Minister for Planning and Environment to advise that any scheme whereby a first time buyer bought a share and the vendor retained a share would run into problems. On the 5th December 2007, the Solicitor General advised that in order for the Homebuy Scheme to be properly implemented, then adequate legislation should be put in place from the outset.
- 3.2 Further, on 3rd January 2008 the Solicitor General wrote to the Minister for Planning and Environment 'the only way of making perfectly certain that the scheme is workable is to introduce it by legislation.'³
- 3.3 In practice it appears that no heed was taken of this legal advice, and the Homebuy Scheme was pushed through without a suitable legal framework.

Senator B.E. Shenton:

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

Head of Conveyancing, Law Officers' Department:

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

Senator B.E. Shenton:

Was this condition adhered to by Dandara the developer?

Head of Conveyancing, Law Officers' Department:

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

Senator B.E. Shenton:

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

² Asset Disposals by the States of Jersey during 2009- report by the Comptroller & Auditor General, p. 23

³ Letter from the Solicitor General to the Minister for Planning & Environment, 3rd January 2009

Head of Conveyancing, Law Officers' Department:

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

Senator B.E. Shenton:

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

Head of Conveyancing, Law Officers' Department:

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

Senator B.E. Shenton:

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

Head of Conveyancing, Law Officers' Department:

Yes.⁴

3.4 Key finding

The Solicitor General recommended as well that no homes should be sold by the developer until that Homebuy agreement had been formally put in place and yet a number of houses were sold by the developer prior to that.

- 3.5 In addition, when the scheme was presented to the States it was not set in context of the legal advice supplied – legal advice was not even mentioned in the accompanying report. Neither was the States Assembly informed that there could be legal problems associated with the method of sales.

4. Was the information put before the States Assembly sufficient?

- 4.1 Proposition 74/2008 'Jersey Homebuy Housing – Amendment to Island Plan Policy H1. The proposition was to change the island plan in order to define Jersey Homebuy Housing within the definition of category A housing (category A housing being 'need' housing i.e. housing for those who cannot compete in the open market).
- 4.2 Firstly, the report accompanying P74/2008 makes no mention of the Solicitor General's advice above. Therefore the States Assembly was not made fully aware of the legal context of the scheme and Members were not in a position to make a fully informed decision.
- 4.3 Secondly, it should be noted that P74/2008 purely and simply re-classified Homebuy sites as category A housing (need housing) rather than category B (open market housing).
- 4.4 However, Ministerial Decision MD-PH-2009-0035 of 4th June 2009 authorizes the 'purchase of 46 residential units at La Providence from Bel Royal (Jersey) Limited and the onwards sale to 46 purchasers **in accordance with P74/2008.**'

⁴ Public Hearing with the Head of Conveyancing, Law Officers' Department, 10th January 2011

- 4.5 But as noted above, P74 was simply a re-classification of Homebuy properties under the Island Plan. It in no way authorized, or even mentioned, the States becoming involved in property transactions.
- 4.6 That being said, our Committee does acknowledge that a subsequent Ministerial Decision by the Minister for Housing on June 12th 2009 (MD-H-2009-0055) requested that the Minister for Treasury and Resources should accept the recommendation for transactions ‘in accordance with the provisions of Standing Order 168 (which relates to land transactions)... *‘and authorise the Greffier and Attorney General to sign the necessary contracts on behalf of the Public.’* Accordingly, the transaction was presented and approved as if it were a stand alone property transaction, rather than a ‘Homebuy’ transaction.
- 4.7 However we maintain that the process of presenting this to the States for approval and the process by which the Ministerial Decision was reached was rather tenuous and less than transparent. Although the decision was unchallenged, the process by which it was made would have meant that only a very tenacious individual would have noticed a problem.
- 4.8 Key finding**
Therefore it could be said that these property transactions were made without the consent of the States Assembly, because the terms of the transaction agreed were at odds with what was put before the States and the information supplied was opaque and confusing.

5. Was the scheme sufficiently thought through before implementation?

- 5.1 *“I think certainly the La Providence pilot scheme has worked inasmuch as we have 46 families in houses and it has not cost the States anything. I think the actual scheme, to me, it seemed a little bit hurried and, to be truthful, I think it was a little bit half-baked.”*

(Head of Conveyancing, Law Officers’ Department at a public hearing, 10th January 2011.)

