



Economic and International Affairs Scrutiny Panel

Regulation of Jersey Estate Agents

Witness: Jersey Estate Agents' Association

Thursday, 28th October 2021

Panel:

Deputy D. Johnson of St. Mary (Chair)

Deputy S.G. Luce of St. Martin

Deputy M. Tadier of St. Brelade

Witnesses:

Mr. N. Dodsley, President, Jersey Estate Agents' Association

Ms. C. Buckley, Vice-President, Jersey Estate Agents' Association

[14:04]

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

We have some questions here but would you like, President, to just outline your overall position and your concerns as to the reputation of the profession in the Island possibly?

President, Jersey Estate Agents' Association:

It is not the reputation necessarily, what we feel is that the time has probably come for Jersey to have some form of legislation and regulation for estate agents. We have been closely involved with the N.A.E.A. (National Association of Estate Agents) Propertymark for a few years now. Following their submissions on what is known as R.O.P.A. (Regulation of Property Agents) in the U.K. (United Kingdom), we feel that it would be a missed opportunity if Jersey does not follow their line but obviously with its own legislation. At the moment because of COVID the U.K. has kicked down the road a little and not heard it in the latest Queen's Speech but their regulation of estate agents is proposing that all client-liaising agents, and including administration staff, have some level of qualification, which they are saying is a level-3 qualification, which is equivalent to A-levels but

owners have a level-4 qualification. Now, in the U.K. what they are proposing is that there would be no grandparenting of anyone, so anyone who is an agent would have to take an exam. What we are saying is probably if you have someone who has done 15 to 20 years agency in Jersey, maybe reaching the end of their career, there is little merit in someone of that stature, who has been well-established and is well-known, to be taking an exam where they have clearly established their own business and practised through the years and are well-learned. But what we have been looking at is Jersey has quite a high start-up rate of individual estate agents. Some of them have not necessarily got the experience that perhaps one would in any other form of business. Our aim, and Catherine particularly, the vice-president, recently has been looking at educational aspects of the association since we both became president and vice-president to see whether we can push it in that direction that youngsters may be looking for a career, that they can see that they could start in an agency, they can either carry on as an agent or perhaps they might want to go off into one of the other branches of property such as conveyancing, surveying.

The Deputy of St. Mary:

Thanks for that and I think we will perhaps come back to qualifications as a separate item. Can you explain to me because I have here that there is a Property Ombudsman in the U.K.

President, Jersey Estate Agents' Association:

That is right.

The Deputy of St. Mary:

Is that part of the Association or is it that position you are talking about?

President, Jersey Estate Agents' Association:

Any member of the Jersey Estate Agents' Association has to have P.I. (professional indemnity), be members of the Property Ombudsman scheme but it is all voluntary. So there are only 16 members I think and following a merger recently there is probably less, so there is probably 15 now. In terms of the Ombudsman scheme, they only have a very limited impact in Jersey in that they can check that our complaints procedures are correct but they cannot really do very much else because of Jersey law. So there would probably need to be a tie-in or similar so that the Ombudsman can check websites and things like that. But recently my firm was audited by them and effectively I had to go back to say to them that we do not register with the H.M.R.C. (Her Majesty's Revenue and Customs), we register with J.F.S.C. (Jersey Financial Services Commission) and there were 3 items that they cannot really check over here, so their only interest was the privacy notice on our website. Now, for customers they can still complain to the Ombudsman if we have not, or a member agent has not satisfied their complaint and we have chosen to abide by those rules effectively. So if there was a disgruntled customer who could not satisfy or sort their complaint out, it would then at this

ultimate stage move on to the Ombudsman who would adjudicate a complaint by the applicant and the estate agent and we would be bound to then ask about it, yes.

The Deputy of St. Mary:

At the stage of the adjudication then, by virtue of being a member of an Association, which in turn linked into it, the Property Ombudsman would do the adjudication as well?

President, Jersey Estate Agents' Association:

Ultimately. Initially, you have your complaint to your office which would be a complaint to the negotiator who would pass it up to a director. If the director cannot satisfy that complainant then we would be able to say: "Right, do we agree it goes to the Ombudsman?" As far as I am aware, there has not been any in Jersey in your time since ...

Vice-President, Jersey Estate Agents' Association:

None that have gone to the Property Ombudsman, no.

Deputy S.G. Luce of St. Martin:

I believe Deputy Tadier has a question.

