



Economic and International Affairs

Regulation of Jersey Estate Agents

Witness: The Law Society of Jersey

Monday, 8th November 2021

Panel:

Deputy D. Johnson of St. Mary (Chairman)

Deputy S.G. Luce of St. Martin

Senator S.W. Pallett

Witnesses:

Mr. N. Benbow, Chief Executive, The Law Society of Jersey

Mr. C. Philpott, Advocate

[15:18]

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

Welcome everyone to this meeting of the Economic and International Affairs Scrutiny Panel in connection with our public hearing relating to the review of the regulation of estate agents. I begin by introducing the panel side, which consists of myself, Deputy David Johnson, chair of the panel.

Deputy S.G. Luce of St. Martin (Vice-Chair):

Deputy Steve Luce, Deputy of St. Martin, vice-chair of the panel.

Senator S.W. Pallett:

Senator Steve Pallett, member of the panel.

The Deputy of St. Mary:

If you could introduce the Law Society side now.

Chief Executive, The Law Society of Jersey:

Good afternoon. It is Neville Benbow, chief executive of the Law Society.

Advocate:

Chris Philpott, advocate.

The Deputy of St. Mary:

Thank you for joining us, and I apologise for the I.T. (information technology) glitches. As you are aware, we are undertaking this review and perhaps we could begin by stating a connection with a U.K. (United Kingdom) approved scheme, which is the Property Ombudsman, a U.K. Government approved scheme to provide redress in cases where an estate agent breaches its code of conduct. We understand that the jurisdiction of T.P.O. (The Property Ombudsman), to give it its shorter name, extends to investigate Jersey agents where there is a contractual arrangement between the T.P.O. and the Jersey Estate Agents Association Limited. Would you like to see that extended to most estate agents or would you like to begin by identifying any problems you foresee in the market at the moment?

Chief Executive, The Law Society of Jersey:

The stark truth is that only 15 estate agencies in Jersey are members of the Jersey Estate Agents Association. Only J.E.A.A. (Jersey Estate Agents Association) members are bound by the codes of conduct laid down by the property market, the National Association of Estate Agents, and the Property Ombudsman scheme, which you just described. The code of practice under the Property Ombudsman, which is ascribed to by those members, is fit for purpose. The issue is that there are around 50 estate agents in Jersey, so 35 - or 70 per cent - of the market are not signing up to standards. They are not signing up to their own trade association. Frankly, unless they can voluntarily subscribe to an association and follow principles of best conduct and practice then there is a need for this to be addressed in a formal way, hence regulation.

Advocate:

I think there is a general consensus among our members that the estate agents do now need to be regulated and potentially regulated locally. I think certainly that seems to be the view of a number of practitioners that practice in the area of residential property but also I think, just talking to a number of our clients both buyers and sellers, there is a genuine consensus that some form of regulation needs to be applied and not just necessarily the options which are available for certain agencies to do things voluntarily.

The Deputy of St. Mary:

Thank you for that, I accept that. That goes to the very nub of our review, in fact. For what you say, you know sufficiently about this scheme to be satisfied that if all members or estate agents were members of it you would be somewhat more relaxed than you are today; is that a fair comment?

Chief Executive, The Law Society of Jersey:

I think that is very much the case. We have to remember that the value of property that is passing through the hands of these 50 estate agents is very substantial. In 2020 the value of freehold and flying freehold property transacted exceeded £1 billion for the first time: property values of a £1,043 million and stamp duty paid of £31.8 million, and that does not include the value of share transfer properties. Very often when regulation is introduced there is always the question of is it affordable. The income in the sector, even at a price of 1 per cent on a transaction, is over £10 million per annum. While regulation does not always come cheaply it is a price that has to be paid and we believe that, as a minimum, every estate agent being a member of the Estate Agents Association, the trade association, and being regulated by signing up to at least the Property Ombudsman scheme is an appropriate way forward. It is quite proportionate to the risks that are there and we have to remember that at the end of the day the buyers and sellers, the people of Jersey, are the ones whose interest must be best protected.