- 5.2 Key finding**
The Homebuy Scheme was never formally put to the States Assembly in a transparent and comprehensive manner. What was envisaged as a ‘pilot’ or trial scheme seems to have been implemented in full without proper checks and balances.
- 5.3 It is also worthy of note that the timing of the above Proposition was at the eleventh hour, as the Amendment to the Island Plan P74/2008 was some months after the price of the properties had been agreed and long after the houses were already being developed.

- 5.4 Therefore when asked to approve the transactions, the Minister for Treasury and Resources was presented with something of a *fait accompli* and indeed he registered his concerns regarding this in June 18th 2009 via a memorandum to the Chief Officer Resources, approving the MD with the caveat that it was 'not an approval for a Homebuy Scheme' and that there were several issues to be addressed before his reservations would be put to rest.

6. Why was the discount increased from 35% to 42%?

- 6.1 Our Committee is unable to establish who made the decision to increase the discount to purchasers and when this decision was made. We have been unable to locate a formal record of a meeting where this was decided and there is certainly no Ministerial Decision.
- 6.2 During a hearing on 11th January 2011, the Chief Officer for Housing mentioned a meeting of the 4th February 2009 attended by the Minister for Planning and Environment, Deputy Sean Power (Assistant Minister for Housing at the time) and representatives from Dandara, the developer of the site. Housing Officers were not present. Interestingly, this is in direct contradiction to the press release issued on 26th April 2009 by Deputy Power in his capacity as Assistant Housing Minister which states that *"I have, **with** the Housing Department's Chief Officer, agreed an average price of £260,000 each or £11,960,000 for the 46 houses. This represents a 42% discount on the fair market price..."*⁵
- 6.3 At this meeting the Chief Officer for Housing reported at the hearing⁶ that it was made clear that the discount of 35% as agreed would place the properties out of the reach of the purchasers as defined by the Gateway system (the process by which potential purchases were assessed according to certain criteria). Therefore the discount was increased to up to 42%. Incidentally, the Chief Officer confirmed that this was not a formal Ministerial Decision. He also confirmed that in his opinion, it should have been.⁷

In response to this point Deputy Sean Power (Assistant Minister for Housing at the time of the above meeting) has made the following response to the Public Accounts Committee: *"One of the big issues was that the Housing Department inherited a Planning Department report and proposition and there was no template to deliver. It was a pilot scheme and as such, the Housing Department had to create a whole new approach to its role in delivering and placing these homes to the end users. That involved the Gateway scheme, the appraisal scheme, the negotiations with the Banks, the selection of the final 46 occupiers and the two step Royal Court process. It was an extremely compressed and difficult three months, but it was achieved. As far as I am aware, the Planning*

⁵ Press release issued by the Assistant Housing Minister, 26th April 2009

⁶ However the Committee notes that the Chief Officer for Housing was not present at the above meeting, and the PAC is not aware of a written record of the decisions he mentions.

⁷ Hearing with Chief Officer for Housing, 11th January 2011

*Obligation Agreement to finalise Homebuy was never produced by P&E, despite numerous subsequent meetings between HSG and P&E.*⁸

- 6.4 The question raised regarding whether the discount should have been the subject of a Ministerial Decision is in line with R.C80/2005 'Recording of Ministerial Decisions', where the decision to increase the discount clearly falls within the guidelines of a decision which should be recorded, as it involves a) a matter of policy and b) a decision to allocate significant resources.
- 6.5 With extra discounts of up to 7% as an extra interest bearing charge, the price of £260,000 became affordable. The Chief Officer for Housing stated in the hearing that the Housing Officer had not been present at this meeting, but that the Planning Officer was present and that the latter had made a note of this meeting. Conversely, in another hearing on 10th January 2011, the Chief Officer of Planning said that neither the Planning Department nor the Minister for Planning was involved in the negotiations regarding price. On the 10th January the Head of Conveyancing also confirmed he was not privy to negotiations on price.
- 6.6 This is a clear contradiction and despite our best efforts our Committee has been unable to establish when this decision to increase the discount was made, and who made the decision. What is clear, is that despite the de facto decision that must have been made, there was no formal Ministerial Decision from the Planning Minister who appears to have played little or no role.
- 6.7 This raises serious issues of accountability and transparency.
- 6.8 In addition, documents supplied to the Committee by the Law Officers' Department demonstrate that different purchasers received different levels of discount, without any accompanying explanation for this discrepancy, save that they were priced to sell.
- 6.9 Key finding**
The discount was increased from 35% to 42% without a Ministerial Decision being made. There was a significant breakdown in the decision making process, and there is no transparency as to how decisions were arrived at. Altogether this would appear to represent a clear breach of Ministerial guidelines.

