

STATES OF JERSEY



REGULATION OF ESTATE AGENTS (P.13/2023): AMENDMENT (P.13/2023 AMD.) – COMMENTS

Presented to the States on 13th April 2023
by the Economic and International Affairs Scrutiny Panel

STATES GREFFE

COMMENTS

The Economic and International Affairs Panel (the Panel) has formed these comments to highlight its considerations of the regulation of Jersey Estate Agents and provide further information to aid in the Assembly's debate of [P.13/2023 Amd.](#) as lodged by the Council of Ministers (the Amendment).

Background

As identified in [P.13/2023 Regulation of Estate Agents](#), the previous Economic and International Affairs Panel reviewed the topic of regulation of Jersey Estate Agents during the previous term (the Review), publishing its report in March 2022 ([S.R.3/2022](#)).

The Panel will not extensively repeat the points made in that report but would highlight that following an initial public survey undertaken in July 2021, the previous Panel decided to undertake the Review and commenced a process of formal evidence gathering in September 2021. The previous Panel received written submissions from estate agents, industry representatives and regulatory bodies and the Minister for Economic Development, Tourism, Sport and Culture (the Minister). In addition, the previous Panel welcomed a number of stakeholders including the Minister for Housing and Communities, key industry bodies and representatives to Public Hearings in October and November 2021.

The previous Panel found that, apart from the general protections offered by the Consumer Protection (Jersey) Law 2018, there was no specific legislation governing estate agents in Jersey or a requirement that Jersey estate agents adhere to an approved consumer redress scheme. The previous Panel noted that this was in contrast to the requirements imposed on estate agents in jurisdictions such as the United Kingdom (UK), where all estate agents are required to obtain membership of an approved consumer redress scheme and adhere to the provisions of the Estate Agents Act 1979. The previous Panel also noted that current estate agent legislation in the UK is being actively reviewed and developed through the Regulation of Property Agents Working Group (ROPA).

The previous Panel's report produced 17 Key Findings and 10 Recommendations for the Minister and was presented on 9th March 2022. The previous Panel received a Ministerial Response on 25th April 2022 and noted that all the Recommendations, with the exception of Recommendation 10, would be 'Deferred' because "*The Panel's report has come in the final weeks of this political term and with a States Assembly agenda that is proving challenging to work through before the forthcoming election*". Therefore, the previous Panel recommended in its legacy report that the findings and recommendations in this Ministerial Response were followed-up by the Panel. A copy of the Ministerial Response can be found [here](#).

The current Panel [wrote](#) to the Minister on 8th August 2022 asking for an update on the findings and recommendations, receiving a [response](#) on 7th September 2022. The Panel has not yet progressed further scrutiny of this matter in its 2023 work programme.

The Panel notes that Deputy Andrews has used information gained through the Review and identified that the Minister for the Environment had asserted that there had been no

plans to introduce legislation to regulate Estate Agents having highlighted provisions within the [Consumer Protection \(Unfair Practices\) \(Jersey\) Law 2018](#).

The Amendment

The Panel is grateful to the Minister for providing an initial draft of the Amendment.

The alteration to P.13/2023 seeks to ensure membership of a redress scheme whilst incorporating the regulatory enforcement within Trading Standards, rather than a new regulatory body.

Although time constraints have meant that the Panel has not been able to undertake full assessment of the Amendment, the Panel has considered the following points.

Consultation

The Panel notes that the amended proposition would still require consultation to take place with stakeholders prior to the establishment of any statutory requirement. This is to be welcomed. The Panel would urge the Minister to ensure that consultation is conducted with individual agents as well as industry representatives including the Law Society. This will aid in the provision of a broader range of views.

The Panel would highlight and endorse Recommendation 6 of S.R.3/2022, which suggested that the Minister consult with the redress schemes to ensure that all Jersey estate agents can meet their requirements.

Furthermore, Recommendation 9 of S.R.3/2022 suggested that the Minister conduct wider consultation on estate agent legislation for Jersey more generally. The Panel is yet to formally establish whether the Minister intends to undertake this work, but highlights that views may be gained during consultation established through P.13/2023.

Regulatory Bodies

The Amendment will remove the requirement for the introduction of a statutory regulatory body for Estate Agents from P.13/2023.

The Panel highlights that although Recommendation 3 of S.R.3/2022 suggested that the Minister undertake consultation on options for introducing local, independent redress in Jersey, the previous Panel did not make specific recommendation to establish a local statutory regulatory body.

Noting that the P.13/2023 does not indicate the form and scope of the proposed regulatory body, nor identify any potential Human Rights implications, the Panel agrees that establishment of a regulatory body should not be required at this time, pending further consultation on the matter.

