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Residential Property Transactions



Presented to the States by the Chairmen's Committee on behalf of the
Residential Property Transactions Review Panel

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1. Chairman's Foreword

The present procedure governing property transactions was established in the 19th century and the overall objective of this review has been to assess whether the present system adequately serves the needs of the public in the present age. One principal area of concern is that, in the vast majority of cases, there is no form of preliminary contract and, until contracts are passed before the Royal Court, there is no certainty that matters will proceed; this degree of uncertainty gives rise to the possibility of last-minute problems and, unsurprisingly, there are those who suggest that, as in other jurisdictions, a two-stage process be introduced. The first of such stages would be a binding agreement to pass contracts before the Royal Court on a specific date (with financial penalties for breach of such agreement), the second being attendance before the Court on the date concerned for completion of the formalities; by separating the transaction into two distinct phases, the parties could be reasonably confident that a transaction would proceed to completion once the preliminary agreement was in place, thereby removing the uncertainty which applies in those cases where there is no binding commitment until contracts are passed before the Royal Court.

The present system does in fact allow for such two-stage procedure. However, professional firms advise that this inevitably delays the overall process and, as the main aim of the parties is to complete the transaction as soon as possible, the use of preliminary contracts has largely fallen away. Despite this view, the Panel is of the opinion that it would be beneficial to the public if greater use was made of preliminary contracts and that, if parties to a transaction and the professional firms involved were to adopt certain practices in advance of a property being put on the market, then the two - stage process could be used more widely without unduly extending the overall time frame. In this connection, reference is made to key findings in the Review including such items as early instruction of lawyers, evidence of available funds on the making of an offer and production of a 'Buyers Pack' at time of marketing.

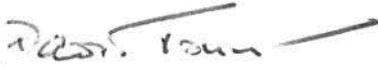
Aside from these practical measures, the Review highlights other areas for consideration. These include the requirement that all Estate Agents should be members of an approved body whose members are subject to a Code of Conduct and the establishment of a local Property Ombudsman to hear complaints. Further, recognising the decreasing number of conveyancers in the Island, the Panel recommends that consideration be given to the creation of a new qualification of 'licensed conveyancer' with the ability of persons holding such qualification to carry out property transactions independently of law firms.

It would be remiss not to mention the Consumer Protection (Unfair Practices) (Jersey) Law which was recently approved by the States. In general terms, this prohibits traders from engaging in unfair commercial practices in their dealings with consumers and applies to developers and the whole range of business activities carried out by Estate Agents. Such unfair practices include providing misleading information and making misleading omissions and it is to be hoped that this Law will discourage Sellers and those acting on their behalf from making claims which, if later found to be 'extravagant', might cause a transaction to fail.

Whilst the Panel conclude that, with the co-operation of various stakeholders, changes can be made to improve the current system, this does not obviate the need to undertake a comprehensive review of the present law which, as mentioned at the outset, was established in the 19th century. This is outside the scope of this review but the Panel notes that the Isle of Man has established a Land Registry system where it is understood that the costs of insurance were initially borne by its Law Society members. Apart from anything else, such a system might help to alleviate the increasing

likelihood of fundamental problems arising from the present lack of recruitment of conveyancers to the legal profession in Jersey.

Finally, this Review could not have been completed without the assistance and kind co-operation of a range of individuals, firms and officials and I take the opportunity of thanking all those involved for their valuable contributions.



Deputy David Johnson



2. Introduction

1. The review commenced in 2016, following a member of the Panel identifying the public's concern about the current process of purchasing property in Jersey. In particular, concerns focused on the ability of either a buyer or seller being able to renegotiate or pull out of a transaction at the last minute, colloquially known by the term gazumping and gazundering.
2. The possible problems within the current transactions process are freely discussed within the Island already. One example, an article that appears on a local law firm's website, is entitled "*Shaky property completions in Jersey's Royal Court*", and commences with the statement:

*"Purchasers can be left homeless and the effect of the broken link then ripples down the entire buying chain. The news has recently been full of reports of property prices being hoicked up at the last minute, leaving buyers with a dilemma; stick or twist? By this stage, the purchasers are committed; have no option but to move; and then get asked for more money."*¹
3. The Panel consciously limited the scope of its review to those properties which are for residential use only, rather than also including commercial properties. Given the differences in the transaction of commercial and residential property, both in terms of how the process works and in the human element involved, it was felt that these were clearly separate issues and needed to be addressed as such.
4. The aim of this review is to examine the process by which residential properties are currently transacted in Jersey, from the point of an offer being made to the property being sold in the Royal Court. The Panel's key areas of focus are the time taken for properties to be transacted, the bottlenecks and flaws that currently exist in the process, and identifying key areas that require reform or could be improved.
5. The current process of property transactions in Jersey (with a few exceptions) sees a property being transacted in the Royal Court on a Friday afternoon, this being the only time and location at which a transaction can occur. A transaction will take on average 4-6 weeks from the point at which a buyer first instructs their lawyer. The subsequent transaction process can be terminated at any point by either the buyer or seller, with no financial penalty up until the physical point of exchange in the Royal Court.
6. During the course of its review, the Panel received public and stakeholder submissions (which can be seen on the Scrutiny website²) and held public hearings with the three main bodies involved in the property transaction process; estate agents, mortgage brokers and law firms. Members of the public and the Jersey Consumer Council were also asked to contribute evidence and attended a public hearing.
7. What has become clear during the course of the review is that, whilst many of the issues discussed here are applicable across the British Isles, there are certain aspects of the property transaction process which are unique to Jersey, such as the Friday-only court date.

¹ Viberts. "*Shaky property completions in Jersey's Royal Court*" <https://www.viberts.com/articles/shaky-completions/>

² Scrutiny Website. "*Residential Property Transactions Submissions*" <http://www.scrutiny.gov.je/Pages/ReviewSubmissions.aspx?ReviewId=239>

3. Findings

- **Finding 1**: Most residential property transactions proceed to the Royal Court without any form of preliminary contract, meaning there is no certainty that the transaction will complete until contracts are actually passed. Whilst the present system allows for preliminary contracts, lawyers advise that they do not improve the timescale and are rarely used unless there is to be a delayed completion. *(page 8)*
- **Finding 2**: The timescales for residential property transactions in Jersey are on average significantly shorter than in the UK, taking 4 to 6 weeks compared to 88 days. *(page 8)*
- **Finding 3**: Where the sale of a property fails to complete at the last minute, a significant cost can be incurred by the prospective buyer. This can add significantly to the costs already accumulated in the process of the purchase of a property and may put the buyer in a difficult financial position. The seller may also be put at a financial disadvantage. *(page 10)*
- **Finding 4**: Lawyers are frequently not instructed by potential property buyers to commence their work until a late stage, due to the potential buyer wishing to avoid legal costs until his mortgage has been agreed. This can cause delays to the transaction process. *(page 12)*
- **Finding 5**: Lawyers are frequently not instructed by the proposed seller until such time as a purchaser is found. This in turn means that the seller's lawyers have not been consulted as to matters affecting title, prior to their marketing the property leading to possible problems at a later date. *(page 12)*
- **Finding 6**: A decreasing number of conveyancers in the Island and an increase in their individual workloads, due to an increase in statutory requirements, has the potential to cause delays in the transaction process. *(page 14)*
- **Finding 7**: The parties to a transaction often work to unrealistic timescales, leading to the buyer's lawyers sometimes carrying out conveyancing checks only days before the Friday Court date. This can lead to last minute problems which might cause the transaction to be delayed, with ensuing upset to both parties. *(page 14)*
- **Finding 8**: There are currently only four principal property valuation firms used by mortgage lenders on the Island. This means that there is a potential for bottlenecks in the property transactions process if one of these firms is unable to take on work. *(page 16)*
- **Finding 9**: Proof of a buyer's financial status at the outset of the property transaction process is not standard practice in Jersey. *(page 18)*
- **Finding 10**: The Friday-only court date for property transactions in Jersey, whilst a significant tradition, limits flexibility in the property transaction process. *(page 21)*
- **Finding 11**: Creating a pre-sale agreement, which includes a financial penalty for buyers or sellers who withdraw from a transaction, would create a greater deal of certainty in the transactions process and compensate losses incurred by either party. *(page 25)*
- **Finding 12**: A "Buyer's information pack" which might be produced by the seller, at the time of a property going to market and which would identify problematic issues about the property, would enable the purchaser's lawyers to commence work earlier. *(page 26)*

