



22nd April 2016

Dear Sirs

Re: Scrutiny Review Panel Response: Domestic Property Transactions

In response to your letter of the 8th April 2016 as attached providing terms of reference and using your numbering;

1. The average time to complete a transaction from offer and acceptance to completion assuming no complications is 4 weeks.
2. This seems to be the same question as 1?
3. We do not see any particular evidence of late failure of transactions. Most transactions proceed to satisfactory completion with very few buyers or sellers withdrawing or altering terms at a late stage. We cannot comment on any negative impact on utility providers or third parties as a result of transaction failure, although doubtless there will be some impact arising from any transaction which is aborted. Timescale for completion of transactions compare favourably with other jurisdictions, particularly England. Because the timescale for completion is fairly short there are inevitably issues that need resolving right up to the day of completion. These will usually be title issues which have taken time to identify and then resolve, and issues with obtaining funds and redemption figures.
4. There are no particular bottle necks which cause issues. Loan documents are generally produced in a timely manner as are search enquiry results. Confirming redemption figures for mortgages to be repaid out of sale proceeds can be difficult to obtain and some of the lending institutions fail to appreciate how crucial it is to produce these as soon as they have a request. We often have to chase for redemption figures a number of times before they are produced. We are unable to complete a sale without knowing that we have sufficient funds to do so.
5. The system in Jersey functions well in our opinion. The 4 week turn around contrasts greatly to the UK, for example, where it can take months to complete a transaction. The absence of a formal exchange and then delay to completion helps to speed up a transaction, although it can mean that clients lack certainty as to completion until very near to the completion date. Formal exchange and delayed completion would help with this, however prolonging the transaction may not be seen as desirable. It is unusual to have a chain of more than 3 linked transactions, whereas in the UK the chain can be 6 or 7 people long. Formal exchange in the latter case is clearly advantageous, however it seems unnecessary for Jersey.

In summary we do not perceive any difficulty with the structures or systems presently in place in relation to domestic residential transactions. Such limited transaction failures or delays that do arise occur either because of a fundamental difficulty with the underlying agreement or a failure by any stakeholder in the existing system to engage fully at the appropriate time. Market forces will eventually exclude those agents, lawyers or other stakeholders who do not engage in the process in a timely or appropriate manner. An amendment to the process is not in our view required.

If notwithstanding the above some amendment is perceived to be necessary the only area we would suggest for amendment is the ability of an individual to specifically enforce an agreement for the purchase or sale of Jersey real estate. At present the maxim 'nulle promesse a heritage ne vaut' means that a promise to sell or buy Jersey real estate cannot be specifically enforced, that is to say an individual cannot be ordered by the court to appear to take the necessary oath to pass a contract. A buyer's or seller's only remedy is damages. The existence of this rule means that preliminary agreements of sale as a matter of course include an artificial damages clause which cause difficulty or concern to transacting parties. Removal of the rule against direct enforcement of an agreement to buy or sell (subject say to a specific form of written agreement) would assist in the limited area where residential purchases are proposed with delayed completion.

Kind Regards

Abigail Watkins



English Solicitor and Head of Conveyancing

On behalf of Benest & Syvret



Scrutiny Office

White and Company
By email to Benest and Syvret

8th April 2016

Scrutiny Review Panel: Domestic Property Transactions

Dear Sirs,

A Review Panel has been established to undertake a Review of domestic property transactions in Jersey. I'm pleased to forward the Terms of Reference for the Review to you, which are set out below:

In relation to residential property transactions, the Review will examine:

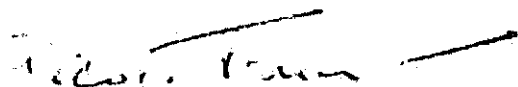
1. *The average length of time that transactions take to progress from offer and acceptance to completion*
2. *The average time to complete transactions*
3. *Whether there is evidence of:*
 - *a widespread problem with late failures of transactions*
 - *transactions aborted at a late stage tended to cause one or more parties to incur significant legal and other fees, plus considerable inconvenience*
 - *material negative impact on utility providers and other third parties arising from aborted transactions*
 - *material legal, financial, administrative and other complications remaining unidentified until the final days of a transaction process*
4. *Whether there are:*
 - *specific bottlenecks affecting the average rate of progress of transactions*
 - *if so, specific options for alleviating such bottlenecks*
5. *Any other matters relating to the existing system of domestic property transactions, arising through evidence gathered.*

We are now progressing the Review with a targeted approach to key stakeholders inviting written submissions. The Panel also intends to hold Public Hearings as part of the evidence gathering process, arrangements for which will be publicised and posted on the Scrutiny website.

The Panel would like to invite you to make a written submission to the Review, based on the Terms of Reference and any related comments that you would like to make. If you would like to provide a submission, the closing date for submissions is 22nd April 2016.

Please note that all written and oral submissions are uploaded to the Scrutiny website (www.scrutiny.gov.je) as a matter of course with the exception of any evidence received under a confidential or private agreement, which, in accordance with Jersey Data Protection legislation, will not be released into the public domain. If you have any questions at this stage about the Review, please do contact our Scrutiny Officer via the Scrutiny Office (direct officer e-mail address j.hales@gov.je).

Yours sincerely,

A handwritten signature in black ink, appearing to read "Deputy D. Johnson", with a long horizontal stroke extending to the right.

Deputy D. Johnson
Chairman, Scrutiny Review Panel
Domestic Property Transactions