7. How was the overall price of properties determined?

- 7.1 We consider it likely that the price (of around £260,000 per property) that was arrived at was not based on market value at all, but was the price that was required to achieve the deal with the developer, based on the affordability

⁸ Extract from an email from Deputy Sean Power to the Public Accounts Committee, 11th April 2011

calculated according to the specified income range and the multiple of earnings that banks were prepared to lend. It does look as though the affordable price was established whilst the other figures worked backwards from there.

Senator A. Breckon:

The other thing, Ian, I mentioned before about the comment that was in P.74. This is about: "The Planning Minister will give direction as to the level of discount to be provided to the Jersey Homebuy Housing. Initially the discount will be set at 35 per cent of the first-time buyer price." On 26th April 2009 there was a statement by the Assistant Housing Minister and he said: "I have with the Housing Department's Chief Officer Ian Gallichan agreed on average price of £260,000 each or £11.96 million for 46 houses. This represents a 42 per cent discount." I still cannot quite grasp how this has happened between Planning and Housing that we have no evidence of how the price and the discount was arrived at. You have mentioned a number of meetings but I think we are going to, Chairman, have to ask for some documentary evidence that shows this: who met, who decided, how this price was struck.

Chief Officer, Housing:

Right. As I say, I think the valuation mechanism was set out to the working party and the scrutiny sub-committee and we followed that valuation process. It was getting it down to £260,000. But I take your point, yes, I appreciate that.

Senator A. Breckon:

We have got no paper trail. There is nothing that says anywhere ... Planning say it was not them, you say: "Well, it was us," but there is nothing that says how that was arrived at.⁹

- 7.2 Although the Chief Officer for Housing was not present at the meeting of the 4th February 2008, he did indicate in the hearing that the formula for the valuation was based on affordability.

Senator B.E. Shenton:

How did you come to the figure of 260?

Chief Officer, Housing

*Well, I have just said, the 260 figure was a figure that we put together in terms of affordability. The Housing Needs Survey was talking about a quarter of a million pounds people were looking to borrow. It was done on multiples of income which stretched from 4.3 to 6, and we know that that was the affordable level on our P.6 sales because we had sold 130 of 140 - not all of them were 3 beds - on our P.6 sales, and obviously we have sold these homes for £260,000, 46 of them at Goose Green. Now, you have to start somewhere. **When people talk about valuation, you have to start at the first-time buyer valuation and work back.**¹⁰*

7.3 Key finding

To date, our Committee is unclear of exactly how or when, or by whom, the valuation or discount was arrived at. It is unlikely that a fair, objective or transparent formula was applied when establishing the price of the properties.

⁹ Hearing with Chief Officer for Housing, 11th January 2011

¹⁰ Public Hearing with the Chief Officer for Housing, January 11th 2011

8. Flaws in the Gateway Scheme

- 8.1 The Gateway Scheme was essentially the means testing scheme through which potential purchasers were assessed via a raft of criteria.
- 8.2 The Scrutiny Sub Panel did not have either sight or knowledge of what the Gateway Policy was before the transactions took place and this Committee only had sight of the policy and accompanying application form when the documents were requested after the public hearings in January 2011. These documents are available at the Appendix to this report.
- 8.3 The Committee is concerned that the Gateway system was inadequate and not clearly enough defined. Neither was it supplied to Scrutiny. The Committee considers that this document did not set a clear policy definition of the target applicants and did not deal equally with income and capital criteria. For example, the application form for potential purchasers did not ask for details of capital assets.
- 8.4 Ministerial discretion over applicants' satisfaction of key criteria was exercised. There is no evidence that there was clear or defined process for such discretion and whether it was fair. (There certainly appears to have been a great deal of discretion exercised, with some purchasers being considerably outside the criteria specified in the Gateway document.)

Senator B.E. Shenton:

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

Head of Conveyancing, Law Officers' Department:

None whatsoever.

Senator B.E. Shenton:

None whatsoever?

Head of Conveyancing, Law Officers' Department:

No. No, he is just the ...

Senator B.E. Shenton:

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

Head of Conveyancing, Law Officers' Department:

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

Senator B.E. Shenton:

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

Head of Conveyancing, Law Officers' Department:

He could do, yes. In theory, yes.

8.5 Key finding

There was no clear or defined process for Ministerial discretion in regards to potential purchasers' credentials.