Deputy M. Tadier of St. Brelade:

Yes, thank you. Apologies that I cannot be with you in person so I could not say hello but we do what we can. The question is around the process and the relationship between you as members of the Estate Agents' Association and therefore signing up to the Ombudsman voluntarily, if you like. How is the Ombudsman set up in the U.K. in terms of who pays for it? Is there a subscription fee normally for U.K. estate agents?

President, Jersey Estate Agents' Association:

Yes, we pay a subscription through our membership to the J.E.A.A. (Jersey Estate Agents' Association). Part of our subscription into J.E.A.A. is paid to the Ombudsman and to the Property Ombudsman scheme. The Ombudsman in the U.K. is compulsory for agents; every agent must belong to a redress scheme which does not apply in Jersey at present.

The Deputy of St. Martin:

That is quite an important point and one I think we are probably going to have to really ...

Deputy M. Tadier:

Just to follow up, how is the relationship the other way around? Jersey is not covered under the English law but is it a 2-way voluntary street, if you like, so that the Ombudsman agrees to complaints

but he is not legally obliged to do so? It is kind of a gentleman's agreement, I guess, is what I am asking?

President, Jersey Estate Agents' Association:

It is essentially at the moment, yes, a gentleman's agreement. However, when I was vice-president and previous President Gill Hunt and I spent some time between ourselves, the Property Ombudsman and Trading Standards Jersey to sort of turn the Ombudsman's code into something that worked in Jersey. So we did that with Trading Standards ... Ms. De Bourcier, was it?

The Deputy of St. Martin:

Alison. We heard from Alison yesterday.

President, Jersey Estate Agents' Association:

So effectively when Trading Standards - 2018 I think it came in - the consumer protection regulations, that was when we really worked on that and as an Association we had meetings with our members to say that they have to abide by trading standards laws which had not really been in Jersey as effective as they are in the U.K. for agents which had **[off mic]** trading standards. The N.A.E.A. Propertymark is pretty hot on things like trading standards, descriptions, et cetera.

The Deputy of St. Martin:

Are we right in thinking that a decision by the Ombudsman could be taken up by Trading Standards in Jersey if they saw a decision ...

President, Jersey Estate Agents' Association:

I suppose you would have to ask Trading Standards that question but I would suppose that if there was something that concerned them, Trading Standards probably independently could investigate if it was deemed to be a breach, or a potential breach, of the Trading Standards Law.

[14:15]

The Deputy of St. Mary:

Can I ask a very basic question? At the moment, assuming an offence or a breach of a code was conducted by an existing member and a complaint was made, can you take me through the hierarchal assessments through which a decision would be made? You said, I think, that the Property Ombudsman itself is starting to give them a ruling, so are there some intermediate stages where that is dealt with at a local level?

President, Jersey Estate Agents' Association:

Before it gets to the Ombudsman it has to be with the company or the company directors, et cetera, or the business ...

The Deputy of St. Mary:

The company directors of ...

President, Jersey Estate Agents' Association:

The company that is subject to the complaint. So they have got to sort out whether they ...

The Deputy of St. Mary:

Okay, the business itself?

President, Jersey Estate Agents' Association:

Yes, if it has gone as far as it can. The Ombudsman would issue a fine, the agency is bound to pay that fine, is it not? They do not tend to be too high from what I have seen, they are sort of around £5,000 compensation levels to be paid generally to the complainant.

The Deputy of St. Mary:

Sorry, what I am trying to get at it is, in certain organisations like lawyers, say, the Law Society, Institute of Chartered Accountants, there is no internal body of the estate agents who acts as a disciplinary review?

President, Jersey Estate Agents' Association:

I suppose our ultimate sanction for members is that we expel them.

Vice-President, Jersey Estate Agents' Association:

But it is only our members, it is not other estate agents.

The Deputy of St. Mary:

Yes, I think I am trying to get a feel for where you are with your own members before we ...

President, Jersey Estate Agents' Association:

Yes, with our own members it would be ...

Vice-President, Jersey Estate Agents' Association:

We would look at the complaint as well.

President, Jersey Estate Agents' Association:

We would look at the complaint ...

Vice-President, Jersey Estate Agents' Association:

Try and get the parties to talk among themselves and resolve it.

President, Jersey Estate Agents' Association:

But if it was that serious - and it has not happened in my time - if it was that serious and there was, say, we deemed it to be a serious situation, the likelihood is we would say to our member: "We do not want you to be a member anymore." But obviously at the moment we have no legislation or no having to be a registered member, there is no requirement for anyone to do anything in a story where some complaints come from. Some complaints will be well-founded; some will be ill-founded.