- **Finding 13**: The Jersey Public Registry Index and Document Enrolment (PRIDE) system for registering property transactions has significantly sped up the process for conducting a property title search. *(page 28)*
- **Finding 14**: There would be considerable public benefit in creating a Land Registry in Jersey as a more modern, efficient and comprehensive system. The Panel acknowledges that this would require a significant investment of time and money. *(page 29)*
- **Finding 15**: Currently only 15 local estate agents are registered with a Jersey-based association requiring its members to follow a code of conduct. This is a minority of the current total number of estate agents active in the Island. *(page 33)*
- **Finding 16**: There is currently no statutory regulatory body for estate agents in Jersey, although there are Jersey-based regulatory bodies for both mortgage providers and law firms. *(page 33)*
- **Finding 17**: The public has no complaints process to follow if required because there is no local Ombudsman for estate agents in Jersey. *(page 36)*
- **Finding 18**: The States have approved the Consumer Protection (Unfair Practices) Jersey Law 2018. Once in force, this imposes certain obligations on sellers and their agents in marketing property. *(page 36)*

4. Recommendations

- **Recommendation 1**: With a view to creating a greater degree of certainty, the Chief Minister should investigate, via consultation with interested parties, whether a pre-sale agreement should form part of a standard transaction process. This should include a financial penalty for buyers/sellers who fail to comply with the agreement. He should report the findings of this consultation to the States before the end of May 2019. *(page 10)*
- **Recommendation 2**: The Chief Minister should encourage, in conjunction with the Law Society, a greater number of people to train as conveyancers. The findings of this consultation should be reported to the States before the end of May 2019. *(page 14)*
- **Recommendation 3**: The Chief Minister should investigate, in conjunction with stakeholders, the introduction of a local qualification enabling persons with a specific qualification of licenced conveyancer to carry out property transactions independently of law firms. *(page 14)*
- **Recommendation 4**: The Chief Minister should investigate, in conjunction with the Law Society and Jersey Estate Agents' Association, the introduction of a standard practice for a potential buyer to produce evidence of sufficient funds from their bank or mortgage broker, before making a formal offer on a property. Progress should be reported to the States before the end of May 2019. *(page 18)*

- **Recommendation 5**: The Chief Minister should consult with the Bailiff, with regard to the feasibility or otherwise for introducing a second date in the weekly Royal Court calendar for conducting property transactions, as is the current practice in Guernsey. The findings of the consultation should be reported before the end of May 2019. (*page 21*)
- **Recommendation 6**: The Chief Minister should consult with the stakeholders, whether there is potential scope for property transactions to complete outside of the current Royal Court process. He should report the findings of these consultations to the States before the end of May 2019. (*page 23*)
- **Recommendation 7**: The Chief Minister should consult with all interested parties, as to the desirability of establishing a land registry in Jersey. The Chief Minister should report his findings to the States before the end of May 2019. (*page 29*)
- **Recommendation 8**: The Chief Minister should introduce a means requiring all Jersey estate agents to be members of an approved professional body and to adhere to a code of conduct. This work should be completed by the end of May 2019. (*page 36*)

5. Timescale of Property Transactions

Time to Transact a Property

8. One of the key problems expressed by members of the public was in reference to the short timescales set for property transactions in Jersey. One member of the public stated to the Panel that:

“My big problem was that all the professionals that were involved in the purchase of the property, and to a lesser extent in the sale of the one we had, were really quite unrealistic in the timeframe which they had set themselves...”³

9. The Panel was informed that current transaction times are in the region of 4 to 6 weeks, whilst the average in the UK is currently 88 days and even up to 6 months in Devon.⁴ It was explained that, given it is such a contracted period of time for the process in Jersey, things can be a “*bit of a roller coaster*.”⁵

10. This “roller coaster” may impact on the smooth conclusion of a property transaction. Whilst it cannot be confirmed as a direct causal link, during its review the Panel did find that a typical week sees a significant proportion of transactions failing to complete:

“We had 12 for last Friday and 7 went through. The other 5 were a combination of paperwork not being quite in place, someone has fallen out with a neighbour, whatever. There was a combination of all sorts of things.”⁶

11. When asked, the Panel was informed this was a fairly typical weekly scenario:

The Deputy of St. Ouen:

“Is that a fairly usual?”

Broadlands:

Yes. You live with that, as long as everyone knows. Our job, as an agent is to make sure that everybody is kept in the loop from day one; they all know that if there is going to be a delay then they can sort it out.”⁷

12. Whilst clearly many buyers will be quite happy to be able to purchase or sell their respective homes sooner rather than later, this timeframe is in danger of becoming overly squeezed. One member of public who spoke to the Panel highlighted such a concern:

³ Transcript. “Members of Public and JCC”

<http://www.statesassembly.gov.je/scrutinyreviewtranscripts/2017/transcript%20-%20residential%20property%20transactions%20-%20members%20of%20public%20and%20jcc%20-%203%20october%202017.pdf> p5

⁴ Transcript. “Residential Property Review Panel: Estate Agents”

<http://www.statesassembly.gov.je/scrutinyreviewtranscripts/2017/transcript%20-%20residential%20property%20transactions%20-%20estate%20agents%20-%203%20october%202017.pdf> p2

⁵ [Transcript, Estate Agents](#). p2

⁶ [Transcript, Estate Agents](#). p14

⁷ [Transcript, Estate Agents](#). p14

The Deputy of St. Mary:

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

Bartley McNeela:

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

Deputy A.D. Lewis:

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

Bartley McNeela:

*Yes.*⁸

13. In terms of who has overall responsibility for the setting of the timeframe for completion, the Panel identified that it is generally considered to be the estate agents who act as the coordinating body:

The Deputy of St. Mary:

“Going back to the time factor, it has been suggested that maybe agents are the ones who determine the over-all time factor. They are told at the beginning that it can be done in 4 weeks. You may well say that in fact it is the vendor or the purchaser who is demanding it. Where are we in that?”

Hunt Estates:

*The agent will speak to all parties concerned and see what is a feasible day. As a general rule of thumb we will look at 4 to 6 Fridays in advance and then we will put a suggested completion date to the lawyers. We will also liaise with the lawyers and ask whether it is feasible for a particular transaction.*⁹

Finding 1: Most residential property transactions proceed to the Royal Court without any form of preliminary contract, meaning there is no certainty that the transaction will complete until contracts are actually passed. Whilst the present system allows for preliminary contracts, lawyers advise that they do not improve the timescale and are rarely used unless there is to be a delayed completion.

Finding 2: The timescales for residential property transactions in Jersey are on average significantly shorter than in the UK, taking 4 to 6 weeks compared to 88 days.

⁸ [Transcript, Members of Public and JCC](#). p7

⁹ [Transcript, Estate Agents](#). p4

Impact of Failed Transactions

14. Evidence was provided to the Panel which suggested that most transactions are eventually resolved; with an estimate provided to the Panel being that:

“We would suggest as a rough guide that circa 70% of transactions complete within the allocated window, 25% of transactions suffer some form of delay and 5% of transactions fall through.”¹⁰

15. Similarly, most delays or alterations do not take place minutes before the start of court on a Friday afternoon, but in the preceding few days. The Panel heard from an estate agent how:

“When someone tries to knock someone on the steps of the court, we all hear about that. Once again, I have not heard about that. If someone is going to try and still buy something but they want it for less money, then that transaction is being discussed two or three days before it goes through on Friday, not in the Royal Square a few minutes before court.”¹¹

16. However, such delays still have an impact on the individuals concerned. The Panel heard from the Jersey Consumer Council that:

“I think people do mind those costs, people are budgeting, evaluating every element of the purchase of a property or a sale of a property because it makes a big difference. All these costs we have mentioned, whether it is just the removal company, changing utilities, all of these add up and often people are then putting it on to their mortgage as the only way they can do it. That is another chunk you are paying off.”¹²

17. A number of submissions received by the Panel, support this view. Their personal examples also highlight that the costs of such disruption can also add up to being significant sums of money. As one individual stated:

“This little episode will have cost me over ten thousand pounds when finished, but I hope to recoup if I live long enough.”¹³

18. It was also made clear to the Panel by the Jersey Consumer Council, that there are examples of a change on the day of transaction:

Chair, Jersey Consumer Council:

“I have certainly known of cases where it is the Domesday scenario where on the Friday that you are due to complete, the purchaser changes his or her mind or the vendor does.”¹⁴

¹⁰ Submission. “Collas Crill” <http://www.statesassembly.gov.je/scrutinyreviewsubmissions/submission%20-%20domestic%20property%20transactions%20-%20collas%20crill%20-%2022%20april%202016.pdf>

¹¹ [Transcript, Estate Agents](#). p15

¹² [Transcript, Members of Public and JCC](#). p37

¹³ Submission. “A. Hall” <http://www.statesassembly.gov.je/scrutinyreviewsubmissions/submission%20-%20domestic%20property%20transactions%20-%20a.%20hall%20-%2027%20april%202016.pdf> p2

¹⁴ [Transcript, Members of Public and JCC](#). p42

Finding 3: Where the sale of a property fails to complete at the last minute, a significant cost can be incurred by the prospective buyer. This can add significantly to the costs already accumulated in the process of the purchase of a property and may put the buyer in a difficult financial position. The seller may also be put at a financial disadvantage.