- 8.6 Considering that the raison d'être of the Homebuy scheme was to facilitate home ownership for those who could not otherwise afford it. To quote from the report accompanying P74/2008

"These are people with incomes too high to be eligible for social rented accommodation but unable to afford, even with a loan, the cheapest first time buyer home. They are stuck in the middle in an "intermediate housing market". The survey indicates that of the 1655 households intending to leave the Island over the next five years, 40% identify their inability to afford to buy a property as the reason for wishing to leave."

- 8.7 The report of P74/2008 also says the introduction of a new form of affordable housing which will provide additional opportunities for those who cannot currently afford a home in the open market.'

- 8.8 The Committee notes that some individuals who qualified under the Homebuy scheme came up with deposits of some £150,000. The Committee questions whether individuals who could find such large deposits really did need financial assistance from the States to buy a home, when the open market was available to them.

8.9 Key finding

It is uncertain whether all of the individuals who benefited under the Scheme actually required financial assistance in the shape of preferential terms for house purchases.

9. The definition of 'first time buyer'

- 9.1 The Homebuy Scheme was publicized as being for first time buyers. However, this was somewhat misleading, as the technical definition of 'first time buyer' includes individuals who had owned flying freehold and share transfer properties. The law had initially excluded flying freehold and share transfer from the definition. This change had been made in October of 2008 subsequent to an individual making a complaint to the States Greffe. The matter did not go as far as the Complaints Board.

- 9.2 A memorandum from the Law Officers' Department on 6th July 2009 noted that the definition of a first time buyer 'is something which is badly in need of re-defining.'

- 9.3 On the same date, a briefing note from the Director of Property Holdings to the Chief Officer for Resources stated that 'the expression 'first time buyer' is not entirely appropriate for the Homebuy Scheme. The target market would appear

to be 'those who through lack of wealth would otherwise be unable to participate in the market.'

9.4 Key Finding

The definition of first time buyer is less than transparent.

10. The future for existing purchasers

10.1 The Committee is concerned about the scenario whereby there is a relationship breakdown or a purchaser passes away and the children may not be able to live in the property. This is due to the fact that the Homebuy contracts state that the house can only pass to another first time buyer. The situation whereby an inheritance could result in an individual being forced to find the balance owed to the States in order to be able to stay was also discussed, as was the possibility of negative equity – where the amount outstanding exceeds the value of the property.

10.2 The Committee recalled that the Minister for Planning had reassured a Health, Social Security and Housing Scrutiny Sub-Panel in September 2008 that he would exercise his discretion in such cases. However, we note that a Minister does not in fact have the power to alter a legal contract- therefore this reassurance was without foundation.

10.3 The purchasers of Jersey Homebuy properties have all bought under contracts where it is a term of the contract that the property may not be sold other than to a first-time buyer. In other words, the provision of the contract is not subject to decisions by a Minister for Planning and Environment or anybody else. It is a provision of the contract.

10.4 In the present economic climate, the ability of potential first time buyers to raise a deposit and a loan is of concern to the Committee. The future onward sale of these properties will not be easy for the existing owners.

10.5 Key finding:

The inflexible contract could potential result in hardship for the existing purchasers and their heirs in the future.

11. Homebuy is not a shared equity scheme

11.1 The Homebuy Scheme is not a shared equity scheme. This is important to point out, as the scheme is regarded by some as a shared equity scheme, such as exist in the UK. Homebuy is in fact a deferred payment scheme. It is impossible under Jersey Law for a shared equity scheme to exist i.e. for the States to share in ownership of a property with a private individual.

11.2 The Homebuy Scheme differs from shared equity schemes in the United Kingdom (UK) (bearing in mind that Homebuy was not a shared equity scheme but a deferred payment scheme), in that the UK some schemes are flexible and the proportion of equity could be changed and in the Jersey Homebuy Scheme it is impossible for a purchaser to change their original position.

11.3 On 10th January 2011, Dandara's lawyer wrote to the PAC to advise that in his client's opinion, Jersey's legal framework should be changed to allow 'shared equity' in the proper sense of the word. He wrote:

'I do not think it would be going too far to say that the form of bond stretched near to the limit the appropriate principles of Jersey Law. I think it unlikely that any commercial lender or property holder (including housing trusts) would find it a sufficiently secure basis for transacting.'

11.4 Key finding

The Homebuy scheme stretched the existing legislation to its very limits.

12. Were purchasers made sufficiently aware of the risks?

12.1 The States of Jersey and the developer benefited financially from this scheme.

12.2 There has been a misconception in the media that the States had lost out financially from the Homebuy deal. In fact the States will benefit to the tune of £8 million (albeit incrementally and not for many years). The developer benefited financially in a more obvious way.