The Deputy of St. Mary:

Two other points - I am sure there are more coming - but the one you just said, expelling from the Association, that is a nuclear option. There is nothing below that where you can impose a penalty or reprimand or something which ...

President, Jersey Estate Agents' Association:

I think we can reprimand but I do not recall any - in my time certainly, and I have been back in the Association since about 2012 - I do not recall of any earlier representations or fines. So basically what we have done as an Association is said: "Look, we want to abide by a code" which we do and Shelagh was one of the people who was instrumental in setting us up. But Propertymark group, which has been. ... while it is not ideal for Jersey, it does give us quite an insight into how they are regulating. We meet with them quarterly, half-yearly. Quarterly for just chats online like this but half-yearly for training. Our Association also - I digress a little - but we provide quarterly breakfast meetings to members, training. We either bring in a trainer from the U.K. or we will have a talk on ... particularly recently it has been data protection, cybersecurity this year, and annually we will try and do something around anti-money laundering and that process, fines.

The Deputy of St. Martin:

So your members get something back for your money then. You are meeting them, you are providing them training and you are trying to invest in ... can you identify any other than the obvious reason of cost of why more estate agents locally do not want to join or do not join?

President, Jersey Estate Agents' Association:

We have requirements that we must see the P.I. insurance of estate agents and public liability, so whether that is something. Where agents take client money if they are doing lettings, we require to see client money protection and it is a requirement of Propertymark, client money protection

insurance. So, I cannot honestly comment why people would not want to be a member. It is not particularly onerous at the moment but this is perhaps why there should be some legislation.

The Deputy of St. Martin:

How often does your Association contact non-members with a view to try to engage with them?

President, Jersey Estate Agents' Association:

Yearly to say: "Will you become a member?" With the Propertymark, seminars, webinars, et cetera, we invite everybody to that to come along because Propertymark are equally keen that their expense in coming over here - when you could - to these functions which unfortunately we have not had for nearly 2 years now, they like to invite all agents.

The Deputy of St. Mary:

Do many of the non-members take it out?

President, Jersey Estate Agents' Association:

A couple of members of Propertymark do and a couple of times we have had non-members but not often.

Vice-President, Jersey Estate Agents' Association:

Not often no, sadly.

President, Jersey Estate Agents' Association:

It is free. Well I say "free", it is not paid for by the agents. It seems Propertymark has ...

The Deputy of St. Martin:

We are here trying to gain evidence and not try to put words into anybody's mouths but are we right to assume that there is a financial implication as to why people do not join because there will always be a cost to everything and cost reduces profit?

President, Jersey Estate Agents' Association:

I would not have thought so. The annual fee is not particularly high.

Vice-President, Jersey Estate Agents' Association:

It incorporates membership of all 3.

President, Jersey Estate Agents' Association:

Yes, we incorporate membership of J.E.A.A., Propertymark and the Ombudsman, so there is not a particular reason we can see why you would not want to be a member.

Vice-President, Jersey Estate Agents' Association:

Unless they have not got some of the requirements like professional indemnity or client money protection.

President, Jersey Estate Agents' Association:

But I do not think we can comment on that.

The Deputy of St. Martin:

President, just for the record again, you say that you think there are 15 of you now but do you keep a good handle on the total number of estate agents on Jersey or is that difficult to do given that they are ...

President, Jersey Estate Agents' Association:

We try. In terms of the businesses we reckoned at about 50-plus.

The Deputy of St. Martin:

Fifty-plus, okay.

President, Jersey Estate Agents' Association:

At the last count which was done recently. That does not include individuals who are working within a firm, so we are saying there could be 50 people working on their account as agents but not necessarily my employees and agents but you would have to ...

The Deputy of St. Martin:

What is the churn like in the industry? Do you see estate agents leaving and new ones starting up every year?

President, Jersey Estate Agents' Association:

We see new ones starting up. Generally they will have come from a firm or firms. A few leave from what I see but not many at the moment.

The Deputy of St. Martin:

I think Deputy Tadier has a question.

Deputy M. Tadier:

Yes, it is just for context really on this. The question is, do you think - I want you to be objective and I want to be objective - are there a lot of estate agents in Jersey given the size of the Island? Are there more than we would expect? Is it about right?

President, Jersey Estate Agents' Association:

I would say there are probably ...

