

# **STATES OF JERSEY**



## **RESIDENTIAL PROPERTY TRANSACTIONS (S.R.2/2018): RESPONSE OF THE CHIEF MINISTER**

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**Presented to the States on 27th September 2018  
by the Chief Minister**

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**STATES GREFFE**

## **RESIDENTIAL PROPERTY TRANSACTIONS (S.R.2/2018): RESPONSE OF THE CHIEF MINISTER**

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| <b>Ministerial Response to:</b>          | S.R.2/2018   |
| <b>Ministerial Response required by:</b> | 10th July 2018   |
| <b>Review title:</b>                     | Residential Property Transactions  |
| <b>Scrutiny Panel:</b>                   | Residential Property Transactions Review<br>Sub-Panel<br><br><i>[Scrutiny Report presented by the Chairmen's<br/>Committee on behalf of the Sub-Panel]</i> |

### **INTRODUCTION**

I welcome the Residential Property Transactions Review Panel's report. It is a well-evidenced and all-encompassing piece of work, and I am grateful for the Panel's findings and recommendations.

The Minister for Children and Housing and I have a clear ambition to support more people to achieve their aspiration of owning their home, which is set out in the 2016 Housing Strategy. The Panel's review is, therefore, timely, and will contribute towards future policy development in this area.

Buying a home is an important life event. By its very nature, it is one of the most significant financial, logistical and emotional commitments that a person will make, so it is important that the processes for selling and purchasing property are robust and efficient.

But we know, as the Panel's review sets out, that the process can be a source of stress and frustration for many households. So where there are concerns about the property transactions system – whether this is the conveyancing process or the standard of service provided by estate agents – it is important that we consider ways to improve the process where necessary. At the same time, it is a positive indication that the transactions system in Jersey does work well if the average timescale for residential property transactions takes 4 to 6 weeks in Jersey, compared to 88 days in the U.K.

We must also look at the property transactions process in terms of its impact on the affordability of housing. We generally think of 'affordability' in terms of the purchase price of a property, but it also includes the time and costs associated with the transactions process, such as legal and conveyancing fees. In this regard, as we build more affordable homes, we must also take into account how the transaction process affects housing affordability for people in Jersey.

## FINDINGS

|   | Findings  | Comments   |
|---|---|--|
| 1 | Most residential property transactions proceed to the Royal Court without any form of preliminary contract, meaning there is no certainty that the transaction will complete until contracts are actually passed. Whilst the present system allows for preliminary contracts, lawyers advise that they do not improve the timescale and are rarely used unless there is to be a delayed completion. | When a property transaction fails, it creates significant financial costs and stress for the buyer and the seller. Whilst most property transactions proceed without problem, a number do fail because of unforeseen issues such as problems with the condition of the property or, in a minority of cases, as a result of gazumping or gazundering.<br><br>People buying and selling properties can use pre-sale contracts, which can reduce the risk of a property sale failing. Nonetheless, this is a voluntary practice and it is rarely used in Jersey because, as noted by the legal profession as part of the review, the time required to negotiate a contract may detract from the actual sale of the property.  |
| 2 | The timescales for residential property transactions in Jersey are on average significantly shorter than in the U.K., taking 4 to 6 weeks compared to 88 days.  | The average time from offer to completion in England and Wales is currently between 8 to 12 weeks <sup>1</sup> . <i>The 'Buying and selling homes: consumer experience study'</i> published in 2017 indicated that 40% of home buyers in England and Wales felt the transactions process took longer than they expected. The fact that property transactions in Jersey take significantly less time than in the U.K. suggests that the process is working well in Jersey.<br><br>On the one hand, a lengthy process can create more opportunities for buyers and sellers to get nervous and pull out of a transaction. On the other, if the process is too short, it can lead to errors and delays.<br><br>In this regard, making greater use of technology and getting buyers and sellers to provide more information upfront play an important part in improving the transactions process and making it run more smoothly. |
| 3 | Where the sale of a property fails to complete at the last minute, a significant cost can be incurred by the prospective buyer. This can add significantly to the costs already accumulated in the process of the purchase of a property and may put the buyer in a difficult financial position. The seller may also be put at a financial disadvantage.   | The property transactions process creates significant costs for the parties involved, so the failure of a property sale to complete at the last moment will cause additional financial and emotional burdens for those affected.   |