Recommendation 1: With a view to creating a greater degree of certainty, the Chief Minister should investigate, via consultation with interested parties, whether a pre-sale agreement should form part of a standard transaction process. This should include a financial penalty for buyers/sellers who fail to comply with the agreement. He should report the findings of this consultation to the States before the end of May 2019.

6. Causes for Delays

19. The Panel has identified a number of areas where the current property transaction process sees bottlenecks, or where measures could be introduced to remove possible causes of delays.
20. Whilst the evidence suggests that a reasonably significant number of properties fail to transact in any given week, the cause of this is less clear. This could be due to a bottleneck of processes that are mutually necessary to proceed, or due to failures on the part of an individual or organisation.

Legal Process

21. One possibility that was raised was that buyers, particularly those requiring a mortgage or similar lending agreement to be confirmed, frequently instruct their lawyer not to commence any costly work until their approval for lending has been agreed. This could be either confirmation that the buyer is eligible for a mortgage of a given sum, or the need for a survey to be undertaken in order to ascertain the value of the property being purchased.¹⁵
22. A mortgage broker informed the Panel that:

“...it probably takes 2 weeks to have the mortgage approved, 2 weeks for the valuation process and for the lawyer to then be instructed and then 2 weeks for the mortgage offer to be issued, usually it takes 2 or 3 days, and for the rest of the process to be brought to a conclusion. But very few lawyers will actually - and I am sure you will confirm this - very few lawyers will in fact accept an instruction from potential purchasers until they know that the mortgage process is pretty well concluded. There is no point in doing so because what they are in fact doing is just making a load of copious notes which might not be put to use and they then might have been incurring or chalking up fees on the part of clients who will not be able to proceed.”¹⁶

23. Evidence received from law firms explained the process from their perspective:

Collas Crill:

“The thing is can firms do ... can everyone do things earlier, and this is the problem. It is like everything, when there is a completion date of 30th August everyone works towards that and too many things are happening in that last week. I accept that...”

Le Gallais & Luce:

But the nature of the system is that you have court every Friday, which means you are working towards that Friday and with the best will in the world, while you would like to start 3, 4 weeks up to the date you have been given, in practice you are already working

¹⁵ Submission, “R. Troy”. <http://www.statesassembly.gov.je/scrutinyreviewsubmissions/submission%20-%20domestic%20property%20transactions%20-%20r.%20troy%20-%2026%20april%202016.pdf> p2

¹⁶ Transcript. “Mortgage Brokers” <http://www.statesassembly.gov.je/scrutinyreviewtranscripts/2017/transcript%20-%20residential%20property%20transactions%20-%20mortgage%20brokers%20-%203%20october%202017.pdf> p16

on lots of other contracts which are happening every week up to there, so it is not always easy to start as soon as you would like to on these things.”¹⁷

24. When examined further, it was identified that whilst “good practice” would mean nothing should occur at the last minute, this was not always practicable:

The Deputy of St. Mary:

“Leaving aside the pressure of work on your conveyancing departments, could the boundary inspection, whatever you would like to call it, be done beforehand so the client or the purchaser, in particular, knows that on the last morning they are not going to be faced with a problem?”

Collas Crill:

I agree, that would be good practice; certainly I would encourage that. I would not want our ... I would not want to see anyone in our firm going out on that last week. I know it can sometimes happen because it might not be in their control because what will happen is the vendor’s lawyers will produce a draft conveyance and it may be that they are the ones that have taken the time to get that out and you do not go onsite until you have got that and got that in hand so you can check everything out. But certainly it is good practice. It should be that those checks are done and the questionnaires are completed at least a week before... obviously then though you have got to get other people involved in that, i.e. banks have got to be doing this ... have got to buy into that as well. Surveyors have got to be able to buy into that, and I just wonder at the moment the reason why it is not happening is volume of work and while that is an ideal world he is still going to have those same issues.”¹⁸

Finding 4: Lawyers are frequently not instructed by potential property buyers to commence their work until a late stage, due to the potential buyer wishing to avoid legal costs until his mortgage has been agreed. This can cause delays to the transaction process.

Finding 5: Lawyers are frequently not instructed by the proposed seller until such time as a purchaser is found. This in turn means that the seller’s lawyers have not been consulted as to matters affecting title, prior to their marketing the property leading to possible problems at later date.

Conveyancing Process

25. Besides the delay caused by a hesitance from buyers to trigger legal costs, the Panel also heard of the need for a greater number of conveyancers in the Island. A conveyancer with over 20 years’ experience, highlighted to the Panel that:

“Conveyancing training takes at least 5 years yet only a relatively small number have been trained in this field in the last 30 years such that 44% of this workforce is due to reach retirement age in the next 10 years. I believe there will be an inevitable consequence.”¹⁹

¹⁷ Transcript. “Law Society” <http://www.statesassembly.gov.je/scrutinyreviewtranscripts/2017/transcript%20-%20residential%20property%20transactions%20-%20law%20society%20-%202014%20august%202017.pdf>

¹⁸ Transcript, Law Society. p14

¹⁹ Submission, “M. Falle”. <http://www.statesassembly.gov.je/scrutinyreviewsubmissions/submission%20-%20domestic%20property%20transactions%20-%20m.%20falle%20-%202026%20april%202016.pdf>

26. The submission further explained that approximately 10 years ago the fixed charge for conveyancing fees was removed and that this has led to a small number of firms:

“...aggressively loss leading to an extent where profit margins may no longer warrant firms accepting these risks.”²⁰

27. It further also draws attention to the fact that this reduction in profit margins has led to increase workload for conveyancers:

“Meanwhile many of my counterparts find themselves under commercial pressure from their employers to deal simultaneously with more matters than ever before in an attempt to preserve their livelihoods.”²¹

28. This increased workload on each conveyancer could be assumed to impact on the speed at which a property transaction progresses. One example given to the Panel by the Law Society highlights this increase workload:

“...as there is more and more red tape, more and more legislative requirements, a purchaser’s lawyer will send a list of questions to the vendor’s lawyer for response by the vendor or the vendor’s lawyers. What has happened is that really only came about I would have probably said in the last 4 or 5 years. There used to be 4 or 5 questions that has now turned into 50-page documents, if not more. What tends to happen is that because firms are sort of getting stung a little bit on one or 2 matters that then becomes a question.”²²

29. The Panel also asked the Law Society about the possibility of having licensed conveyancers, as in the UK, in order to increase the number on the Island:

The Deputy of St. Mary:

“...the shortage of conveyancers. Is there a problem you see capable of being addressed? One thought we had was whether there should be ... I mean in England you have a licensed conveyancer for instance. Could there be some sort of title to one which it would seem more of a career move, maybe rather than being suited to law in some things? Is that a possibility to be considered?”

Le Gallais & Luce:

I was on a Law Society subcommittee to look into training for conveyancers because there were not so many coming through and, to be honest, we found it very difficult to get any kind of consensus on that sort of thing. One of the concerns was from some of the firms, was that if you allow licensed conveyancers then that takes away a whole area of income from lawyers unless licensed conveyancers have to work for a lawyer. But then what is the point of having that qualification as a licensed conveyancer if you then are still subject to working for a lawyer. You want to be able to do it so that you can work for yourself. So there was a little bit of reluctance on the part of firms to agree to that.”²³

²⁰ [Submission, M. Falle.](#)

²¹ [Submission, M. Falle.](#)

²² [Transcript, Law Society.](#) pp. 2-3

²³ [Transcript, Law Society.](#) pp. 30-31

Finding 6: A decreasing number of conveyancers in the Island and an increase in their individual workloads, due to an increase in statutory requirements, has the potential to cause delays in the transaction process.

Finding 7: The parties to a transaction often work to unrealistic timescales, leading to the buyer's lawyers sometimes carrying out conveyancing checks only days before the Friday Court date. This can lead to last minute problems which might cause the transaction to be delayed, with ensuing upset to both parties.

Recommendation 2: The Chief Minister should encourage, in conjunction with the Law Society, a greater number of people to train as conveyancers. The findings of this consultation should be reported to the States before the end of May 2019.

Recommendation 3: The Chief Minister should investigate, in conjunction with stakeholders, the introduction of a local qualification enabling persons with a specific qualification of licenced conveyancer to carry out property transactions independently of law firms.

Availability of Surveyors

30. Surveyors are appointed by either the prospective home buyers or the banks providing the lending services to the purchaser, in order to identify both the value of a house and its structural soundness.

31. The Panel was informed that the problems faced by surveyors were very similar to those faced by conveyancers:

The Deputy of St. Mary:

"...You mentioned the words "surveyors". Is there a shortage of surveyors in your book? Is that a problem?"