Advocate:

I think the only question would be whether or not, yes, you have the codes of practice that the Property Ombudsman has issued in the U.K. but whether you needed some local kind of conduct and a local Property Ombudsman. I guess that is just for people to consider. But it would certainly - adopting what is already in place in the U.K. - be a good starting point.

Chief Executive, The Law Society of Jersey:

The devil is always in the detail with these matters but the principle of regulation is something that we would very much support.

The Deputy of St. Mary:

We will come back to you referred to local control, we will perhaps come back to that in a minute, but moving away from the code of conduct, you will know better than I that consumer protection legislation was introduced in 2018 and applies to all businesses in Jersey, including estate agents. Do you think that the consumer protection legislation in place is broad enough to cover any breaches of code which you might perceive at the moment?

Chief Executive, The Law Society of Jersey:

I think it is a starting point. The consumer protection talks about unfair practices. We want to extol the virtues of best practice in estate agency and across all professions and business interests. It is

a starting point but it is not nirvana. It is providing basic protection for buyers and sellers but we think there is more needed. Yes, of course, they are required to comply with anti-money laundering and C.F.T. (counter terrorist financing) requirements, for which they are regulated by the Financial Services Commission. But there is a need for formal regulation, we believe, above and beyond that which is provided by the Consumer Protection (Unfair Practices) (Jersey) Law 2018.

Advocate:

I think specifically you need to make reference to a code of conduct. I think it should be in addition to the consumer protection not instead of.

The Deputy of St. Mary:

You answered a further question I had, which was: do you think that in most cases legal action against estate agents through the consumer protection legislation will be disproportionate and the redress is more appropriate? I think what you are saying, without putting words into your mouth, that the code of conduct will be a more proportionate way of dealing with it before you have recourse to litigation.

Chief Executive, The Law Society of Jersey:

Absolutely. A code of conduct is something that should be published. It should be seen by clients and they should see: "Right, this is the protection that I am getting." If something goes wrong this is what happens. I can look at the code of conduct and I have someone to go to and do something about. Litigation is an expensive tool in any jurisdiction.

Advocate:

It should always be last resort.

Chief Executive, The Law Society of Jersey:

Absolutely it should be the last resort. There should be means of addressing issues. It may be that we need a formal redress scheme. That may be provided through an ombudsman. Yes, I think it is right, there probably needs an adaption of the Property Ombudsman code of practice for Jersey; that is absolutely right. Because that code is best practice, which are standards set above the minimum level required by law. We do not have those requirements by law in Jersey. The legal obligations; again standards set by law. They are fairly *de minimis* and we think it is appropriate to have a better framework for regulation when it comes to estate agents. If you think of all other professions - the legal profession, the accountancy profession - they are regulated. They are regulated appropriately.

The Deputy of St. Mary:

I invite my colleagues to come in at any time of course. But before we go on to my second area. We have had other public hearings, including one with the Minister for Housing and Communities, and the panel then heard that Trading Standards investigates approximately 20 complaints per year in relation to agents. As a general matter, do you believe that there is enough public awareness, that there are rights out there already or not?

Advocate:

Difficult to answer that. I think there is a lot of literature available. Whether or not it is easily accessible to people, I do not know.

Chief Executive, The Law Society of Jersey:

The test comes in having something there when things go wrong. If you have to go to Trading Standards it must be a pretty awful thing that has happened. But there will be issues that arise that people say: "Oh, I am not going to do anything. I have sold my house or I have bought my house and I suppose it was all right" and they want to move on. They do not really want a matter to fester.

[15:30]

But having somewhere where they can go when things go wrong is the critical thing. You only know what level of support you have when something does go wrong.

Advocate:

I think as well as a sector, in terms of Jersey property, it is so significant that it warrants its own regulation and its own code of conduct over and above the usual consumer protection legislation that we have in the Island.

The Deputy of St. Mary:

We are certainly getting your message quite clearly on that. Before we go into the detail about what the code might cover, you obviously are very keen there should be a code of conduct. Are you able to point to examples where a code will benefit current practices and how your clients have been disadvantaged by what goes on?

