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THE BAILIFF OF JERSEY
MR WILLIAM BAILHACHE



THE BAILIFF'S CHAMBERS
ROYAL COURT HOUSE
ST HELIER, JERSEY
CHANNEL ISLANDS
JE1 1BA

Tel: [01534] 441100
Fax: [01534] 441137
Email: bailiffschambers@gov.je

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Deputy D Johnson
Chairman
Domestic Property Transactions Scrutiny Review Panel
Scrutiny Office
States Greffe
Morier House
St Helier
JE1 1 DD

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Dear Deputy Johnson

Scrutiny Review Panel: Domestic Property Transactions

Thank you for your letter of 8th April asking me to comment on the Review which your Panel is currently conducting. I have noted the Terms of Reference which are really addressing whether there is a current problem in taking transactions in real estate through to completion. You will appreciate that completion involves a contract passed before court, and that is really the only involvement which the Court has in the process which you are examining. Accordingly, we do not have the information to comment substantially on the matters within your Terms of Reference.

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.

I wonder if I might venture two other comments. First of all I note that your Panel is looking at domestic property transactions. My own view is that it is not really possible to recommend changes for domestic property transactions and not commercial property transactions, and therefore you would need to have regard to the conveyancing system across the board if there were to be proposed changes. Let me give an example. Let us suppose there is a sale or a 25 year lease (which needs to be by contract passed before the

Court) of a building in St Helier which comprises a ground floor shop and three flats above. Is that domestic or commercial? Suppose the building were a ground floor shop and one flat above – is that domestic or commercial? It seems to me that there would be potential difficulties in delimiting domestic from commercial, and there is no obvious reason for doing so, albeit I quite understand that it is domestic property transactions which generate the political concern.

Secondly, there probably is an issue about a Land Registry system which is transaction based and not property based. The development of our system harks back to the days when it was not always possible to alienate real estate from the family, and it was more important to know what a particular person owned (was he *fondé en heritage* – the owner of Jersey real estate?) rather than who owned a particular property. 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 simpler, 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 a 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. I think this last point probably falls outside your Terms of Reference, although it might squeak in under the fifth term of “*Any other matters relating to the existing system of domestic property transactions arising through evidence gathered.*”

Yours sincerely

Bailiff