Collas Crill:

I think there are the same pressures as we are under, do you not think?"

Le Gallais & Luce:

Yes, I think they are extremely busy. The banks tend to have a bank of surveyors and they use a certain number for their work, so very often doing the bank surveys they are inundated, let alone doing sort of full surveys that people want on a property."²⁴

32. It was suggested to the Panel that there was also a potential delay within the bank's process of conducting surveys. It was highlighted that it was usually the bank waiting for the completion of the survey on the property to be conducted that caused the delay, rather than the lawyers for the bank. It was stated to the Panel by the Law Society, that:

"So it is the bank waiting on the survey, waiting on the facility, waiting for all their hoops to go through. When they push the button in terms of the lawyer, the lawyers of all the main banks over here, they have all got standard documentation and generally

²⁴ [Transcript, Law Society](#), p10

*speaking if you are getting ... if you are instructed on a Monday for completion on Friday you will get it done.*²⁵

33. It was also noted that the Bank's decision making is not always made in Jersey, which could compound any delays due to a lack of local knowledge or experience.

The Deputy of St. Mary:

"And from memory from other people, sometimes the bank's decision making is not always taken in the Island, is that right?"

Collas Crill:

That is right.

Le Gallais & Luce:

That is right, yes.

The Deputy of St. Mary:

That itself could lead to delay because they are not familiar.

Collas Crill:

*It can sometimes lead to a delay...*²⁶

34. It was brought to the attention of the Panel by the Law Society that changes to the system of how banks use surveyors were made during the 2014 Mortgage Market Review (MMR). It was explained that this review was a process to eradicate what was seen as irresponsible lending following the financial crisis.²⁷ The side effect of this, however, was that it created extra regulations:

*"As part and parcel of M.M.R. a whole raft of other impositions or rules were introduced to include responsibility by the lenders to handle or instruct all valuations in whichever part of the country they are from. Now, rather than mortgage brokers instructing local valuers, all banks will use a centralised valuation service based in the U.K. For most of them Valuations Direct, who are based in Nottingham, look after most of the banks. There is a local service that looks after one of the lenders here. What those contractors will do is that they will farm out on a rotating basis instructions to the different valuers in the Island. What they do not know though is whether those valuers are on holiday or ill. We have 4 principle valuation firms in the Island: Reynolds Associates, Wills Associates and the 2 one-man bands, who are Gary Le Feuvre and Paul Labesse. All we need is Paul Labesse to be on holiday and Gary La Feuvre to be ill and we have suddenly got a massive problem in terms of valuations being done in a timely fashion."*²⁸

35. The general message the Panel received was that there was a sufficient lack of surveyors to create a bottleneck in the property transaction process:

Deputy A.D. Lewis:

²⁵ [Transcript, Law Society](#). p10

²⁶ [Transcript, Law Society](#). p11

²⁷ [Transcript, Law Society](#). p11

²⁸ [Transcript, Mortgage Brokers](#) p7

“Does the shortage of surveyors cause a bit of a bottleneck regularly?”

Managing Director, The Mortgage Shop:
Most of the time, especially this year”.

Finding 8: There are currently only four principal property valuation firms used by mortgage lenders on the Island. This means that there is a potential for bottlenecks in the property transactions process if one of these firms is unable to take on work.

Guarantee of Funds

36. As well as bottlenecks, the Panel was informed by an estate agent that there were aspects of the process surrounding the proof of funds of a buyer, which could cause delays:

“The other thing, now, is that we want as much information as we can have from buyers to verify their situations. We want to know who they are going through, what mortgage adviser. Some people say, “We have our consent to buy,” having actually just been in for a 5-minute chat and have been told, “Once you provide all your information, then we will let you know.” We need to know the exactly at which stage they are so as to flush such people out, find out whether they have a substantial deposit and where that is coming from, whether we can have a letter from their bank to say that they are in funds to that amount. All those things will minimise the transaction time and help to avoid other things coming up at a later date.”²⁹

37. The Panel explored whether a document from the bank which evidenced a buyer’s financial status, would be beneficial, and whether such a thing at present was mandatory. The Panel heard that *“proof of funds is absolutely essential”* and that estate agents try to get such proof *“as much we possibly can”*. However, the Panel was also informed that *“historically, it has not been something that we have asked, because it was embarrassing.”³⁰*

38. It was also stated that proof of funds was mandatory in the UK but not in Jersey:

“In the UK, mostly, now, proof of funds has to be given straight away. We try to improve the process as much as we can. We want to know people’s financial situation, as Gill said, and proof of funds is really important because a lot of people say, “Yes, I have the money,” but no, they have not. Then that is dependent on the surveyor coming up with the right valuation to the property and whether the bank will lend. The whole process then starts getting in a mix and at the end of it all we are down to what the lawyers can do.”³¹

39. The Panel asked whether a mandatory requirement of proof of funds would assist in the process:

²⁹ [Transcript, Estate Agents](#). p4

³⁰ [Transcript, Estate Agents](#). p5

³¹ [Transcript, Estate Agents](#). p5

Deputy A.D. Lewis:

“So, if it were a mandatory requirement that you had to have proof of funds, would that help you a lot?”

Hunt Estates:

It would. However, it depends at what stage we have proof of funds, because if they have just been to the bank and they say, “Yes you can borrow X amount,” they can have made an offer on that basis. It is down to us to let the vendor know that they have only been in for a preliminary chat and are making their offer on that basis.”³²

40. It was stated however, that a significant number of checks are already performed by estate agents:

Hunt Estates:

“But we do have a duty of care under our KYC and our anti-money laundering, to find out where the money is coming from, so we do already have the right to ask that and we can ask that. Sometimes we know that we might be selling the house of someone who is scaling down so, if they say that the funds are coming from that, we have a bigger picture. However, if they have just walked in and said, “We have the cash in the bank,” are they cash cash, or are they on a mortgage or have they a small deposit but they are borrowing too? All these things we need to know as an agent for the vendor, to verify them and to vouch for them once we have found out that information. We do do second checks. We cannot just take people at face value.”³³

41. The Panel heard from mortgage brokers that they felt it was their responsibility to encourage their clients to identify how much they could borrow at the earliest stage, even before a potential property was identified:

Managing Director, The Mortgage Shop:

“So we finally encourage our many clients to come to see us to find out how much they can borrow before they even start thinking of looking at a property. So therefore we are already instrumental in ensuring or attempting to ensure that the process, the lead-in process, up to the time that completion takes place, is reduced to the absolute minimum. It is very, very important.”³⁴

42. It was explained that the public were generally better informed about identifying their borrowing capacity before making an offer on a property:

Managing Director, The Mortgage Shop:

“That used to happen a lot more than it does now because people I think at long last realise by listening to peer group and colleagues at work and family and various people that there is a procedure that really ideally needs to be followed, which is getting

³² [Transcript, Estate Agents](#). p5

³³ [Transcript, Estate Agents](#). p6

³⁴ [Transcript, Mortgage Brokers](#) p2

*preapproval for the maximum level of borrowing before going out into the property market.*³⁵

43. Evidence presented to the Panel by a mortgage broker stated that they do offer a service where proof of funds can be provided, in the form of a “mortgage certificate.” To receive a certificate, the potential buyer must provide a series of documents. These include: proof of identification, evidence of income, bank statements, credit cards and any other forms of debt or outgoings.³⁶
44. At present, only a small proportion of potential buyers secure such a certificate however:

The Deputy of St. Ouen:

“How often is that done that you issue a mortgage certificate?”

Managing Director, The Mortgage Shop:

*The actual mortgage certificate probably 10 per cent. People frequently come to see us and what we are able to obtain for them is frequently greatly in excess of what they are expecting to borrow, so therefore a certificate is not issued in those circumstances. The main issue that holds back most people in buying a property in the Island is not income but size of the deposit. That is what restricts people.*³⁷

45. The Panel also noted that there is a potential delay within the mortgage application process. A submission to the Panel from *The Mortgage Shop* states that:

*“Specific bottlenecks affecting the average rate of progress of transactions- these are attributable principally to lenders who will as a result of bank holidays, staff holidays, illness, computer down time, office moves etc end up at various time of the year with backlogs of 10 working days if not more, when turning around a mortgage application.”*³⁸

Finding 9: Proof of a buyer’s financial status at the outset of the property transaction process is not standard practice in Jersey.

Recommendation 4: The Chief Minister should investigate, in conjunction with the Law Society and Jersey Estate Agents’ Association, the introduction of a standard practice for a potential buyer to produce evidence of sufficient funds from their bank or mortgage broker, before making a formal offer on a property. Progress should be reported to the States before the end of May 2019.