The Panel suggests that the Minister may wish to progress specific consultation on whether a local regulatory body is required, should there be any views raised on the matter during consultation established through P.13/2023.

Redress Schemes

The Review identified a number of existing Redress Schemes, including the Property Ombudsman (TPO) and the Property Redress Scheme. Membership of these schemes is required for all estate agents operating in the UK. The Panel notes adoption of P.13/2023 as amended would meet recommendation 2 of S.R.3/2022.¹

The Panel has briefly considered membership requirements of schemes. It appears that there can be some variation, for example between the two schemes approved by the UK Government. It appears that application to membership of the Property Redress Scheme does not have membership requirements.² However, applicants to the TPO are obliged to hold the following:³

- Professional Indemnity (PI) Insurance
- Client Account (if a residential letting agent)
- Company registration or identification
- Client Money Protection Scheme if handling client money

The Panel notes that there is no prerequisite of formal qualification to join these schemes. Holding such qualifications may be beneficial in ensuring compliance to the scheme's Codes of Conduct. The Panel would highlight that online training and guides are provided by schemes to aid in knowledge of best practice and compliance requirements.⁴

The Panel also notes that the TPO issues specific [Codes of Practice](#) for the Channel Islands. The previous Panel was informed during the Review that the Government of Jersey had carried out extensive work with the TPO, which included ensuring those codes of practice were up to date and reflected the regulatory framework.⁵

The Panel suggests that the Minister considers membership requirement of schemes, and training provision, prior to deciding which schemes to approve as a requisite of operating as an Estate Agent in Jersey. The Panel would further suggest that the Minister may wish to consider how aspects such as qualification requirement may also be progressed.

The Panel has identified that there have been instances in which members of the Property Ombudsman have been expelled by its independent Compliance Committee, following instances of failure to pay complaint awards.⁶

If membership of the redress scheme is revoked, the Estate Agent would not be legally entitled to continue trading under the Regulations proposed in the Amendment until rejoining a scheme. The Panel would suggest Estate Agents would be wary of risking

¹ *RECOMMENDATION 2: The Minister for Economic Development, Tourism, Sport and Culture should introduce a legal requirement that Jersey estate agents obtain membership of a redress scheme approved by the Government of Jersey.*

² <https://www.theprs.co.uk/propertyagent/who-can-join>

³ <https://www.tpos.co.uk/join-the-scheme/application-requirements>

⁴ <https://www.tpos.co.uk/news-media-and-press-releases/press-releases/item/tpo-launches-new-online-cpr-training-module>

⁵ [Transcript - EIA Scrutiny Panel - Regulation of Jersey Estate Agents - Minister for Housing and Communities – 27 October 2021, page 3](#)

⁶ <https://www.tpos.co.uk/news-media-and-press-releases/press-releases/item/seven-agents-excluded-from-the-property-ombudsman-for-non-payment-of-awards>

their ability to trade which may ensure compliance with good practice. As highlighted in the Amendment, it is anticipated that any agent who continued trading without membership of an approved scheme would be liable to a level three fine (£10,000).

There are also instances in which agents have been referred to trading standards by the schemes themselves.⁷ The previous Panel was informed that this was an option in Jersey:⁸

“A consumer could come directly to the Trading Standards Service, who provide a comprehensive and confidential consumer advice service, so we could provide the appropriate advice. We would be able to determine if they were a member of the Association or not and what avenues they would have for complaint and redress, including officers investigating for a potential breach of the Consumer Protection (Unfair Practices) Law.”

The Minister should include the Trading Standards Service within consultation to ensure their ability to meet their part in regulatory enforcement. The Minister should also take actions that ensure redress schemes are aware of the Trading Standards Service in Jersey.

Conclusion

Cost of establishment of an independent redress scheme in Jersey is uncertain, as is establishing a statutory regulatory body for Estate Agents. The Panel believes it is sensible for the Minister, following consultation, to identify suitable existing Redress Schemes, rather than to establish a statutory regulatory body or independent Jersey based scheme.

Although the Panel has had limited time to consider the Minister’s amendment it is of the opinion that the introduction of statutory requirement for Estate Agents to obtain membership of an independent redress scheme, approved by the Government of Jersey, is sensible based upon the findings and recommendations of the previous Panel and agrees that the Amendment proposes sensible changes to the original proposition.

The Panel will continue to conduct scrutiny on this topic and will consider further actions of the Minister.

⁷ <https://www.tpos.co.uk/news-media-and-press-releases/press-releases/item/letting-agent-in-finchley-london-has-been-expelled-from-the-property-ombudsman>

⁸ [Transcript - EIA Scrutiny Panel - Regulation of Jersey Estate Agents - Minister for Housing and Communities – 27 October 2021, page 6](#)