We were due to sell our home in St John in October 2015.

We had agreed a transaction with a couple who represented themselves as cash buyers, this was reinforced by our estate agent. We agreed a material discount on the price as the buyer was cash based and was pressing for early completion.

All the usual transaction matters were handled and a court date of 2 October was agreed, conveyancing was straightforward and our advisors met us at our property just prior to mid day on the day before we were due before the Royal Court to walk through and sign the final contract.

The purchasers had been pressing for early completion and we had agreed that we would facilitate vacant possession on the day following completion at 12:00 In order to achieve this we had begun the packing and move process on the Wednesday with the removal firm and by 13:00 on the Thursday all but our beds and small amount of essential homeware and clothing remained in our house. The last load left our property shortly after 13:00 on the Thursday.

At around 13:40 we received a phone call from our estate agent saying there was a problem and that the transaction may not complete the following day. It was at this point and for the very first time the agent revealed that the intended purchasers did not in fact have the funds available to complete the transaction. We assumed at this point that it was likely due to delays in raising the mortgage – however this was not the case. It soon transpired that the purchasers did not have the equity contribution to complete the purchase as they were in fact selling a UK commercial property and that had yet to exchange contracts. This left them some £600,000 short of the £1,200,000 agreed sale price.

I stress that at all times we had been led to believe that the transaction was cash/mortgage backed and indeed an assertion that although the purchasers were known to be selling a property elsewhere, completion of that transaction was not required in any way to allow our transaction to complete.

So it became clear at this point that we had been misled by the purchaser as had our agents and their own converyors – Messrs Vibert..

The transaction as it stood finally failed two weeks later when the purchaser stopped lying about the apparent near completion of the commercial deal and revealed that contracts were not actually exchanged in the UK and that they would not be in a position to complete in the foreseeable future. During those intervening weeks our possessions had remained in storage locally, we then had to arrange for their redelivery to our home (which took almost three further weeks due to scheduling issues for White & Co) and went through the process of moving back into our home. Once it became apparent that there was no possibility that the transaction would take place we also lost the property we were intending to purchase as we were unable to give any assurances on our ability to complete the transaction given the lack of propriety in our purchaser.

What was a long and emotionally stressful journey for us is the impact of the transaction failing at that time but setting that to one side, the reality is that an individual made representation to his own counsel, our agents and directly to us that he had the resources available to complete the transaction when in fact he did not and nothing in the processes

that exist around client engagement for either the legal advisors, the estate agents or others involved caused this misrepresentation to be challenged and uncovered.

What was the impact?

Collas Crill were our appointed advisors. They had prepared the contract of sale and completed all necessary conveying duties on our intended purchase. They discounted their agreed fixed fees heavily, despite having incurred substantial time costs in excess of those originally included in their fee quote. Indeed when we did finally sell our St John property and purchased a new home, they further offset their paid fees from the original sale transaction against those due for the now completed transaction.

There are no questions or concerns around their conduct or charging scale.

The legal costs for the aborted transaction were in the region of £3,500

Thompson Estates were our agents. They worked extremely hard once the transaction began to flounder to try to gain information and to understand the issues at hand.

They expended material time on the failed transaction but ended up with no sale/fee.

We had appointed surveyors to undertake a structural survey on the property we were buying as it was a period property – the costs of that and the valuation for mortgage purposes were circa £3,300

• Legal fees paid for abandoned purchase £3,500

• Survey/Valuation costs paid or abandoned purchase were £3,300

• Removal/storage/insurance and redelivery costs £3,200

• Bank fees for arrangements subsequently abandoned £500

• Sundry costs for mail re-direction/phone moves etc etc £500

• Total estimated Direct costs of abandonment £11,000

What could be improved?

Assuming that the legal reforms required to undertake wholesale reform and move to a more equitable process as found in the UK (contract exchange to completion) are beyond appetite perhaps the following would add comfort:

1) The introduction of a certified funds/funding flow summary as part of the legal process of contract creation.

a. The transaction failed as the purchaser was able to mis-represent. It would be reasonable to assume that the purchaser should be required to provide evidence of the existence of their equity contribution/funding to their legal advisors. Perhaps a transaction summary document that shows the funds flow should be required as part of the legal documentation and that should be provided by the purchasers advisors to the vendors advisors before contracts can be drawn up. The onus could be placed on the purchasers advisors to obtain this detail as part of their AML/KYC diligence work.

2) The introduction of legally structured 2 way non refundable deposits to be held in ECROW form by the vendors legal advisors.

a. By legally structured I emphasise the need for uniform agreements that (depending on the type of transaction freehold/share transfer/commercial etc.) there is a standard agreement that stipulates the conditions under which the deposit will or will not be refunded should the transaction fail or the circumstances under which the agreed value of the transaction can be changed without forfeiture. Potentially the percentage value of the deposit could be dictated by the level of equity contribution being made by the purchaser. (i.e. if they are highly geared first time buyers who have little cash its not viable to demand a 10% deposit, but for our transaction 5 or 10% would have been appropriate).

b. There should also be protection for the purchaser against the vendors revising their price or agreeing a higher price with an alternative buyer. It should be possible to include obligations in the agreement on the vendors that they will immediately cease or instruct those engaged to market on their behalf, the marketing of the property. If that fails to happen or the vendor is seen to be withdrawing and accepting an alternative offer within a specified timeframe or they revise the price once agreed this would carry a penalty payable to the purchaser – again this should be a material percentage, great enough to act as a deterrent. Protections around delaying tactics by either side could be conditions of the agreement to ensure the conditions of forfeiture are enforceable.

We understand that it is more common for “gazumping” to occur than for one party to totally misrepresent in these circumstances however there are consequences, both emotional and financial to the wronged party. There should be recourse under law to prevent such behaviour’s or allow for compensation to be paid.