³⁵ [Transcript, Mortgage Brokers](#) p3

³⁶ [Transcript, Mortgage Brokers](#) p3

³⁷ [Transcript, Mortgage Brokers](#) pp. 3-4

³⁸ Submission. *The Mortgage Shop*”.

<http://www.statesassembly.gov.je/scrutinyreviewsubmissions/submission%20-%20domestic%20property%20transactions%20-%20the%20mortgage%20shop%20-%202022%20april%202016.pdf>

7. Improving the Transactions Process

46. The Panel was informed by the various stakeholders contacted, that there were various possible means by which the overall transaction process could be improved.

Friday-Only Court Dates

47. The Friday-only court date for residential property transactions (besides share transfers) was one of the most frequently commented on issues addressed to the Panel. The comments received varied greatly.
48. The members of the public who submitted evidence to the Panel were generally of the opinion that from a purely practical point of view, the Friday-only court date was a hindrance:

Bartley McNeela:

“Yes, I think it is a nice traditional part of Jersey law but it does not seem fit for purpose and to choose a Friday, which is the worst possible day to try and sort things out. The utility company were not available. There are issues with getting a removal firm to work weekends. It is all very difficult to do things with having a decision made on a Friday afternoon. Surely it could be done on other days, perhaps every day, perhaps 2 or 3 days in the week to try and spread it out. That would make it a lot more user friendly.”³⁹

Anthea Hall:

“Yes, fine. Well I can just jump and say I have 2 complaints, major complaints, which I think you are discussing and is cropping up a lot. That is namely the day transactions go through, which is a Friday. As the gentleman said, it is very difficult to get anything done on a Saturday and a Sunday so you have to hand over your keys, you cannot go back to your house so what do you do? If you have not got another property to go to or you have another property to go to, say, even so removals are not going to do it on a Saturday and a Sunday...”⁴⁰

49. The views expressed by the public were echoed by the Jersey Consumer Council:

Chair, Jersey Consumer Council:

“My last point is really to do with the points that have been raised. From the point of view of someone having come to the Island now quite a long time ago, I still do not understand why, and it is a lovely Jersey thing, but all sorts of things are lovely Jersey things, you have to go to court to convey a property and even if you do have to go to court, why does it have to be on Friday? Lots of people have made that point and it is the most inconvenient day of the week for people, and people have explained all of that and why that is a problem and I, on the part of the Consumer Council, would absolutely agree with that.”⁴¹

50. Similar views about the Friday-only court date were highlighted by the estate agents who the Panel communicated with. It was felt by at least one estate agent that having a second day for property transactions would alleviate some of the pressure:

³⁹ [Transcript, Members of Public and JCC](#). p10

⁴⁰ [Transcript, Members of Public and JCC](#). pp.11-12

⁴¹ [Transcript, Members of Public and JCC](#). p42

Broadlands:

"I would like to see more than one day a week, perhaps.

Deputy A.D. Lewis:

That is the kind of thing we are getting at.

Broadlands:

Just on a Friday afternoon, I think probably the lawyers - perhaps a Wednesday and a Friday. It would just take a bit of pressure off everybody, so they know where they are."⁴²

51. It was also highlighted to the Panel that having only a single court date meant that delays are "exacerbated when a Friday is lost for Good Friday and over a Christmas / New Year period, an additional date would assist where the gap is too great."⁴³
52. The Panel was informed that Guernsey's model is significantly different, allowing property transactions to take place on Tuesdays and Thursdays, which provided flexibility:

Hunt Estates:

"There was a discussion about whether people do still want to go through the standing up in court and the whole traditional side of it. In Guernsey they transact on a Thursday and a Tuesday. Most people go for the Thursday anyway, because they know that they have the weekend, then, to move and have a little bit longer, rather than a Friday afternoon and the weekend to move out. I understand that the Tuesday is more of a back-stop date, in case it does not happen."

53. It is noted however, that having a second court day each week would potentially prove problematic. The Bailiff, in his response to the Panel, stated that:

"It is possible that one of the issues that you will consider is whether a fixed time for passing contracts- Friday afternoon- causes delay or other difficulty. The only point that I would make in that connection in case it should come up for consideration is that I do not believe it would be feasible to split the dates for passing contract across the different weekdays if the present system of passing contracts were to be maintained. We already have a crowded court diary, and having multiple occasions on which contracts might be passed would be very difficult to manage and disruptive to other court users."⁴⁴

54. Those in favour of the Friday-only court dates highlighted that, should a property fail to meet the Friday court date, "a week is not a very long period" to wait.⁴⁵ It was also pointed out to the Panel, that share transfer transactions largely take place on a Friday, quite voluntarily:

⁴² [Transcript, Estate Agents](#). p18

⁴³ Submissions, "Ogier" <http://www.statesassembly.gov.je/scrutinyreviewsubmissions/submission%20-%20domestic%20property%20transactions%20-%20ogier%20-%202018%20april%202016.pdf>

⁴⁴ Submissions. "The Bailiff of Jersey" <http://www.statesassembly.gov.je/scrutinyreviewsubmissions/submission%20-%20domestic%20property%20transactions%20-%20bailiff%20-%202018%20april%202016.pdf>

⁴⁵ [Transcript, Mortgage Brokers](#) p23

Managing Director, The Mortgage Shop:

“The Friday seems to be a very happy arrangement for everybody. All legal practices I think have geared their whole raison d’être for the whole of the logistics of their offices to Fridays to the extent that shared transfer transactions, which are not subject to the Royal Courts, goes from the Friday as well most of the time which is a clear indication of the fact that everybody must be satisfied with that. If they were not then many more shared transfer transactions would take place on other times of the week.”⁴⁶

55. The Panel was also reminded by a one law firm, that the Friday court date had historical significance that shouldn’t be underrated:

”The nostalgia and historic significance of the Friday Court is also warmly received by the vast majority of home buyers and should not be overlooked.”⁴⁷

Finding 10: The Friday-only court date for property transactions in Jersey, whilst a significant tradition, limits flexibility in the property transaction process.

Recommendation 5: The Chief Minister should consult with the Bailiff, with regard to the feasibility or otherwise of introducing a second date in the weekly Royal Court calendar for conducting property transactions, as is the current practice in Guernsey. The findings of the consultation should be reported before the end of May 2019.

Passing of Formal Contracts

56. It was brought to the attention of the Panel by a local law firm that a formal court sitting was not necessarily required:

“Furthermore as had been discussed in the past we could do away with the formality of passing contract in the Royal Court altogether and exchange agreements instead.”⁴⁸

57. A submission to the Panel from a local law firm argued that removing the requirement for the Royal Court and following a process similar to that of the UK, may speed up delays:

“The law should be changed so that (as in the UK) the sale of a property can be executed by a signed document registered with the Registrar of contracts (exchange of contract) rather than the present system of passing a contract on a Friday on oath before the Royal Court. This should also enable transactions to be effected on any week day. This would undoubtedly speed up the process and reduce delays. This would require a change in the manner in which the contract is passed so that the contract contains a legally enforceable affirmation or undertaking to abide by the terms of the contract (currently a seller and buyer take an oath before the Royal Court).

A further benefit that could arise from such a change would be that the law could be changed (by a statute) to provide the Royal Court with power to enforce a contract (specific performance) where a buyer or seller (mostly seller) acts in breach of an

⁴⁶ [Transcript, Mortgage Brokers](#) p23

⁴⁷ [Submission, Collas Crill](#) p6

⁴⁸ Submission, “Mourant Ozannes”

<http://www.statesassembly.gov.je/scrutinyreviewsubmissions/submission%20-%20domestic%20property%20transactions%20-%20mourant%20ozannes%20-%202022%20april%202016.pdf>

agreement for the sale of the property. An addition benefit is that such a change might stop the practice of gazumping and gazundering.”⁴⁹

58. Such a change would require further subsequent analysis however. As one local firm highlighted to the Panel:

“The UK process has a system of exchange then completion, so the clients once they have exchanged know the date upon which they are you complete. Whilst this gives them certainty once exchange has taken, reaching the exchange part of the deal can have many of the same problems as getting a Jersey conveyance straight to the Royal Court for completion within a matter of circa 4 weeks. It should also be noted that by comparison the current Jersey system of conveyancing is generally far quicker than the UK as well as many other, if not most other jurisdictions”.⁵⁰

59. This would suggest that completing a UK property transaction may be a longer overall process, taking more time to get to a point of completion. However, there is less uncertainty at a later stage than seen under the current Jersey model.

60. A similar comparison could be made between the advantages and disadvantages of the use of pre-sale agreements:

“Pre-sale agreements are available for complicated transactions, or where for instance transactions have completion dates set some months down the line or dependent upon some contingency. Such agreements of sale are entered to tie the parties into the later completion date, however these agreements would not suit most transactions, would cause an unnecessary delay and tend to contain loop holes which can cause great irritation to clients.”⁵¹

61. At present, given that there is no standard wording or document, it is not clear whether this would at present make the overall process any quicker and whether the costs would be very high:

The Deputy of St. Mary:

“... But going back to my overall point: does it increase the general work ... the actual action of having a preliminary contract does increase entire spend...”