Chief Executive, The Law Society of Jersey:

The work that has been undertaken in the U.K. is a good starting point. I do not think there is any need to necessarily reinvent the wheel. You referred in one of your written questions, Deputy Johnson, to the Regulation of Property Agents Working Group, which published its report in July 2019. You make reference to that in saying: "Regulation will provide the opportunity to prevent best practice and drive cultural change within the industry" and asking whether we believe this statement

could also apply to estate agents in Jersey. The simple answer to that is yes. But their report goes further than that and went on to say: "Moreover it could help drive efficiencies in the sector, including by improving processes and behaviours in the following ways: clarification of roles and responsibilities between a regulator, professional bodies, trade association, redress providers and enforcement bodies will add much needed clarity and simplicity. Establishing a monetary code or codes of practice will enable a reduction in unnecessary codes and the considerable costs of maintaining such codes and the new independent regulator's open, transparent and public accountable will be in a position to challenge other stakeholders in the sector in terms of how they are offering a value for money service, remaining relevant and helping to raise standard, trust and confidence in the public about the sector." You should not need to reinvent the wheel. There is a framework there and I think we should use what is happening in the U.K. and take the best of that for Jersey. It is difficult to have, for the size of the market, an independent regulator in its entirety but there are ways and means of achieving that. I think starting with the association is a good starting point. But whether you should have licensing to confirm the appropriate qualifications and credentials, whether you should have that mandatory code of practice setting out clear standards of behaviour, and designated qualifications and training for anybody who is employed within that sector. Because at the moment, anybody can just set up as an estate agent and they can go and value a property. I remember in years gone by the profession of estate agency was chartered surveyors, who valued properties professionally and they then started selling those properties. We have a different model now and really the chartered surveyors, generally speaking, are those only in commercial property with very few chartered surveyors in what I would call residential estate agencies. So things have changed. We need to stay with those changes and make sure that those that are left behind in terms of the residential property are properly skilled and they need to have some form of regulation to monitor what they are doing and how they are doing it.

Advocate:

And what best practice is.

Chief Executive, The Law Society of Jersey:

And what best practice is, absolutely. A long answer to the question you asked, Chair, but in essence I think we can use best practice from the U.K. It is very modern changes that they have put in place and indeed the code of practice for residential estate agents in the Channel Islands from the Property Ombudsman was effective from November 2020. So it is very, very recent. I think we can learn a lot from that without having to do too much work ourselves here in Jersey.

The Deputy of St. Mary:

Thank you for that, and thank you for the long answer. I suppose what I am really driving at is you are obviously quite keen there should be a code but I am just trying to get my finger on the pulse of

what sort of things go wrong. Of course there is no code, are the problems between Law Society members and the estate agents about how transactions are conducted or that depends on the agent? I am looking for examples of where there are problems.

Advocate:

I think it very much depends on the agent. You have a lot of very experienced estate agents in Jersey and some longstanding businesses. In terms of the mischiefs that you are trying to address, I think sometimes it is as simple as regulating the communication, misrepresentation of getting details right of the property that you are selling. If you read through the code for best practice none of that would jump out at you as being something that would be a surprise. I just think it is important that people have that as a focal point. I think putting unreasonable expectations on consumers as to timescales, making offers conditional on: "Yes, we will accept your offer but we will only accept it if you complete within 3 weeks." It is that type of practice that I think, on the ground, just needs to be looked at, and a clear framework of obligation to put all offers to the seller. It is something that I think the code of practice ... it is simple but I think it is effective. There are mischiefs that can be addressed. It is difficult to kind of give you a list of them.

The Deputy of St. Mary:

What I am trying to do is counter any response from certain agents saying: "What is the problem then? It works quite well now without a code." Probably for some it does. Just going back to a couple of examples you have given me. Are there times when lawyers resist the conditions which they are imposing on potential purchasers, for instance, like a contract race or completion within a certain time?

Advocate:

I guess that is entirely up to the individuals but there is no doubt that when the market is as buoyant as it is, and there is a huge push to get transactions over the line, sometimes your unreasonable expectations puts pressure on all parts of the system, be that lenders, be it surveyors, be it lawyers or in fact be it the consumers who are involved in the transaction themselves. Because it is a hugely stressful time when people are buying and selling property. There is a way I think people need to conduct themselves in these negotiations and these transactions that helps that when people are ... it is a pretty vulnerable time when you are buying or selling. So minimum kind of standards of the way in which you should conduct yourself I think are really important.