<sup>1</sup> <https://www.gov.uk/government/publications/buying-and-selling-homes-consumer-experience-study>

|   | <b>Findings</b>   | <b>Comments</b>  |
|---|---|--|
| 4 | Lawyers are frequently not instructed by potential property buyers to commence their work until a late stage, due to the potential buyer wishing to avoid legal costs until his mortgage has been agreed. This can cause delays to the transaction process.   | All parties should be encouraged to adopt good practice during the transactions process in order to prevent uncertainty and the possibility of last-minute problems arising. However, the nature of the transactions process will, inevitably, create delays and hold-ups, whether as a result of the individuals or the organisations involved.                                     |
| 5 | Lawyers are frequently not instructed by the proposed seller until such time as a purchaser is found. This in turn means that the seller's lawyers have not been consulted as to matters affecting title, prior to their marketing the property, leading to possible problems at a later date.                  | As noted in Finding 4, all parties should be encouraged to adopt good practice during the transactions process in order to avoid the possibility of last-minute problems arising. There would, therefore, be benefit in making sure that more information is available before a property is put on the market, and relevant parties such as lawyers are engaged at an earlier point. |
| 6 | A decreasing number of conveyancers in the Island and an increase in their individual workloads, due to an increase in statutory requirements, has the potential to cause delays in the transaction process.  | A shortage of conveyancers in Jersey has the potential to create delays in the property transactions process, especially in a buoyant housing market where there are a greater number of sales. Where possible, more people should be encouraged to take up the profession in order to make sure that the process continues to work effectively.                                     |
| 7 | The parties to a transaction often work to unrealistic timescales, leading to the buyer's lawyers sometimes carrying out conveyancing checks only days before the Friday Court date. This can lead to last-minute problems which might cause the transaction to be delayed, with ensuing upset to both parties. | Improving consumer understanding of the property transactions process and making sure they are aware of their responsibilities is likely to improve people's experiences of buying and selling a property. In turn, greater awareness of how the process works will help to ensure the parties to a transaction work towards more realistic timescales.                              |
| 8 | There are currently only 4 principal property valuation firms used by mortgage lenders in the Island. This means that there is a potential for bottlenecks in the property transactions process if one of these firms is unable to take on work.  | As noted at Finding 6, a shortage of surveyors has the potential to create delays in the property transactions process which, as a consequence, has an impact on buyers and sellers in relation to the speed of a property sale.   |
| 9 | Proof of a buyer's financial status at the outset of the property transaction process is not standard practice in Jersey.   | The ability of a person to afford to buy a property is, clearly, one of the most important things for an estate agent and seller to know upfront. Proof of a buyer's financial status is, therefore, essential to the successful completion of a property transaction.   |

|    | <b>Findings</b>   | <b>Comments</b>  |
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|    |   | Mortgage lenders can provide a ‘mortgage in principle’ certificate to confirm a person’s ability to purchase a property, and this evidence will provide reassurance that a property transaction is likely to go ahead. It further reduces the risk that time and resources could be wasted on property viewings that are not likely to go further.   |
| 10 | The Friday-only court date for property transactions in Jersey, whilst a significant tradition, limits flexibility in the property transaction process.   | The Friday-only court date for residential property transactions is a widely commented-on issue. Whilst some people value the tradition of the process, others are concerned about the inflexibility it potentially creates in the property transactions process.  |
| 11 | Creating a pre-sale agreement, which includes a financial penalty for buyers or sellers who withdraw from a transaction, would create a greater deal of certainty in the transactions process and compensate losses incurred by either party. | Pre-sale agreements may increase the commitment between buyers and sellers at the early stages of a property transaction. As noted in Finding 1, whilst the present system allows for preliminary contracts to be entered into between the parties, they are not widespread in Jersey because they can delay the sale completion process. The benefit may, therefore, be small in the majority of transactions where the process only takes a few weeks.   |
| 12 | A “Buyer’s information pack” which might be produced by the seller at the time of a property going to market, and which would identify problematic issues about the property, would enable the purchaser’s lawyers to commence work earlier.  | <p>There is potential to work with industry to develop better quality guidance for buyers and sellers of property. Given that buying and selling a property is something that a person may do only a few times in his or her lifetime, a lack of knowledge and awareness of the transactions process might cause delays and misunderstandings that could otherwise be avoided. The availability of guidance from the start to finish of the process would help to improve this situation.</p> <p>It’s important to avoid a situation where provision of information upfront creates added costs, delays and duplication. This was one of the concerns raised when the U.K. Government sought to introduce ‘home condition reports’ in the early 2000s.</p> <p>However, the principle that more information should be offered upfront is supported and may cut abortive sales when problems are identified at a late stage of the process. Sellers should be encouraged to collect together relevant information – planning permissions, certificates of works done, etc. – in order to be ‘sale ready’ so that the information is available when a property is marketed.</p> |