Vice-President, Jersey Estate Agents' Association:

We have nothing to compare it with.

President, Jersey Estate Agents' Association:

No, not really, there is not much to compare.

Deputy M. Tadier:

I guess in terms of the population, because I know you cannot compare like-for-like, but we are an Island of just over 100,000 and we have, what, some 60 estate agents, would you say?

President, Jersey Estate Agents' Association:

Fifty-plus.

Vice-President, Jersey Estate Agents' Association:

Fifty, I would think. Around 50.

President, Jersey Estate Agents' Association:

Yes, that is firms we are talking about.

Deputy M. Tadier:

Firms?

President, Jersey Estate Agents' Association:

Yes.

Vice-President, Jersey Estate Agents' Association:

It might be a little disproportionate.

President, Jersey Estate Agents' Association:

It probably is disproportionate but ultimately at some point it will shake some out of the equation anyway because they will not have enough business to do. There has been a sort of a ... I think this year has seen quite an increase in the number of agents or agencies.

Deputy M. Tadier:

I guess the question is, if there are probably more than we would expect, has that got something to do with the fact that it is too easy to sell up because there is not enough regulation, I suppose is the ...

President, Jersey Estate Agents' Association:

Yes, I think it is a good point. I think if there was entry level for people. I did conveyancing for 40 years but I was not a lawyer so I cannot set up as a conveyancer.

Deputy M. Tadier:

Yes.

President, Jersey Estate Agents' Association:

So, I think from an entry-level point, what worries us slightly, and I think we have said before in various forums, is where the agent is not perhaps as experienced as some of the agents in the other transactional chain, you can get a situation where an inexperienced agent is not communicating with their applicant client to the point where it can put a transaction in jeopardy. I think all of us at the table have been in that situation. Fortunately, because some of us are more experienced, we have managed to resolve the situation for people. But it could be that if an agent just leaves the transaction, once they have sold a house and they have got their applicant there, they tend to leave the thing to the lawyers, so that is not really where you can leave a deal.

The Deputy of St. Martin:

Is there anywhere where there is a definitive list of estate agents in Jersey, whether they are registered with you or not?

President, Jersey Estate Agents' Association:

No. We have had a discussion with the J.F.S.C. about those that are supposed to be registered with them and we are at fault. There is not a public list at present. That would be something ...

The Deputy of St. Martin:

Well that is the reason I go down that route because I am just thinking about client due diligence and money laundering, et cetera. I am aware that you may well have had some communication from certain people about trying to get more estate agents up to speed on C.D.D. (customer due

diligence). I know that your response was that you are an Association of, in a sense, however many, 15, and you do not speak on behalf of the others. That is quite right but given that there are changes to civil financial penalties and that the J.F.S.C. are going to start getting tough with people who have not done their proper due diligence, how does government, how does Jersey, how do we set about making sure we have contacted everybody who - this is just my guess - are showing the fact that without regulation, without licensing or without something, we do not know how many estate agents there are in the Island?

President, Jersey Estate Agents' Association:

I think there would have to be a public list if you went for a light-touch regulation. We looked briefly between a set Bermudan rule, which is realtors there have to be registered. There are 66,000 roughly population in Bermuda; I cannot remember how many agents there were but they look to be ... do we have that? Well we briefly got to Bermuda and there is application for real estate licence, criminal checks, and it could be relatively light touch. I do not know how much fee they pay at the moment but for a comparison to Jersey it may be the place to look.

The Deputy of St. Martin:

Is there a danger to the reputation of the Island, reputation of the industry by estate agents not doing proper due diligence on their clients?

President, Jersey Estate Agents' Association:

There certainly would not be, absolutely. I do not know of any that do not. Every agent, be they members of our Association or members of any, Propertymark direct, or not members of any association, should be contacted by the J.F.S.C. Anyone creating an estate agency generally has to put their business plan ... well not generally, has to put their business plan through the J.F.S.C. As far as we understand from them that is what they get on with but they do not have a public list of who is supplying and who is not. Now, obviously A.M.L. (anti-money laundering), financial crime is different to what we are saying about the competence of agents in Jersey. But certainly agents have to know what they are doing and have their methodology in place on their A.M.L.

[14:30]

The Deputy of St. Martin:

We are told anecdotally - and I stress anecdotally - that the level of compliance within estate agents on due diligence requirements is pretty low. Would you say then that that is not your understanding?