12.3 Any financial liability is in fact firmly with the end occupier/purchaser, who ironically was supposed to be unable afford the house in the first place.

12.4 It is unclear whether the majority of Homebuy purchasers would have been aware of the extent of liability that they were taking on. It is also noted that if property values rose the purchasers would only receive part of the benefit but if they fell they would take 100% of the loss. It is dubious whether the purchasers were made fully aware of the fact that they had taken on a risk that was geared on the downside.

12.5 This was confirmed by both the Director of Property Holdings and the Head of Conveyancing, Law Officers:

Senator B.E. Shenton:

But if the property prices have fallen by £50,000 and the homebuyer put a £50,000 deposit, the States would get their money back under the bond, the mortgager or the bank would get their money back, but the homebuyer would lose his deposit, basically. Yes, it would lose the whole £50,000.

Director, Jersey Property Holdings:

Yes. The homebuyer would definitely. In the event of a default, the homebuyer would lose their deposit but the States could decide to re-house the occupants in social housing and sell the property and would recover probably more than they had expected under the deferred payment.¹¹

Senator B.E. Shenton:

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

Head of Conveyancing, Law Officers' Department:

Well their percentage would fall, yes. That is correct¹²

- 12.6 On 3rd January 2008, the Solicitor General wrote to the Minister for Planning and Environment with advice regarding the proposed 'shared equity' scheme.' Within this advice he stated:

'The buyer will retain as much of the uplift as relates to the percentage of the purchase price which he paid. I am not clear what is intended to happen if the property has decreased in value.'

- 12.7 In real terms what will happen in this scenario is that the end purchaser takes 100% of the loss. On 24th December 2010, our Committee noted that one of the properties at La Providence changed hands for only £390,000. On 10th December 2010, a couple sold number 54 to another private purchaser for £469,500 but they bought it originally for £495,000 on 19th September 2008, representing a loss of around 5%.
- 12.8 Using these two examples, and assuming a reasonable deposit of £15,000, these type of values applied to the Homebuy scheme produce negative equity results of many thousands of pounds, depending upon the assumptions applied in such calculations. This liability would be crystallised in the event of a sale during this time, and potentially would fall upon individuals who could not afford to lose this amount of money.
- 12.9 This risk was certainly not put to potential purchasers by the Housing or Planning Departments. This raises certain moral issues.
- 12.10 Later, it was confirmed that the view taken by the Law Officers' Department was that it was the job of the individual purchaser's lawyer to advise him of the potential financial liability:

Senator B.E. Shenton:

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

Head of Conveyancing, Law Officers' Department:

¹¹ Public Hearing with the Director of Property Holdings, January 11th 2011

¹² Public Hearing with Head of Conveyancing, Law Officers' Department, January 10th 2011

Yes, that is right. No, our job is to secure the public's interest, really. The lawyer acting for the purchaser is supposed to look after the purchaser's interest.¹³

12.11 Key Finding:

Homebuy purchasers were exposed to financial risk with insufficient warning.

13. What happens if house prices fall?

13.1 Key finding:

It was confirmed to the Committee during the hearings that no serious thought had been given by Housing to the possibility of a fall in house prices and the implications that would have on the end purchaser.

Senator B.E. Shenton:

... we have just witnessed a financial crash largely on a simplistic basis caused by the fact that in America they felt that the property market could not decline. We are seeing significant falls in the property markets throughout Europe. Throughout these hearings there seems to be a general perception that property will never drop in Jersey, which is maybe historically the case. The Solicitor General in her legal advice on Homebuyer was: "I am not clear what is intended to happen if the property has decreased in value." What work did your department do to stress test for falls in the property values in Jersey?

Chief Officer:

Well, we did not.

Senator B.E. Shenton:

You did not do any work?

Chief Officer Housing:

No, we did not do any stress testing.

Senator B.E. Shenton:

You did not do any work?

Chief Officer:

No, we did not do any stress testing. If you look at historic values, and I am not talking about the huge explosion in property prices in Jersey, it has been a wise investment for many, many years. Over the long term this is a good investment but people are buying these homes to live in. How many repossessions have there been in Jersey over the last 20 to 30 years?¹⁴

- 13.2 On 12 August 2009, the Statistics Unit published the Jersey House Price Index for the second quarter of 2009 which reported the following data for the mean prices of three bedroom houses:¹⁵

¹³ Public Hearing with Head of Conveyancing, Law Officers' Department, January 10th 2011

¹⁴ Public Hearing with the Chief Officer for Housing, January 11th 2011

¹⁵ Asset Disposals by the States of Jersey during 2009, Report by the C&AG November 2010

<i>£'000</i>	<i>Q1</i>	<i>Q2</i>	<i>Q3</i>	<i>Q4</i>
2007	402	417	449	470
2008	510	506	541	524
2009	528	516		

13.3 As can be seen, there had been a general fall in values of three bedroom houses of just under 5% from quarter 3 of 2008 to quarter 2 of 2009.