The Deputy of St. Mary:

On a more general point, I am sure you would think it probably useful if an estate agent went to the lawyer first before he put the property on the market so he could acquaint himself with such matters as rights of way, et cetera. I take it that is a forlorn hope, is it?

Advocate:

I think they tried to introduce something similar in the U.K. about 5, 10 years ago called the Home Information packs. But I do not think that really went anywhere. That was again going to be incumbent on a selling agent to pull together all of the relevant information. A similar system applies in Australia, I believe, where very much it is incumbent on the estate agents to pull all of the information together in advance, including, like you say, rights of way, relevant contracts. I do not think we will ever get to the stage of that over here.

The Deputy of St. Mary:

Wishful thinking on my part. You mentioned Home Information pack. I was involved in a review some years ago which is to do with the property transaction process, and I think that since then what has happened is that the lawyers, rather than the estate agents, do present a schedule of what is to be included on sale. I see it in England too. Although in England the vendor is requested to bring certain particular points to the attention of his lawyers. Does anything like that exist at the moment? I mean you do, I think, on any ordinary transaction produce a set of conditions as to what is to be included, which I thought on reading them it might be more appropriate for agents to deal with rather than yourselves. But perhaps you can enlighten me on that.

Advocate:

Agents would usually obviously get the particulars of the property correct in order to market it. Then the main item that they produce is the inventory of contents. I think for the most part then it gets handed to the lawyers and members of the profession to then undertake their title and other due diligence in respect of that property. So the actual heads of terms for the agreement is usually issued by the estate agents themselves, then the inventory of contents to the extent that there are any with the property follows later.

Chief Executive, The Law Society of Jersey:

One important element is there is a standard seller questionnaire completed in respect of every transaction and that has been something that was introduced a couple of years ago. So we had a consistent approach so lawyers are asking the same questions in respect of the property. That puts in place as an obligation on the seller to complete that to the best of their knowledge and belief.

Advocate:

I think it is right that probably in helping clients to complete those, that it is probably more the legal profession side of it than the estate agency that would assist them completing.

The Deputy of St. Mary:

That is what I was really getting at. It seems to be a relatively new concept and I thought it was in the hands of the lawyers rather than the agents. I think you more or less confirmed that is the case.

Advocate:

That is correct.

The Deputy of St. Mary:

Before I go on, do either Steves want to say anything at this stage or are we doing okay?

The Deputy of St. Martin:

I am happy to come in, Chairman. I have been trying to find an opportunity and I think all the questions that have come into my head have been answered as we have been going along. One thing I might just ask. I mean it is quite clear that the code of practice in the U.K. may not be quite what we need over here. The qualifications that estate agents may need, may need to be doctored to a local standard so that they fit over here. But maybe I could ask the 2 gentlemen whether they feel that we have got enough on-Island resources and funding available to administer regulatory oversight of an estate agent sector in Jersey?

Advocate:

I think, given the volume of transactions, and the volume of cash that is generated by property transactions in Jersey, it is right that a code of practice is considered.

Chief Executive, The Law Society of Jersey:

In terms of income from the sector, a minimum 1 per cent is charged on property sales and with property values last year just in freehold and flying freehold of £1,043 million or just over £1 billion, there is a high degree of income. We believe that that should be sufficient to support regulation. Whether it is a gold standard of regulation or whether it is, what I think is probably proportionate at the moment, requiring all estate agents to belong to their trade association - in this case the Jersey Estate Agents Association - and for them to sign up to the codes of conduct, including the code of practice for residential estate agents in the Channel Islands under the Property Ombudsman. That is not a draconian step and it should not be a high-cost element of regulation. One might describe it as fairly light touch. If that works then there is perhaps no need for the more robust regulatory standard to be introduced.

[15:45]

But what we are after here is best practice being introduced and to stop any potential for bad practices to become part of the matter. As I say, our concern is only 30 per cent of estate agents are members of their own association.

Advocate:

In terms of the cost and who would pay, consideration could be given to some form of licensing arrangement perhaps. I know other jurisdictions do that. Where there is an annual fee and you get a licence for being able to trade as an estate agent, I think that is something that could be looked at. Maybe those will be the funds that would then be used towards this Property Ombudsman or committee that would look into complaints.