President, Jersey Estate Agents' Association:

Certainly, I would say not from members' understanding. We have got our own procedures ...

The Deputy of St. Martin:

Yes, I stress, I am asking you to talk from an industry perspective not from an Estate Agents' Association perspective.

President, Jersey Estate Agents' Association:

I could not honestly comment about that. One would hope that the agents are doing what is required of them under the law. Ultimately it is for the J.F.S.C. to check that out with those agents but I have not necessarily ... our sphere is really within our own businesses and who we are dealing with and our general discussions among members when we meet quarterly about what we are doing. In the past 6 months I have been quite active, speaking with the J.F.S.C., with government, certainly the upcoming MONEYVAL and the civil penalties regime and we have been relaying that to members as we go but as for other agents, I really cannot comment on.

The Deputy of St. Mary:

Going back to there is no official list: do you have access to an unofficial list of agents?

President, Jersey Estate Agents' Association:

I think Shelagh prepared one once and ...

The Deputy of St. Mary:

So you have a home-made version rather than a ...

President, Jersey Estate Agents' Association:

Yes, exactly.

Vice-President, Jersey Estate Agents' Association:

I have looked on the Government website, I have looked on the *J.E.P. (Jersey Evening Post)* where they have some logos, and just seen things on LinkedIn or social media or somebody else starting up ...

The Deputy of St. Martin:

I think Monty has a question. Sorry, Deputy Tadier.

Deputy M. Tadier:

Apologies, I do not think this has been touched on, and I think the reference to Bermuda was really useful for us, and I think that is something the panel can look into as a potential model. But I guess the question always with any new potential government regulation is whether it is justified. Can you

give us any tangible examples of where you think a lack of regulation has caused problems in Jersey in the industry and where regulation might therefore benefit the public?

President, Jersey Estate Agents' Association:

My personal view is that perhaps we are in 2021 and we have not got any legislation for real estate agents. So it is not necessarily that there is a view that there has been bad practice; I do not know whether there has been. I started in the 1980s as a conveyancer and I had certainly heard of it then but it generally got resolved fairly quickly. We had instances where agents were paid a deposit for a property and my employer, who is a fairly senior judge now, was an advocate then, wrote to said agent and said: "Release the money immediately or else" effectively. I think the agent was acting at that time in good faith. That was 1981, 1982 sort of time. But in terms of Jersey, I think we are dealing now with properties that are ... I think we all saw one sold recently, £30 million. It is probably time that Jersey had some legal framework for the real estate agents.

The Deputy of St. Mary:

I think what Deputy Tadier is getting at is that suggested by this, in what way is the public suffering?

Vice-President, Jersey Estate Agents' Association:

I think we do not realise that estate agents are not ...

President, Jersey Estate Agents' Association:

There is that view though ...

Vice-President, Jersey Estate Agents' Association:

Sometimes confidence is an element.

President, Jersey Estate Agents' Association:

It promotes confidence.

The Deputy of St. Martin:

Maybe I could phrase the question in a different way. I am assuming that if I wanted to I could set up myself as an estate agent tomorrow just by saying: "I will sell your house on your behalf to potential clients."

President, Jersey Estate Agents' Association:

Yes.

The Deputy of St. Martin:

It would be useful if you could give some practical examples of what are the risks to the seller, the risks to the buyer of ...

President, Jersey Estate Agents' Association:

Risk to the seller would be ...

The Deputy of St. Martin:

What are they most likely to struggle with or suffer from because they have an unregulated or an unqualified body?

President, Jersey Estate Agents' Association:

Any valuation can be in some cases too high but in worse cases too low. Now, you are saying if you have 3 agents that go into a property, one may value it at 10.50, one may value it at 9.50. Now it is down to the vendor at the end of the day who they pick but some will likely go with the higher agent and the property may not sell, so they are then delayed in their transaction. Not knowing the process can also delay people. So if you get an applicant who says: "I will come along and buy your house" and they do not have the means of buying it, no one is checking, chasing it up ...

Vice-President, Jersey Estate Agents' Association:

There is a chain of events.

President, Jersey Estate Agents' Association:

The whole chain of transactions.

Vice-President, Jersey Estate Agents' Association:

It might not suit the family's ...

President, Jersey Estate Agents' Association:

It will fall through.

The Deputy of St. Martin:

Are there any glaring differences or ... if there is no regulation, there is no regulation here, but what are the obvious things we should be looking at when we look to compare Jersey to the U.K. where they do have levels of regulation, Ombudsman schemes?