13.4 Comment

The Committee has not seen any evidence about price negotiation i.e. how and by who and when the price was negotiated. It may have been more appropriate to reduce the sale price rather than increase the percentage discount.

13.5 Key Finding

There was a fall in the value of three bedroom houses between quarter 3 of 2008 and quarter 2 of 2009, yet the Housing Department did not see the need to stress test for falls in property value.

13.6 In light of the above, it could even be argued that the States might be guilty of mis-selling.

14. The Way Forward

14.1 While the Public Accounts Committee applauds the philosophy behind a scheme to extend home ownership to those who would otherwise be unable to get on the property ladder, we are very concerned at the way in which the Homebuy scheme has been implemented, and would put forward the following recommendations and comments:

14.2 If further transactions under the Homebuy Scheme are envisaged, new primary legislation needs to be introduced to establish the framework for a true shared equity scheme. This would mean that the public would have increased control over its interest in the equity of a property. Not only does this echo the opinion of Dandara's legal representative, it also is in line with Solicitor General's original advice in December 2007.

14.3 The quantum of deferred payment on offer (essentially the discount offered) should be based on an objective formula rather than through discussion with the developer.

- 14.4** The Gateway policy should be tightened up and made transparent in order to eliminate unfairness and ambiguities as far as is possible.
- 14.5** A comprehensive Homebuy or shared equity policy should be put to the States Assembly for approval (set within the proper context of legal advice) before the scheme is extended to any other properties.
- 14.6** There is concern that a policy described as 'half-baked' (by the Head of Conveyancing at the Law Officers' Department) was pushed through despite the lack of formal sanction by the States Assembly. The recent PAC update on the States Accounts raised concerns that Ministers could push through their own political agendas without taking into account the valid concerns of those around them. In this case the desire of the Planning Minister to railroad through an election manifesto promise highlights the stark reality that Ministerial Government lacks some very basic checks and balances.
- 14.7** We are concerned that fundamental decisions such as the price of the properties and the discount settled on were reached without any formal Ministerial Decision. In future, all significant matters of policy involving public funds must be subject to Ministerial Decision and / or approval of the States.
- 14.8** The Public Accounts Committee considers it imperative that the above issues are addressed before the Homebuy Scheme is extended to other sites, and mistakes repeated.
- 14.9** Our Committee has now had sight of draft Supplementary Planning Guidance which sets out the way in which Jersey Homebuy is proposed to operate in future. Despite this, we still have many reservations and concerns yet to be addressed which we will be investigating imminently. Our findings will appear in our next report.

Committee Membership

The current membership of the Public Accounts Committee (as at the date of the presentation of this report) comprises:

States Members

Senator B.E Shenton (Chairman)
Senator A. Breckon (Vice-Chairman)
Senator J. Perchard
Deputy J. Le Fondré

Independent Members

Mr A. Fearn
Mr M. Magee
Mr K. Keen

Officer Support: Mel Pardoe

Terms of Reference

1. The purpose of the project is to examine issues arising from the C&AG's report on the States' disposal of assets during 2009 and, in particular, issues arising from the sale of properties as a trial of the proposed Jersey Homebuy scheme.
2. The issues to be examined include:
 - (1) the liabilities assumed by the States of Jersey as a result of the transactions.
 - (2) whether all appropriate budgetary approvals were obtained by the relevant departments to enable the transactions to take place.
 - (3) the appropriateness of the process by which were determined the prices at which the transactions took place.
 - (4) whether the financial consequences (for the applicants and the States) of the proposed Jersey Homebuy policy has been properly assessed before the trial took place.
 - (4) whether the Standing Order 168 procedure operated effectively to secure States' control or oversight of the property transactions.

Stakeholder Comments

Our Committee received comments from various stakeholders regarding the final draft of this report. Other than a few minor factual alterations, we did not feel that any of these comments should materially change the content of the report. However in the interests of transparency we are reproducing the comments below.