Collas Crill:

It does. Maybe, as I say, if you had a standard presale agreement and so you just print that off and everyone signs that once everyone is in a position to, that might ... obviously that is not going to add an awful lot to the overall fee, but at the moment certainly it does. I mean if we were asked to do preliminary agreements we would quote accordingly in relation to that deal.”⁵²

⁴⁹ [Submission, R. Troy](#), p5

⁵⁰ [Submission, Collas Crill](#) p6

⁵¹ [Submission, Collas Crill](#) p6

⁵² [Transcript, Law Society](#), p7

62. Given the short turnaround time for property transactions in Jersey and the time it would take to produce such an agreement, this may in fact hinder the speed of a transaction:

Le Gallais & Luce:

“Generally the presale agreement will refer to a contract which is attached to the back of the presale agreement and says a date when that is going to be passed. But as Paul said before, you would only normally do that if you are looking at a date in the future of 3 months because there is no point ... if you are completing in 3 weeks, by the time you have done all your checks 3 weeks is going to be up anyway so you can complete as soon as you have finished your checks. Having the agreement does not make a great deal of difference if you have got to make it subject to everything else that might come up: issues in title, as well as the finance, site visit, you have to undertake if there is a problem onsite and things do not quite agree with what is in the contract. You have got to then maybe approach a neighbour to be party to the contract. So all of those things you would have to make it subject to.”⁵³

Recommendation 6: The Chief Minister should consult with the stakeholders, whether there is potential scope for property transactions to complete outside of the current Royal Court process. He should report the findings of these consultations to the States before the end of May 2019.

Financial Compensation

63. The Panel considered, whether a deposit system alongside a contract between the seller and potential buyer would prevent the last minute pulling out of a transaction. The Panel was informed that this already exists in France:

Managing Director, The Mortgage Shop:

*“...I arranged for a mortgage in France using a French lender and over there the whole system is tied up to a fine art. Purchasers, once they have agreed to purchase a property, are required to pay over a 10 per cent deposit in cash at the time they sign the purchase contract which is called a *compromis de vente*. I would get in touch with the notaires who are looking after the transaction and ask them to add into the *compromis de vente* a clause, a clause suspensive which will allow for the return or the refund of the deposit if the vendor ... if the purchasers are not able to obtain mortgage funds.”*

Deputy A.D. Lewis:

It is usually called a clause get-out, is it not?

Managing Director, The Mortgage Shop:

*Yes. Now, this *compromis de vente* now comes accompanied by anything up to 10 different reports: termites, ants or whatever there was too much of in Brittany or Normandy but more particularly asbestos, plumbing, energy reports, radon gas, all sorts of things like that and all of these reports accompany the *compromis de vente*. So all the research has been done and prepared. It is French law and it works perfectly, absolutely perfectly. The whole thing is spat out yet extraordinarily the process takes*

⁵³ [Transcript, Law Society](#), p8

*at least 3 months. Not 4 to 6 weeks but 3 months because that is the way it works in France, but it does work and really a leaf should be taken out of that book.*⁵⁴

64. The Panel was informed that even a small sum of money alongside a formal contract can help to focus the buyer on the purchase:

Hunt Estates:

“One little thing that used to happen was that they [the purchaser] had to sign a housing consent and pay £75. They were actually paying and signing something and it did focus them a little bit to think, “I am now making some form of commitment” but we do not have consents anymore.

Deputy A.D. Lewis:

*That is a good example. So, if there were a pre-contract of some sort – it might not be a percentage, but a reasonable fee that the buyer would lose if he started mucking things about – if he suddenly decided that he did not want to proceed, then there would be a cost to him, because there would clearly be a cost to the seller who would probably have taken it off the market.*⁵⁵

65. The Panel was reminded however, that especially with first-time buyers, there was often little scope for spending significant sums of money on a potentially failed transaction:

Broadlands:

*“That is right. It is difficult to be all-encompassing, though, because most young people buying for the first time cannot afford to make a mistake in what they are buying. They cannot afford to get involved with signing a contract that is going to cost them money; they just do not have the spare cash to do it. It is a lovely idea in theory but in practical terms I do not think it works. We ask for preliminary agreements of sale to be prepared if we know that someone is looking for a completion date which is quite a long way off, then we go for it. However, if someone is going to look to complete in 4 to 6 weeks then we do not bother with it.”*⁵⁶

66. An alternative solution was raised by a member of the public with professional experience of the process in South Africa:

Vivien Vibert:

“... in South Africa there is a pre-contract system which is compulsory, that is how you do it, that is how it is done, you sign a piece of paper. I suppose it is similar in a way to in England where of course by the land laws you have got to have a written agreement before the transfer is allowed and that would probably help. As I say, in Jersey you have to have a written agreement of some sort and here we have a contract but the clever thing that they do in South Africa and which would be wonderful if it could come into place here is that they separate occupation and ownership. Now occupation and

⁵⁴ [Transcript, Mortgage Brokers](#) pp.18-19

⁵⁵ [Transcript, Estate Agents](#). p29

⁵⁶ [Transcript, Estate Agents](#). p29

ownership or possession and ownership are 2 completely different legal things that we recognise in leaseholds and tenancies and all sorts.”⁵⁷

67. It was explained to the Panel that the practice was for contracts to contain a fixed date for occupation and an “occupational rent” as financial compensation to the seller if the transfer is completed after the date of occupation or to the purchaser if it is completed before occupation:

“...the financial compensation is what is called an occupational rent in South Africa, which is written into the pre-contract so you have a market related rate. You pay a deposit of course, a 10 per cent deposit. It is not always 10 per cent but normally, so you have a market related rent, something which is pretty much what you would be paying on the market which should be similar to what people would be paying in interest on a mortgage. Of course that rather depends on all kinds of things like Bank of England rates and things. The person who is in occupation pays that rent for however many days it is to the person who is not in occupation while registration is delayed.”⁵⁸

68. Feedback from the legal profession would suggest that whilst they offer the potential for such a contract and associated penalty, clients have concerns about the time this might add to the overall process:

“Gazumping and Gazundering is a common concern amongst our clients. We have the facility at our disposal to follow the UK formula and execute agreements of sale subject to finance and conditional upon other counterpart agreements relating to the other transactions in the chain albeit that these are enforced under payment of a penalty rather than by specific performance. Whilst this arrangement is not infallible, (with the exception of changes in lending criteria and financial conditions) the theory is that any problems are dealt with well in advance of passing contract. The feedback from our clients is that there is presently no appetite to extend the time which property sales take and no desire to extend these to mirror the timescales of UK transactions. Mortgage offers also have a limited duration (just as they do in the UK) where mortgage offer expiry often causes problems and added expense.”⁵⁹

Finding 11: Creating a pre-sale agreement, which includes a financial penalty for buyers or sellers who withdraw from a transaction, would create a greater deal of certainty in the transactions process and compensate losses incurred by either party.

Buyer's Pack

69. It was brought to the Panel's attention that in England a property buyer's pack is now produced, which helps answer potential questions from the buyer at an early stage and which speeds up the general buying process.

Chair, Jersey Consumer Council:

“... I think it probably impinges on the point that I think other people in terms of this idea, particularly if you are the vendor, of whether you should be answering a whole series

⁵⁷ [Transcript, Members of Public and JCC](#). p21

⁵⁸ [Transcript, Members of Public and JCC](#). p22

⁵⁹ Submission. “Viberts”. <http://www.statesassembly.gov.je/scrutinyreviewsubmissions/submission%20-%20domestic%20property%20transactions%20-%20viberts%20-%202022%20april%202016.pdf>

of questions at an early stage because of course in England now they have what is called the 'property buyer's pack' which is a pack that has to be available that the vendor has to pay for where the vendor has answered all of the questions in advance and has had all the searches undertaken in advance, which certainly they are now beginning to find in England really does speed up the process"⁶⁰

70. The Panel was informed that this sort of pack was especially needed in Jersey, where:

"The actual conveyancing documentation in Jersey is, even though it is now in English where it has been translated, incredibly complicated. It uses very complex legal language that many people simply do not have the ability to understand and very often do not like to ask their lawyer for fear that it will potentially complicate things or cost them more and I think it is because so much has been translated from the French, no one has thought, or perhaps the ability is not there to do this, from a point of view of plain modern English: "How should this be described?"

Finding 12: A "Buyer's information pack" which might be produced by the seller, at the time of a property going to market and which would identify problematic issues about the property, would enable the purchaser's lawyers to commence work earlier.