The Deputy of St. Martin:

In the same way that the legal profession, if people have issues they go to the Law Society and there is an internal process, do you believe that estate agents will be in a position where they could judge themselves if we set things up to be in the same way as we do with the legal profession?

Chief Executive, The Law Society of Jersey:

With the legal profession it is slightly different in that a matter is referred to ... any matters where there is a prima facie case of misconduct are referred to a disciplinary committee, which comprises a senior lawyer and 2 lay members appointed by the States Assembly. It has that important degree of independence from members of the Law Society. So lawyers are not judging lawyers. I think there would have to be some form of similar independence process in place for serious complaints that where there is a clear breach of the code of practice or code of conduct.

The Deputy of St. Martin:

Thank you for that. I know Senator Pallett has a question, but last one from me, if I may. Is it your belief that we should be in a position to set up the qualifications, the code of practice and the oversight locally and that we should also be in a position to move away from any link with the U.K. so that we set up a regulatory system, which is tailored and geared very specific to the local market?

Advocate:

I believe so. It may not be the first step. There may be other steps in terms of getting more of the agents to buy in to what is already there, but I think certainly it is something that could be and should be done locally.

Senator S.W. Pallett:

In some regards, you have sort of strayed on to the area I had a question about and that was around non-compliance with any potential code of conduct. Obviously if people are not going to abide by a

code it is important that there are some teeth to ensure that they do. But I just wondered, you have sort of gone into it to some degree about what that might look like, but I think anybody that would be signing up to a code would want to know how it was going to be applied, who was going to deal with any non-compliance, and the degree of severity of any sanction against those that were non-compliant. I just wonder if you have got any thoughts on that. You have sort of touched on it but do you have anything you could add to that?

Advocate:

I think that if you went down the licensing route, the ultimate sanction from whichever body it was that was adjudicating the complaints would be to have your licence removed for a period of time so that you were not permitted to trade. Again, I know that that is one of the redresses that you have in Australia, for example. But you would have to go down the licensing route for that. The teeth would be if you do something in breach of this code of conduct and it is found that yes, you have your licence temporarily withdrawn. I think that is quite a significant incentive for people to comply with to what we perceive to be best practice.

Chief Executive, The Law Society of Jersey:

Or it may also include redress for an individual who has lost money as a result of it. There is going to be a fair degree of devil in the details. As I said before, very difficult to say this is what it will look like but I think there is a need to work with the estate agent industry and work out what is right and to implement that.

Advocate:

I think there is a groundswell within the estate agents, most of them, that actually this form of regulation would be a good thing. You may have canvassed views about whether or not a licensing system would be appropriate. I do not know what the estate agents feel about that. But it is certainly done in other jurisdictions.

Chief Executive, The Law Society of Jersey:

I think the issue is if 70 per cent of estate agents have not signed up to their local trade association that, to me, gives an indication that they are not very keen to be told what they can and cannot do and they prefer to trade on their own without regulation.

Advocate:

In terms of the cost as well of any licensing, of course, most ... before you have a business over here and you commence a business, you need a business licence. There is already a process of that in Jersey and it is possible that maybe people could look to the existing business licence as a

means of introducing some form of licensing through estate agents. In addition, getting almost a register of those people that are plying their trade in buying and selling very high value property.

The Deputy of St. Martin:

This is something maybe I should know. In terms of ensuring that local estate agents carry the correct insurance for some of the business that they carry out and some of the things that they do, is there any process for that to be checked at the current time to ensure that if something does go wrong they are insured that way or is just left to the individual estate agents?

Chief Executive, The Law Society of Jersey:

It is down to the individual estate agents to obtain appropriate insurance. In the legal profession, by way of example, firms or individuals who are acting in their own right have to maintain £2 million of professional indemnity insurance cover and £3 million if they are a limited liability partnership. That is a very significant burden but the risks are high. If a client sues an estate agency and they do not have sufficient insurance or they do not have personal means to cover any decision or sanction that is imposed against them by the courts, then that would fall upon them personally. We think it is important that they should have proper insurance and there should be potentially minimum levels. Bearing in mind the purchase of a property is the most expensive thing you will buy in your life. It is your most precious asset, other than your partner, but it is something that you ... if there is anything that goes wrong and the estate agency is deemed to be liable for that eventuality then they need to have proper insurance. But at the moment there is, Senator Pallett, absolutely nothing available in terms of insurance and monitoring ... there is insurance available but there is nothing to monitor the level of insurance and the cover that is provided.