Response from Deputy Sean Power, former Minister for Housing

(In relation to point 6.1) The decision to stick to the price of £260,000 was cast in stone because of the multiplier effect of the “mean mortgage” of £50,000. Most parties who qualified under the scheme had an ability to earn about £50,000 p.a, and this was established as the Gateway salary. Five times £50,000 gave the mean mortgage value of £250,000 and this determined the “average” house price.

(In relation to point 6.2) There were at least two formal meetings with officers, Ministers and Dandara to attempt finalize an agreement on Homebuy and the final affordable price. This process also involved many phone calls and e-mails. These meetings were on the 4th February 2009 at South Hill and a final meeting at Housing on the 26th April 2009. The Chief Officer of Housing refers to a final meeting at his office at the Housing Department on the 26th April 2009, attended by Dandara.

(in relation to point 6.3) One of the big issues was that the Housing Department inherited a Planning Department report and proposition and there was no template to deliver. It was a pilot scheme and as such, the Housing Department had to create a whole new approach to its role in delivering and placing these homes to the end users. That involved the Gateway scheme, the appraisal scheme, the negotiations with the Banks, the selection of the final 46 occupiers and the two step Royal Court process. It was an extremely compressed and difficult three months, but it was achieved. As far as I am aware, the Planning Obligation Agreement to finalise Homebuy was never produced by P&E, despite numerous subsequent meetings between HSG and P&E.

Response from the current Chief Officer for Planning and Environment

Further to my factual email, I would again like to reiterate the department's position in that it felt that email agreement between Ministers and the Chairman of the Sub Panel, plus a commonly agreed press release, did constitute sign off for the Homebuy scheme in Sept 2008.

I would also like to make it clear that although the legal preference was for new legislation, the existing legislation has been made to work with the support of the Law Officers' Department.

Response from the Treasury Department

(In relation to point 5.4) In the memorandum issued by the Minister for Treasury and Resources it was very clear that this particular scheme was to be treated as a trial and was not an approval for the overall Homebuy scheme.

Response from the current Chief Officer for Housing

Paragraph 2.5. This is not factually correct. On 14th August 2008 the scrutiny panel received a position paper from the Housing Department. That position paper included a copy of Housing Department policy HD31 which set out the allocations criteria.

Paragraph 4.3. I do not believe that this paragraph accurately sets out what P.74/2008 intended or achieved. Prior to the States approval of P.74/2008 there were no Homebuy sites and Homebuy as a scheme (even a pilot scheme) did not exist. P.74/2008 was of course a proposition of the Minister for Planning & Environment and sought to change the definition of Category A within Policy H1 of the Island Plan 2002, to include Jersey Homebuy Housing. The proposition sought to provide Jersey Homebuy Housing on 3 sites only. These 3 sites were not sites which made any provision for category b housing whatsoever, they were category A sites which had initially been made available for 55% First Time Buyer and 45% social rented housing.

Paragraph 5.3. This paragraph seems to be suggesting that agreement over the price for homes at La Providence had been agreed prior to the debate of P.74/2008. The Housing Department had had no discussions with the developer prior to the approval of P.74/2008. If a price had been agreed we were certainly not aware of it and I have seen no evidence to substantiate such a view.

Paragraph 6.5. During my evidence I referred to a meeting attended by the then Assistant Minister for Housing, Minister for Planning & Environment and the developer. I had suggested that as a Planning Officer had been present at that meeting, the Planning Department ought to be asked to produce the record of that meeting. I am assuming that this has not happened. A copy of the note of that meeting is attached hereto. (Note from the PAC - Planning did provide this note when requested subsequent to the Hearings in January 2011).

Paragraph 7.1. It is agreed that Homebuy is an affordable housing scheme and prices ought to be set at a level which is affordable.

Paragraph 8.2. This is not factually correct. On 14th August 2008 the scrutiny panel received a position paper from the Housing Department. That position paper included a copy of Housing Department policy HD31 which set out the allocations criteria.

Paragraph 8.3. This is not factually correct. On 14th August 2008 the scrutiny panel received a position paper from the Housing Department. That position paper included a copy of Housing Department policy HD31 which set out the allocations criteria. It is accepted that the registration form did not ask for details of capital, this information was gathered during detailed interviews of all the applicants undertaken by Housing Officers. The documentation to evidence this is available for inspection if required.

Paragraph 8.4. Homebuy was a scheme designed to be targeted at those who were unable to purchase an appropriate first time buyer home on the market without assistance.

Initial Gateway parameters were set to focus on applicants with between £40,000 and £60,000 in income.