⁶⁰ [Transcript, Members of Public and JCC](#). p30

8. Land Registry

71. Jersey has made progress in recent years regarding how it manages the registering and records of property transactions. For example, in November 2006 the use of English in contracts became mandatory. As well as this, the Panel was informed about how the Public Registry Index and Document Enrolment (PRIDE) system has made access to documentation easier:

“Nowadays the records are held on a database known as PRIDE (Public Registry Index & Document Enrolment) system accessible via the internet available for inspection 24/7. On this system all transactions involving land, obligations (borrowings), powers of attorney and caveats (injunctions granted by the court preventing transfer of immovable property) are registered.

Historically the Public Registry records (indices and the contracts themselves) were held in paper-based format (large bound books). The PRIDE system was originally launched in 1995. This involved the computerisation of all the indices of the Public Registry, going back as far as 1800. The user could search the indices on a stand-alone PC but then had to refer to the specific book to view the details. In 2001 PRIDE phase 2 was launched, which involved the scanning/photographing of all the books. The user could search and view the images on a stand-alone PC. In 2006 PRIDE was updated and made available over the internet to all the law firms. The PRIDE system also has a link to a Digimap PRIDE layer where a user can search for properties by map location using the Digimap in addition to other forms of search using name, property description or Unique Property Reference Number.”⁶¹

72. The Panel was advised that this has led to a speeding up of the entire process:

“These advances have meant that a title search of a property which used to take a couple of days now can be completed in a couple of hours. In 2014 the input system for PRIDE was upgraded. We now accept certain documents by electronic submission and have speeded up the process for scanning and attaching the images to the index.

The details of the contracts passed before the Royal Court on a Friday (names of contracting parties, Unique Property Reference number, Digimap location etc.) are input onto the system on the following Monday and the image of the contract itself is attached to the by close of business on the Wednesday. Within three working days therefore the full details are available on the PRIDE system.”⁶²

73. Given the improvements to the efficiency of the process created by the PRIDE system, the Panel explored whether further improvements would be made by the implementation of a land registry.

⁶¹ Submission: Judicial Greffe.

<http://www.statesassembly.gov.je/scrutinyreviewsubmissions/submission%20-%20domestic%20property%20transactions%20-%20judicial%20greffe%20-%202012%20april%202016.pdf>

⁶² Submission: Judicial Greffe

74. The response from the Bailiff was that this is a matter than could be considered, although he acknowledged there were significant time and financial costs involved:

“Secondly, there probably is an issue about a land Registry system which is transaction based and not property based. ...Now that there are many more transactions passing before court than 200 years ago when this system was developed, there is a real question mark about whether a transaction based Registry is the most effective system. With your training, you will be aware that there was a substantial review of land law in England and Wales in 1925 with the passage of the Law of Property Act, the Registered Land Act and the Settled Land Act. The introduction of the Land Registry was to enable identification of the owner of a particular piece of land and to make conveyancing simple, no longer relying upon the production of title deeds. It took England and Wales some 80 years to change completely from a title deeds system to a land registry system, but it has been achieved and no doubt with digital scanning of property in Jersey, we can do better in terms of time! Nonetheless, it would be a large job involving considerable investment of money and time. Whether that would be justified by the simplification of the system and the reduction of legal costs for conveyancing would of course be a matter for political assessment.”⁶³

75. Such a significant change would require a Government decision. The Panel was informed that such a change would amount to completely overhauling the fundamentals of local property law:

“With a registered title system, specific enforcement remedy and a code for exchange and completion the system could be modernised to address a number of inherent issues with the existing system. However, that would require a complete overhaul of the fundamentals of local property law requiring considerable investment by Government. Given the number of isolated incidents within the existing system this may not be a justified investment of public funds.”⁶⁴

76. Whilst Guernsey also has no land registry, the Isle of Man has introduced a land registry through a phased approach between 2002 and 2009. During that time an increasing number of Parishes were required to register property with the land registry. This means that since the last Parish was included in the system in 2009, registration of title to a freehold or leasehold estate in land is compulsory on a conveyance on sale, the grant of a lease for more than 21 years or the assignment of a lease where there is more than 21 years left to run. Voluntary registration of land is also allowed.⁶⁵

77. This would suggest that if Jersey decided to follow the Isle of Man in implementing a land registry, this would indeed be possible.

Finding 13: The Jersey Public Registry Index and Document Enrolment (PRIDE) system for registering property transactions has significantly sped up the process for conducting a property title search.

⁶³ [Submissions. The Bailiff of Jersey](#) p2

⁶⁴ [Submissions. Ogier](#) p2

⁶⁵ Isle of Man Government Website: “Land Registry” <https://www.gov.im/categories/home-and-neighbourhood/deeds-probate-and-land-registries/land-registry/>

Finding 14: There would be considerable public benefit in creating a Land Registry in Jersey as a more modern, efficient and comprehensive system. The Panel acknowledges that this would require a significant investment of time and money.

Recommendation 7: The Chief Minister should consult with all interested parties, as to the desirability of establishing a land registry in Jersey. The Chief Minister should report his findings to the States before the end of May 2019.

9. Regulation of Estate Agents

78. Whilst the Panel has not explored the conduct of estate agents specifically, several stakeholders have commented on the potential benefits of greater regulation of estate agents:

Managing Director, The Mortgage Shop:

“Well, my comments are obviously in the public domain and I do rely upon estate agents as part of our overall process in the success of our business but there certainly is a good reason for there to be greater control because it is a well-known fact that most estate agents will recommend one vendor and will recommend one lawyer and that one particular legal practice is responsible for about 50 or 55 per cent of all transactions in Jersey. It is a small practice as well. Now, I will not comment as to the reason why that one lawyer or legal practice is recommended or why one particular vendor is recommended. The lender offers the highest rates in the Island, sometimes twice as high as what other lenders will offer. So, yes, there are certainly ... perhaps it is misguided advice which is given out by certain estate agents to potential purchasers.”⁶⁶

79. The Panel heard from one estate agent that the quality of firms in the Island was not universal:

The Deputy of St. Mary:

“Going back to your point about doing your preliminary work with the vendor. I am pleased to hear that. Is that universal among agents, do you think?”

Broadlands:

No. A lot of people do not know what they are doing. We have been doing it for a long time...

Broadlands:

...However, there are an awful lot of people who have not got a clue what they are doing. They can sell something if they have something to sell but they do not know what they are doing, what the processes are. They do not have to pass anything before they are what they are. And they can literally one day decide to be an estate agent and walk through the door. So, you are going to find people who do not know what they are doing, but then that is down to people like us, who look after the negotiators.”⁶⁷

80. It was clarified however, that some level of regulation did exist, albeit not compulsory:

Deputy A.D. Lewis:

“...do you think that there is a case for some kind of regulation, licensing or something? Most other countries have a licensing regime for estate agents, bearing in mind that you are offering – I know that you are not advising, but you are offering advice and it is the biggest transaction anybody is every going to make. You are experienced agents and not everybody is qualified, not everybody is experienced. And you are experiencing

⁶⁶ [Transcript, Mortgage Brokers](#) p20

⁶⁷ [Transcript, Estate Agents](#). pp.9-10

that to your detriment at the other end of a stage. So, is that something that you think should be looked at?"

Hunt Estates:

"It has been looked at time and time again, and even UK agents are not registered, are they? They do not have to be licensed or anything.

Deputy A.D. Lewis:

But they are covered under the Consumer Protection Act.

Hunt Estates:

Yes. We are members of a national association, which sets out codes of conduct, which we abide by. We have our professional indemnity insurance. If we are handling client money we have client protection. We come under agency law. We also come under anti-money laundering law and we have to be registered with that body and that body anyway. So, there is already certain legislation in place. Maybe we need to say to the public, "Use an agent who does step up to the plate and adheres to these codes of conduct and looks after their clients and carries out best practice."⁶⁸

81. In Jersey, currently 15 estate agents are registered with the Jersey Estate Agents' Association (JEAA) according to its website.⁶⁹ There are currently 41 estate agents listed as being locally based according to the Government of Jersey website.⁷⁰ The JEAA website states that:

"Are Estate Agents in Jersey regulated?"

Whilst there are no specific laws regulating Jersey estate agents, they are nevertheless required to be registered with the Jersey Financial Services Commission as a specified Schedule 2 business under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008 and are required to collect customer due diligence in accordance with the Money Laundering (Jersey) Order 2008. That is the culture we now live with.

Can customers now benefit from the JEAA?

Certainly, the JEAA act as a form of redress for complaints received from customers against its members and then looks into resolving the situation.

Would you encourage customers to use a Member Agent?