The Deputy of St. Mary:

Perhaps I could just apologise to my 2 colleagues, I was looking for a hands-up signal if they wanted to come in and the display did not come out at my end so I am sorry if I appeared to ignore you at any time. I hear what you say about insurance, of course, but I think the risk of agencies ... given that most transactions end up going through the lawyers, that is where the greater risk must be, is it not? There would not be the same cover, I would have thought, that lawyers do.

Chief Executive, The Law Society of Jersey:

Unlikely to need the same level unless by their actions they have been negligent. There could be contributory negligence in any matter. We are not aware of any or many that have come to court where the estate agent has been deemed to be liable but the same applies for law firms. Very often they will have insurance for the entirety of their legal careers and never have any call for it. That is what you have insurance for and we think that it would be appropriate and proportionate to have at

least a minimum level of cover maintained by estate agents as part of their practice and commitment to their clients.

The Deputy of St. Mary:

Yes, as with lawyers in Jersey, you will not get your certificate, or perhaps the equivalent of it, unless you could give the necessary assurance you had it. I do understand. Can I just quickly go back, because I would like to think we can still close on time despite the delayed start but Deputy Luce raised the general question about regulating estate agents? In the U.K. the National Trading Standards are involved through a specialist team there, I think. Do you anticipate that anything like that should happen in Jersey through the local Jersey Trading Standards service or do you envisage any monitoring being done entirely through the association with extended powers?

Advocate:

I think the latter. In terms of the consumer protection over here ... sorry, I maybe misunderstood the question.

The Deputy of St. Mary:

There is consumer protection over here and I think in the course of our public hearing with the Minister concerned we were well-briefed on that. In the U.K. I think there is a National Trading Standards service which will intervene, and I just wonder if you envisage that happening or something similar over here or whether you rather envisage that it will all be done through the Estate Agents Association if every member was required to be a member of it.

Chief Executive, The Law Society of Jersey:

I do not know ...

Advocate:

I think we stand alone, I would have thought. If you are looking to try and put a standalone form of regulation and structure around estate agency in Jersey, I think you would try and do it through that process that you were setting up rather than any of the existing consumer options that you would have.

The Deputy of St. Mary:

Okay, thank you. I am not trying to necessarily draw analogies with lawyers, but if there is a breach the nuclear option would be to ban the agent from practising at all but there could be fines or reprimands. In the Law Society, forgive my ignorance, is there a mechanism by which the softer penalties can be dealt with, other than at a lower level, rather than have a whole disciplinary committee? Is there any analogy we can lean on?

Chief Executive, The Law Society of Jersey:

The Law Society has controls in relation to professional conduct complaints in relation to breaches of the Law Society of Jersey Code of Conduct 2017 but, at the present time, it does not have a formal basis of dealing with service complaints. It does deal with fee complaints but service complaints are generally resolved by intervention in terms of a mediated result by myself in my capacity as chief executive officer. We have a very high success rate of such complaints. You have issues/complaints and conduct issues. They are distinct. If someone has an issue with an estate agent who will be the client of that estate agent and they are paying a fee for the services, it may be that there is an agreed way as part of this process that if there is dissatisfaction and it is proven to be a valid complaint, there may be reduction in the fee that is levied on the sale, for example, as opposed to a fine that is imposed.

[16:00]

Advocate:

I think the ultimate sanctions would be either a fine ... whatever process you put in place for addressing these complaints, if it got to the stage where it was found I guess the redress would be a fine. I think that is what applies in the U.K. and, as I say, the ultimate sanction would be to take the licence away so someone could not trade for a period of time.

Chief Executive, The Law Society of Jersey:

But I do not think we can resolve all the issues by determining now what those sanctions should be. It will need consultation with proposals as to what could be appropriate, that is fit for purpose and proportionate to the issues that there are.

