

Deputy David Johnson
Chair,
Economic and International Affairs Scrutiny Panel
By email

8th November 2021

Dear Deputy Johnson,

Regulation of Jersey Estate Agents

Thank you for your letter of 2nd November and the opportunity to comment on the current regulation of Jersey estate agents.

As a preliminary observation, I would be prepared to consider a statutory registration scheme for estate agents if I could see a strong case for so doing. I shall therefore take a keen interest in the outcome of the Panel's review. Having made that point, I should nevertheless clarify that while we do not have a statutory licencing regime for individual estate agents in Jersey, the activities of estate agents are regulated.

Estate agents are required to conduct their business in accordance with the Proceeds of Crime (Jersey) Law 1991 and associated anti-money laundering regulations. They are subject to the anti-competitive provisions of the Competition (Jersey) Law 2005. In addition, and as your predecessor Panel's report SR.2/2018 ('Residential Property Transactions') rightly acknowledges, estate agents fall within the scope of the Consumer Protection (Unfair Practices) (Jersey) Law 2018, for which I have administrative responsibility. This 2018 Law prohibits estate agents from engaging in unfair commercial practices in their dealings with consumers.

In turn, the 2018 Law adds weight to other voluntary control mechanisms that estate agents can adopt, such as the UK-based Propertymark Scheme, with its Property Ombudsman service. It adds weight by making it an offence to falsely claim to be a signatory to a code of conduct of the type established by Propertymark.

A significant number of Jersey agents are members of Propertymark through their membership of the National Association of Estate Agents and / or via the Jersey Estate Agents Association (JEAA). Our own Head of Environmental and Consumer Protection worked with Propertymark following the introduction of our 2018 Law to align their Channel Islands code of practice with our own regulatory framework for both property sales and letting activity.

Turning to the questions you ask in your letter, I shall respond with reference to the Panel's terms of reference and its call for evidence. To my mind, the Island's strong international reputation is not being put at risk by our method of regulating estate agents. There are, however, some important underlying questions that the Panel seems to be asking:

1. Whether the Island's property market is functioning effectively and serving the interests of buyers and sellers in a balanced way?
2. If it isn't, what issues are compromising the operation of the market?
3. Whether licensing or other direct regulation of estate agents would be an effective way of mitigating those issues?

I note with interest how the JEAA's membership of 15 estate agents have answered those questions. While their views carry a degree of weight, I think the Government has a responsibility to consider the broader implications for the market before it applies the new layers of regulation that the JEAA is calling for. In this case, it could create new barriers to market entry that might impact competition. Competition is good for consumers and for the businesses they serve. Amongst other things, it improves efficiency, encourages innovation and helps keep prices down. In contrast, a statutory licensing regime can generate additional cost that may be passed on, possibly to the vendor that the estate agent tends to act for.

We then need to ask whether the cost of new regulation would be outweighed by the benefits of some form of licensing regime. To know that, we need to understand the problem or problems that we are trying to solve.

Your predecessor Panel's 2018 report found that the domestic property transaction process was affected by a range of factors including: a general absence of pre-sale agreements; the scarcity of trained conveyancers; and the nature of the land registry system that we have in Jersey. It also commented on the relative prevalence of gazumping activity and the impact that has. Indeed, the level of uncertainty for both buyers and sellers throughout the process seemed to be a recurring theme, as did the inclination of both buyers and sellers to complete sooner rather than later to minimise that period of uncertainty.

If we move forward to 2021, arguably the most significant change to the property market has been the rate of increase in property prices. There is clear evidence of a serious imbalance in the level of demand versus supply. Too many buyers are chasing too few properties. That imbalance is such that prices have now risen well beyond the reach of our resident population of young people. I think that is possibly the principal policy issue for the next States Assembly to confront. While licensing of estate agents may have some scope to improve that position, the more effective approach would be to concentrate the finite resources of the Government on measures to increase housing supply.

In the intervening period, current property market conditions seem to me to be capable of causing an increase in gazumping activity. While I note that the Panel has not yet published anonymised results of its survey, I should be surprised if gazumping is not one of the key issues that it highlights. Again, while statutory licensing and codes of practice for estate agents may help alleviate aspects of the problem, there are other approaches that may offer greater scope for impact. Greater housing supply would be one. Amending the transaction process might well be another.

In summary, I invite the Panel to consider broadening its consideration of this important topic and look forward to considering its findings and recommendations in due course.

Yours sincerely,



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