Absolutely, that would give them comfort knowing that the agent operates from a Code of Practice in their everyday operation. The JEAA emphasise that their members work for the vendor in the case of a sale, and the landlord in the case of a rental. A fact that often gets overlooked in trying and clinch a deal! As property is one of the biggest investments a person is likely to make – it makes sense to select an agent that follows best practice. The Jersey Estate Agents' Association is committed to raising the standards in estate agency."⁷¹

⁶⁸ [Transcript, Estate Agents](#). pp.10-11

⁶⁹ Jersey Estate Agents' Association <https://www.jeaa.co.uk/members.html>

⁷⁰ Gov.je <https://www.gov.je/Home/RentingBuying/BuyersGuide/Pages/EstateAgents.aspx>

⁷¹ Jersey Estate Agents Association. "About Us" https://www.jeaa.co.uk/about_us.html

82. The Panel asked an estate agent to what extent this form of regulation was legally binding. It was identified that this is something that estate agents may be open to exploring:

Deputy A.D. Lewis:

"... If someone intervened and said, "Look, okay, let us agree what best practice looks like, and then go from there and have some light-touch legislation to make it happen," otherwise everybody is not going to sign up, are they, would you accept that that was a possible way forward?"

Broadlands:

I think that you would get a majority of the experienced agents quite happily looking at something like that.

Deputy A.D. Lewis:

You are doing it already to a certain extent. The advice that you are giving is good advice. It is not then followed up with a paper trail that is legally binding.

Broadlands:

That is right. There is nothing regulated and there is no official piece of paper. It has got to be worth talking to the lawyers about that. It then comes down to your recommendations, really.

Deputy A.D. Lewis:

So, would it help if there were some light-touch Government intervention to assist your industry, to make things better, and obviously the consumer would benefit as well? Or would you prefer us just to leave it to you guys to sort out among yourselves?"

Broadlands:

If it is of benefit to the consumer. I am not a great lover of over-regulation, as I am sure you are aware."⁷²

83. Whilst not touched on directly by law firms, there was reference to the potential need for an improved method by which estate agents manage the transaction process:

"Estate agents put a great deal of pressure on people to stick to the dates which they have set (whether or not there is a valid reason). This is largely because there is a great deal of work involved in rearranging a whole chain of transactions. This pressure is often passed back to us by our clients who simply ask that we do what we can to achieve completion on time.

In setting these dates, Estate agents are not in a position of knowledge to take account of the common factors which may necessitate an increase from the 3 week minimum. In no other line of work would one professional dictate to another professional the length of time a piece of work should take in this way."⁷³

⁷² [Transcript, Estate Agents](#). pp.40-41

⁷³ [Submission. Viberts](#). p2

Finding 15: Currently only 15 local estate agents are registered with a Jersey-based association requiring its members to follow a code of conduct. This is a minority of the current total number of estate agents active in the Island.

Finding 16: There is currently no statutory regulatory body for estate agents in Jersey, although there are Jersey-based regulatory bodies for both mortgage providers and law firms.

10. Ombudsman

84. The Panel explored whether expanding the role of the existing Channel Islands Financial Ombudsman or creating a new service, would assist with public complaints whilst also improving the property transactions process.
85. It was highlighted to the Panel that the financial services industry has an ombudsman but that estate agents, who are largely unregulated, do not:

Chair, Jersey Consumer Council:

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

The Deputy of St. Ouen:

So what problems does that give rise to?

Chair, Jersey Consumer Council:

Anne will have comment on this, I know. Like any unregulated industry, clearly for the whole reason that we have a financial services ombudsman, which again took years and years and years in this jurisdiction, because all sorts of awful things were happening with people being involved in financial transactions and there was nowhere for them to go.”⁷⁴

Executive Officer, Jersey Consumer Council:

“Yes, and I think that is the point, that we need some process to even the playing field. The financial ombudsman is there to even that playing field between the little guy and the big guy and we have the same scenario whereas now, if you have a complaint, where do you go with it, what do you do? There is no formal process involved there, which does mean the consumer is vulnerable. There is no process at all of buying a property. How do we know what the stages are? It is very confusing, there is lack of transparency, we do not know what costs we are facing, what the key turning points are. If you do a project at work, you know what the critical milestones are, they are mapped out for you and you work to those whereas if you are thinking of buying a property, which is probably the most expensive thing you will ever do, we do not know what they are.”⁷⁵

86. The Panel was informed that the Law Society of Jersey acts as effectively an ombudsman for the legal industry:

⁷⁴ [Transcript, Members of Public and JCC](#). pp.32-33

⁷⁵ [Transcript, Members of Public and JCC](#). p34

The Deputy of St. Mary:

“But again there is not much you can do about that in the present system. Changing tack slightly. A question on a legal ombudsman or an ombudsman involved with property transactions. We have a Financial Services Ombudsman already. The estate agents, when we saw them, talked about they had spoken to the U.K. one and were prepared to, I think, use his services if required. But - I do not think I am betraying any secrets here - when we had a presentation by the Financial Services one recently, he made the point that once an ombudsman is in place for certain things it is almost natural for his portfolio of situations to be added to. Do you see any advantage or disadvantage in his being there? I am thinking possibly more from the point of view that would itself maybe lead on to regulatory requirements probably for estate agents rather than you guys because you have a regulation yourselves. I presume you will say you have very few complaints arising from this, apart from maybe the system.

Collas Crill:

No, that is right. I think that is right.

Le Gallais & Luce:

Because ultimately if there are any complaints in regard to service or professional conduct then they would be referred to the Law Society, so if there are any issues there then I think that it would ... there is a mechanism already in place to deal with those.”⁷⁶

87. The Panel note the view of the Jersey Consumer Council regarding the need for the regulation of estate agents. Given there being an Ombudsman for financial services and the regulation of local law firms by the Law Society, there is clearly a precedent set within the other areas of the property transactions process.
88. The Panel recognise however, that the Jersey estate agents are able to voluntarily join *The Property Ombudsman* scheme in the UK. One local estate agent advertises on their website that they are covered by this body:

“Welcome to Quemard Properties

What do you look FOUR in an estate agent? Quemard Properties are the only estate agency in Jersey associated with all FOUR of the following memberships:

The Jersey Estate Agents’ Association (JEAA), The National Association of Estate Agents (NAEA), The Property Ombudsman Scheme (TPOS), and The Association of Residential Letting Agents (ARLA).”⁷⁷

89. The Property Ombudsman has published a Code of Practice for residential estate agents in the Channel Islands. This is signed up to by estate agents who join the scheme and includes specific responsibilities to both buyers and sellers during the transaction process.⁷⁸

⁷⁶ [Transcript, Law Society](#). pp.33-34

⁷⁷ Quemard Properties. <http://www.quemard.je/>

⁷⁸ The Property Ombudsman. “Code of Practice for Residential Estate Agents in the Channel Islands”. <https://www.tpos.co.uk/images/documents/rules-codes->

Trading Standards

90. The work of such an ombudsman may be impacted by upcoming changes to trading standards regulations. The Panel spoke with the Director of Trading Standards about the Consumer Protection (Unfair Practices) (Jersey) Law, which was adopted in the States on 21st January 2018.
91. This Law will protect both consumers and businesses and would apply to all transactions where there is a customer-business relationship. As such this would affect estate agents, mortgage providers and lawyers to some extent. The principle that underlines a large part of this law is that the consumer needs enough information to make an informed decision, before any formal transaction takes place.⁷⁹

Finding 17: The public has no complaints process to follow if required because there is no local Ombudsman for estate agents in Jersey.

Finding 18: The States have approved the Consumer Protection (Unfair Practices) Jersey Law 2018. Once in force, this imposes certain obligations on Sellers and their agents in marketing property.

Recommendation 8: The Chief Minister should introduce a means requiring all Jersey estate agents to be members of an approved professional body and to adhere to a code of conduct. This work should be completed by the end of May 2019.

Appendix: Panel Membership, Terms of Reference and Evidence Considered

Panel Membership:

Deputy David Johnson (Chairman)



Deputy Richard Renouf



Deputy Andrew Lewis



Connétable Michel Le Troquer



Review Terms of Reference

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.

Evidence Considered:

All evidence considered by the Panel can be found on the scrutiny website www.gov.je.

In addition to considering written submissions from key stakeholders and members of the public and undertaking additional research, including the Code of Practice for Channel Islands Residential Estate Agents (The Property Ombudsman), the Panel held the following public hearings:

- **Tuesday 3rd October 2017 - Estate Agents:**
Representatives from Hunt Estates and Broadlands
- **Monday 14th August 2017 - The Law Society:**
Representatives of the Law Society from Collas Crill and Le Gallais and Luce
- **Tuesday 3rd October 2017 - Mortgage Brokers**
Representative from The Mortgage Shop
- **Tuesday 3rd October 2017 - Members of the Public and Jersey Consumer Council**
Three members of the public and the Chair and Executive Office of the Jersey Consumer Council