President, Jersey Estate Agents' Association:

Well they have got the Estate Agents Act 1979 as amended in the U.K. But there is sadly ... that will become the Trading Standards now but there is also the impact perhaps when an estate agent

may have an interest in a property or an interest in a company buying the property. If it is not disclosed there is risk there. This would be covered by legislation. So you would not have that sort of situation where somebody maybe had a shareholding in perhaps a property development company. I do not know, that is what the U.K. system is designed to prevent.

The Deputy of St. Mary:

I think it is fair to say that we did have responses to our online survey and there were a few replies on that basis that either the agent was more favourable towards another offer for whatever reason it might be. Even - I will say it, we are in public, so I am not saying it is a regular thing - but suggestion has been made that some agents might not accept an offer from one purchaser unless they felt fairly confident they were going to get the job of selling that purchaser's price.

President, Jersey Estate Agents' Association:

Then that is down to the agent. Certainly, in terms of I think the J.F.S.C. does not allow that now in their handbook; you are not allowed to do that. If a buyer is doing development and they offer it to the agent, then it is down to the agent either to accept the instruction or not. But I would say that I have not particularly heard of that. Generally with an offer where those situations as you describe on the submissions, there could be other reasons behind it, that one buyer was not in a position to proceed with the transaction whereas the ultimate buyer was obviously placed in a better position. So, in a particular market like we have now which is fairly active, you will get people who were disappointed. The reason that people generally will win out on a purchase is (1) their bid, (2), and most importantly really, their position to proceed. So, it is not necessarily the estate agent's decision. That is where I would say that that is not as black and white as it seems perhaps is clear.

The Deputy of St. Mary:

Because it is not black and white like that, I am just trying to work out the code for which a subject ... you cannot specifically identify each and every subject like that, all the elements of grey area, so why an agent would accept one offer over another.

President, Jersey Estate Agents' Association:

Well, ultimately, the client is the vendor and an agent's duty, certainly among our Association, is that you put the offers forward and the best offers are put forward in writing to the vendor. Certainly, in our case, and I think in your business, we would advise the vendor what we felt was the nature, et cetera, and the vendor makes the decision.

The Deputy of St. Mary:

So a large part of that advice, I take it, would be the question of the financial position of the purchaser, because you have got to sell it on how they have established what the estate ...

President, Jersey Estate Agents' Association:

Yes, the general position is: do they have full cash, are they mortgage approved but not with anything to sell? There are a lot of things. Sometimes buyers are not quite as truthful as that at the outset. You might find that their house in England that they are selling has not quite gone to market yet but they are all ready to go. But you would then go back to the vendor and get it a lot cheaper, to be honest, moving on from that because particularly that transaction would not be moving as quickly as one would expect it to. So an experienced agent should pick up within a week: "Well this is not working as quickly as it should be."

The Deputy of St. Mary:

We are here to gather evidence today rather than arrive at a decision but if a code were introduced, do you see any local involvement into judgmental decisions on behaviour of agents or will this be done from afar?

President, Jersey Estate Agents' Association:

I think it could be done locally. Whether you had a ... I think they have got a superintendent of real estate in Bermuda or whether the J.E.A.A. ourselves could do something or whatever. Yes, it could be that Jersey administers this for itself.

The Deputy of St. Martin:

This is a pretty general question but I am going to say there are 50 estate agents in Jersey, what would you think the effect on that number would be if we had a full set of regulations and P.I., client due diligence, if everybody had to come up to speed with all the various regulations that the public should really expect their estate agent to have?

President, Jersey Estate Agents' Association:

There may be some that would leave the industry. I think quite a majority would take exams and come up to speed, one would hope.

Vice-President, Jersey Estate Agents' Association:

If they are passionate enough about it as a career then why would they not want to?

The Deputy of St. Mary:

Your legal advocacy generally is less than all your accounts, I would assume, because it is ...

President, Jersey Estate Agents' Association:

I suppose it has increased purely because of Trading Standards but, yes, they are still ...

The Deputy of St. Mary:

But most agents do not handle client money, do they? They go straight to the lawyer?

President, Jersey Estate Agents' Association:

No, the only client money they may have is if they are conducting the lettings and obviously ... estate agency is sale. Lettings should be paid through client money but quite an increasing proportion now will pay the rent to the landlord. But an agent that has client money would be required to have ...