The Deputy of St. Mary:

What I was really getting at was whether there was a 2-tier approach to dealing with the minor problems a la Law Society, if I can put it that way?

Chief Executive, The Law Society of Jersey:

Yes, there is. There is the informality of addressing issues through the Law Society or what some might call the nuclear option of making a professional conduct complaint, which go through the formal process where they are deemed to have a prima facie case of misconduct.

Advocate:

The course of first recourse would always be, if you had a dispute with an agent who was involved in your transaction, with that agent. That would just be part of the normal transaction. The reason

for the regulation is if that does not get anywhere or it is so serious that it warrants further investigation and review, but the first port of call would always be to try and speak, I suppose, directly to the agents first but have somewhere where it can be escalated if a consumer believes that, frankly, they are not getting the redress that they wish.

The Deputy of St. Mary:

My final question, I say this because I know that Deputy Luce has to rush off any minute. We talked about professional qualifications and standards, et cetera. With other organisations which come into being, perhaps belatedly, there are usually grandfathering provisions. Would you have a view about that or is your view such that ...

Chief Executive, The Law Society of Jersey:

I think if you have established businesses then I think you can have grandfathering, however the number of estate agents that have popped up should not necessarily mean that you just say: "Right, all the ones we have got now are all fine." I think they have to be reviewed and what you would have is an application for membership of the trade association which undertakes an initial assessment. If it is deemed that that is the framework through which this should properly lie or an alternative to that, it may not be the Jersey Estate Agents' Association, it may be another body, but there should be mandatory membership of that for which they should have to apply and there will be specific terms and conditions. I do not think grandfathering ... when 70 per cent do not belong to the association, I think there may be a grandfathering element for those that have been established more than 5 years, for example. But there should arguably be some form of, if you like, entry requirement, so it is not an automatic entry. They have to pass certain tests and that might be that they have a certain number of their people who are qualified or going forward for qualification to make sure that the standards are high or they sign up to codes of practice of the Property Ombudsman, or whatever.

Advocate:

I think the converse of that is, of course, if there is a licensing regime and there is a fit-and-proper person test, one would hope that everybody would be able to meet those criteria, whether or not they have been in the profession for 10 or 15 years. With the legal profession as well, you obviously have those barriers to get into the profession and then, as I think you alluded to at a previous Scrutiny hearing, we have continuing professional development, which I think again can form part and parcel of what may be a requirement of the licensing. But certainly if they decide to go down that route of having like a fit-and-proper person test, I would hope that everyone would be able to meet those.

The Deputy of St. Mary:

Thank you. You have stolen my last question about C.P.D. (continuing professional development) which I was going to come on to but that can be written into the code of conduct. As you said earlier, we cannot hope to cover every eventuality now but just to agree the framework. For my own part, as I say, I am conscious my colleagues have other things. The 2 Steves, do you have any further questions before we wind up?

Senator S.W. Pallett:

No, nothing from me, thank you.

The Deputy of St. Mary:

It may be that Steve Luce has perhaps had to go already because I know he did emphasise he had to go off quickly. Is there anything further you gentlemen want to tell us which we appear to have missed? This has been very helpful for us.

Chief Executive, The Law Society of Jersey:

The only thing that I might suggest to be looked at, Chair, is the House of Commons Library report on regulation of estate agents dated 6th August 2021, which I think is a useful resource which gives a very good overarching picture of the position in relation to the regulation of estate agents. I think it may be helpful to the Scrutiny Panel in its deliberations. It goes without saying that if you have further questions of us we are more than happy to assist any time. We want professional standards in Jersey in all walks of life. We have them in the legal profession, they have them in the accountancy sector, and we believe that it is appropriate and proportionate for that now to be extended to the estate agent world, particularly given the value of the sales and the growing property market in Jersey at the current time.

The Deputy of St. Mary:

Thank you for that final thought. As you say, our Island reputation is very dear to us and we need to promote it wherever we can, so I do understand that point. Thank you both again for your time. Sorry about the early hitches on this. Hopefully we will not have to take advantage of your offer to come back to us but we appreciate it and may well do. So thank you again and I close the meeting.

[16:08]