A small number of applicants had capital, either in the form of cash or assets to dispose of. In every case additional testing was carried out to ensure that the individuals' capital plus mortgage potential did not exceed the level where they would be able to purchase an appropriate property on the first time buyer market. No homes were sold to anyone who did not need the assistance.

Paragraph 8.8. This paragraph is regrettable. It says that the Committee questions whether some applicants really did need the assistance. Where is the evidence to substantiate that comment?

Paragraph 9.2. It is not clear from the content of this paragraph who provided the advice at the Law Officers' Department. It is our impression that it was not provided by the Attorney General, Solicitor General or any of the Law Officers and whether therefore it represents official legal advice or the personal opinion of someone whose credentials are unknown.

Paragraph 10.1. This paragraph is not factually correct. Homebuy properties can be inherited by anyone under exactly the same terms of use and occupancy of all other first time buyer homes developed under the 2002 Island Plan. The difference with Homebuy is that the bond must be repaid as an inheritance is an 'act of alienation'. In the case of inheritance, the principle borrowing will presumably have been settled either through repayment or life insurance cover. The children inheriting the property are able to retain the property provided that the outstanding bond is repaid, in effect acquiring a property for just 40% of its value.

Paragraph 10.2. The Planning Obligation agreement establishes how the land and the property must be used in perpetuity. The Planning Obligation Agreement is a statutory document, enforceable or otherwise by the Minister for Planning & Environment.

Paragraph 10.3. As Paragraph 10.2.

Paragraph 10.4. This is a factor of the present market. There is no evidence that Homebuy purchasers were purchasing with a short term resale in mind. These properties were provided as homes for families in need of housing and not as a means of risk free speculation.

Paragraph 12.9. All of the buyers engaged their own Lawyers to advise them. It would have been wholly inappropriate for States Departments acting as the vendor to offer legal advice to buyers separately.

Paragraph 13.3. This is only a partial use of statistics. A more complete picture of the property market would show that by Quarter 3 2009, average prices of 3 bedroom houses had increased to £538,000. In addition overall on a calendar year basis the average price of properties sold in 2009 was 2% higher than in 2008.

Paragraph 13.4. As Paragraph 6.5 above

Paragraph 13.5. This is a statement without adequate evidence to substantiate it. It is therefore suggested that it be removed.

Response from Senator Freddie Cohen - Minister for Planning and Environment

2.4 as presently worded leaves the reader with the impression that I simply ignored my undertaking to the States that I would pre-agree the Goose Green trial with Scrutiny. The fact is that I agreed every step with the chairman of the scrutiny panel and had his absolute agreement to all elements before I went ahead. It seems that is now some confusion over whether the chairman had the endorsement of his committee. That is not my fault and I am perfectly entitled to assume that the views of the committee are represented through the chairman. I am for example sending this email to you as chairman and I do not feel it necessary to check the response with each member of your committee. I therefore hope you will consider a little rewording of this section.

3. The legal advice section gives the impression that we ignored legal advice.. As far as disclosure is concerned there is always a presumption that legal advice will not be disclosed by Ministers and indeed there has been criticism when a minister has strayed from this principle. As far as I understand the situation, whilst changes in legislation may have been the preference for a standard Shared Equity model, the Law Officers were perfectly happy with the mechanism for Homebuy. I don't think there was ever a suggestion from the LOD that the method approved by them could lead to 'problems' as suggested in 3.5

6.6 You kindly make it clear that I had little or no role in the decision to increase the discount. The fact is that I had no role whatsoever, I wasn't asked to sign and MD, I had no idea that different discounts were being applied, I didn't have involvement in setting the price and I had no idea that some purchasers had £150,000 available as deposit.

10.2 The report states that the Planning Minister has has no discretion in relation to assisting beneficiaries. Would you check this as that was not my understanding of the situation. I understood that there was a mechanism under which a Minister would have the right to waive the conditions of the contract to ensure fairness.

11. Shared Equity is not a precise term and local authorities have hugely different models in the UK. Homebuy has certain element that are comparable to UK schemes and particularly as there is participation in the upside it is a little unfair to state that Homebuy is not a SE scheme.

Most important of all is that we need some direction as to how to progress a new scheme. I believe in delivering the dream of home ownership to as many local families as possible. There is lots of opportunity on States owned sites particularly and assuming the IP is approved much new housing provided by the private sector will need to be sold at a discounted price under some form of SE scheme.

Goose Green seemingly wasn't perfect but the 46 families have acquired delightful homes they otherwise may not have been able to acquire. I hope you will provide some direction of how to progress quickly.