The Deputy of St. Mary:

So the actual financial outlay I would have thought would be perhaps too great for an estate agent who wanted to join your ranks?

President, Jersey Estate Agents' Association:

Certainly at the moment it is not, not in a ... yes, in Bermuda, for instance, they currently sell a broker's licence for 670 dollars per annum so.

[14:45]

The Deputy of St. Mary:

Yes, Deputy Tadier said that that is a place for us to look at. Sorry to harp on about this, but on a local panel of some kind being decision-makers, do you sense that might cause some opposition and, i.e., allegations that some members might be frightened or concerned that their rivals effectively will be their judges?

President, Jersey Estate Agents' Association:

I do not think so. If you look at Jersey as well you have the, I think it was 2005, the Law Society of Jersey Law ... lawyers being regulated by their peers and electing their committee.

The Deputy of St. Mary:

I think they may have some lay members on as well. Possibly, I do not know that. But there are even more lawyers than there are estate agents.

President, Jersey Estate Agents' Association:

Yes.

Vice-President, Jersey Estate Agents' Association:

But we do have lay people.

President, Jersey Estate Agents' Association:

I just feel that Jersey in 2021 perhaps it would be time to just be looking at that sort of licensing system for agents.

The Deputy of St. Martin:

Just going back to one of the very first things you said when we started the meeting which was around grandfathering and a suggestion from outside was that there would not be any and everybody would need to have a qualification and then you suggested maybe 15 or 20 years. I do not know where the question is going. I am just interested to know how we got to the 15 or 20 years and then just have a very quick discussion around the general difficulties of setting a time limit on grandfathering and why we would set it at 2000 or 2005 or any other reasons why we would not require people to sit exams.

President, Jersey Estate Agents' Association:

Yes, so the U.K. is that they have an exam which is 4 modules at the moment, multiple choice, reasonably difficult in that it is more based around U.K. laws. So you have to get your head around that or you have not really got some input into that. I think that in terms of grandfathering, grandparenting, somebody who has done 15 years in the industry should really know what they are doing and I do not think that it would be particularly an issue to say that they can be licensed if we go down the licensing route. As Jersey, I think you would have enough experience there. They would still have to complete a form that gives them ... a fit and proper person questionnaire, for instance, anti-money laundering policies, risk assessment, et cetera. So there is all that that would still go with it.

The Deputy of St. Martin:

Monty, you have a question?

Deputy M. Tadier:

I am loath to interrupt. I think we are getting lots of good questions and answers. I suppose what it comes down to is that as a panel we are still open-minded as to whether we need regulation or not. To play devil's advocate, the case will need to be made to those more sceptical perhaps than us and yourselves. So, for example, the vast majority of estate agents in the Island are not members of your Association and they might say, and others might say, that introducing regulation when there has not been any clear problem identified that we are trying to solve is neither necessary nor proportionate. It could also be seen, if we are talking about grandfathering whereby they are required to get qualifications but pre-existing long-established firms are not, that could be just seen as protectionism. Can you give us some ...

President, Jersey Estate Agents' Association:

You could even go all the way and say everyone needs to qualify. What we are saying is there are people who have been established for a long time and know what they are doing. Should you really say to them: "You have got to qualify again to do your job"? Now in terms of Jersey as an international jurisdiction, all I am saying is we have looked at probably outside, particularly because of our financial industry, we have looked at the MONEYVAL coming in in 2 years' time. I think it would be an opportunity with Jersey to, with a light-touch licensing scheme, to lead the way for an offshore jurisdiction which, from what we could see, was only Bermuda that had done it so far. Then to the outside - and you would probably have to speak to your own people in Senator Gorst's office - would that look good for the Island that we are dealing with large amounts of money and people's ... very large amounts for properties now, that we have a licensed system for agents?

Deputy M. Tadier:

I get that. So I guess the question is, to go from a system where we have no regulation and no licensing to then requiring licensing and qualification, I am wondering whether it might be sufficient just to have a licensing scheme and a code of conduct which applies to all estate agents and then to leave it at that. The argument might be that the free market should really resolve issues about who is qualified and who is not in the sense that ... I guess, we have all driven cars and we can get into bad habits if we have not learnt properly. I taught myself to play a musical instrument so I am really experienced but I have probably got about 20 years of bad habits when I play the accordion whereas if I had been classically trained, I would have probably been doing it much better.

President, Jersey Estate Agents' Association:

Yes, there is that but I think if we had some form of examination, be it that you would have licensing. What you are saying is if we had licensing and no ... everyone would be grandfathered but at least I think for the youngsters that might want to come into the industry to have them structured to learn what is going on and new staff as well. I insist that my staff register for training and they are all at varying stages of the N.A.E.A. Propertymark exams purely because it does give - not experience, because you do not have real world experience with that - but you do get a lot more insight into property transaction and various things. There is a lot to think about. There is health and safety now when you are on site. Every agent should do a risk assessment when they go on a viewing. Now that could be a visual risk assessment but technically that is what you are asked to do. So, if you are viewing a property with a client, you should not really be sending them out to the double doors on to a flat roof with no railings and say: "This could be a suitable balcony for you." We have seen an agent recently doing that which is why it sprung to mind. There is a lot more to agency than just showing a person a property and getting a fee. There is risk assessment, the A.M.L. particularly and the nuances with that, then knowing your client.

Vice-President, Jersey Estate Agents' Association:

All the latest legislation. Conveyancing laws.

President, Jersey Estate Agents' Association:

Yes, there is a lot of it, particularly data protection, cybersecurity, we have lots to consider.

The Deputy of St. Mary:

It is a fair question, Monty. Just to throw in the mix though, there are professions, when S.T.E.P. (Society of Trust and Estate Practitioners) came into being, the grandfathering rights there. I think one also has to bear in mind not as much how difficult it will be for estate agents, but even lawyers like myself are required to do C.P.D. (continuing professional development).

President, Jersey Estate Agents' Association:

We are.

The Deputy of St. Mary:

I get certificates; so the company disciplines to make sure that you cannot just sit on your laurels and carry on as before, you have to be brought up to speed.

President, Jersey Estate Agents' Association:

As part of our association, as PropertyMark members, we do C.P.D. and they also have, which have been very good, and particularly during lockdown, various webinars, workshops from A.M.L. which obviously are the U.K. but pretty similar to here, Japanese knotweed. There are a lot of things that agents can look out for and pick up and learn almost in a lunch-and-learn session.

The Deputy of St. Mary:

We did have a section on qualifications generally but we are talking about the qualifications to get it right. We are talking about estate agents, I am assuming that those who go out in the market and sell, do you envisage the term encompassing other members of staff in a more junior role?

President, Jersey Estate Agents' Association:

The exams that exist at the moment, those are level 2, but I have not heard of many people taking that. So that would be for somebody who has just come into the business, say, a junior role. One could encourage them to take that but I think most people would be capable, with some guidance, of taking a level-3 exam which is in the current N.A.E.A. PropertyMark. Our aim would be to have some Jersey aspect to that because we have obviously got different methods in Jersey with your

share transfer and your Friday court. Rather disturbingly, I suppose, in some respects, some agents refer to “exchange” which we do not have in Jersey.

The Deputy of St. Mary:

But you could have. That is one of my hobby horses and that is not for now.

President, Jersey Estate Agents’ Association:

Yes. Or signing the contract which, as a former conveyancer, particularly disturbs me other than a share transfer. Of course you go to court on a Friday and raise your right hand and that is your contract. But we do get agents who do not understand that process, I would say, but these are the ones that will not ...

The Deputy of St. Mary:

So a final look to understand an agent could not know that?

President, Jersey Estate Agents’ Association:

Well, it has been the case that you have signed the contract, then you have signed the contract. I have seen it, so I am text-book correct.

The Deputy of St. Mary:

Well I think from my point of view, we have asked the questions we had. Unless you have got anything else to add which we have not covered then ...

President, Jersey Estate Agents’ Association:

I do not think so at the moment. We will probably have a meeting to finalise our thoughts. Are we still able to submit to the panel in terms of ...

The Deputy of St. Martin:

Yes, I think you are, the review is still open. If you have anything more that you wish to make, please feel free to do so, absolutely.

The Deputy of St. Mary:

If anything comes to mind after this that would be useful, it is obviously for the better. Our overall situation is that we have some other hearings to be held yet and then we will ...

Scrutiny Officer:

You might see the panel put out a general call for evidence for estate agents, rather than feed into that large part of that evidence, if it were something you would like to do.

The Deputy of St. Mary:

Okay, if that is all then, thank you all for coming and making the time. Perhaps we will see you again.

President, Jersey Estate Agents' Association:

Thank you, Chair.

Vice-President, Jersey Estate Agents' Association:

Thank you.

The Deputy of St. Mary:

Thank you.

[14:58]