|    | <b>Findings</b>   | <b>Comments</b>  |
|----|---|--|
|    |   | The U.K. Government is proposing the introduction of a ‘property passport’, and this is a policy idea that could be adopted in Jersey in the future if there is evidence to suggest that it would be welcomed by consumers.  |
| 13 | The Jersey Public Registry Index and Document Enrolment (PRIDE) system for registering property transactions has significantly sped up the process for conducting a property title search.  | The Jersey Public Registry Index and Document Enrolment (“PRIDE”) system provides an efficient and timely registration and recording process for property transactions in the Island.  |
| 14 | There would be considerable public benefit in creating a Land Registry in Jersey as a more modern, efficient and comprehensive system. The Panel acknowledges that this would require a significant investment of time and money. | There may be public benefit in introducing a Land Registry in Jersey in order to simplify the existing system. As a result, this could reduce the legal costs of conveyancing. However, whilst there might be public benefit in such a system, it would be a significant investment to make, and there would be resource implications of moving to a transaction-based system.   |
| 15 | Currently only 15 local estate agents are registered with a Jersey-based association requiring its members to follow a code of conduct. This is a minority of the current total number of estate agents active in the Island.     | Professional organisations such as the Royal Institute of Chartered Surveyors (“RICS”), the National Association of Estate Agents (“NAEA”) and the Jersey Association of Estate Agents, are important to the property sector because they encourage good practice and contribute towards professional standards. This provides assurance to consumers (who may not understand the property buying and selling process) that the estate agent they are dealing with is appropriately qualified and meets minimum competency standards in order to broker and advise on the process of buying and selling a home.<br><br>Moreover, membership of a professional organisation provides consumers with greater protections because estate agents must comply with a code of practice, which includes requirements around client money protection, insurance, dispute resolution processes, conflicts of interests and access to independent redress. |
| 16 | There is currently no statutory regulatory body for estate agents in Jersey, although there are Jersey-based regulatory bodies for both mortgage providers and law firms.   | There is no statutory body for estate agents in Jersey as applies to equivalent industries such as financial services or law firms. This issue applies to the housing sector in general – estate agents, letting and management agents, and landlords.<br><br>There are a number of different aspects to regulation. As noted at Finding 15, regulation might, for example, include a statutory requirement for an estate agent to be a member of  |

|    | <b>Findings</b>  | <b>Comments</b>  |
|----|--|--|
|    |  | <p>a professional organisation or, as noted in Finding 17, to join a redress scheme.</p> <p>In the U.K., estate agents are principally regulated by the Estate Agents Act 1979, the purpose of which is to make sure that estate agents work in the best interests of their clients. There is no equivalent legislation in Jersey, but the <a href="#">Consumer Protection (Unfair Practices) (Jersey) Law 2018</a> will provide statutory oversight in a number of areas connected to estate agent activities, as noted in Finding 18. In addition, the <a href="#">Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008</a> includes requirements in relation to anti-money laundering with which estate agents must comply.</p> <p>There may be benefit in bringing these separate pieces of legislation and other areas of best practice under some form of code of conduct for estate agents on a voluntary or statutory basis.</p> |
| 17 | <p>The Public has no complaints process to follow if required, because there is no local Ombudsman for estate agents in Jersey.</p>  | <p>This issue applies to the property sector as a whole, including estate agents, letting and management agents, and landlords. It is important that consumers have swift, effective routes to raise complaints when things go wrong. Disputes should be dealt with firstly through an organisation's complaints process but, when this has been exhausted, there is benefit in consumers having access to an independent redress. The current means of redress do not support this, and a consumer's only option is to take a grievance through the courts.</p>   |
| 18 | <p>The States have approved the Consumer Protection (Unfair Practices) (Jersey) Law 2018. Once in force, this imposes certain obligations on sellers and their agents in marketing property.</p> | <p>Once in force, the Consumer Protection (Unfair Practices) (Jersey) Law 2018 will help to protect consumers from unfair, misleading and aggressive sales practices. The Law will apply to all traders in Jersey, including estate agents, and ensure that they avoid using misleading advertisements, statements and photographs when marketing properties. This will benefit consumers when buying a home, and provide them with a means of redress through Trading Standards if things go wrong.</p>   |

## RECOMMENDATIONS

|   | <b>Recommendations</b>  | <b>To</b> | <b>Accept/<br/>Reject</b>          | <b>Comments</b>  | <b>Target<br/>date of<br/>action/<br/>completion</b> |
|---|---|-----------|------------------------------------|--|--|
| 1 | With a view to creating a greater degree of certainty, the Chief Minister should investigate, via consultation with interested parties, whether a pre-sale agreement should form part of a standard transaction process. This should include a financial penalty for buyers/sellers who fail to comply with the agreement. He should report the findings of this consultation to the States before the end of May 2019. | CM        | Neither<br>accept<br>nor<br>reject | <p>While pre-sale agreements could provide buyers and sellers with greater protection against the risk that a property transaction may fail, it is not felt necessary to take this recommendation forward at this point.</p> <p>Pre-sale agreements can be used already during the property transactions process to provide buyers and sellers with greater certainty. However, as noted by the legal profession, these agreements are not used widely because they can make the transactions take longer.</p> <p>The Chief Minister agrees to work with industry, including the Law Society, to consider the issue further and the potential development of different types of preliminary agreements, which could be used in a property transaction between parties if they choose to do so.</p> | N/A  |
| 2 | The Chief Minister should encourage, in conjunction with the Law Society, a greater number of people to train as conveyancers. The findings of this consultation should be reported to the States before the end of May 2019.   | CM        | Accept                             | The Chief Minister will work with the Law Society to see what actions can be taken to encourage a greater number of people to train as conveyancers.   | May 2019   |
| 3 | The Chief Minister should investigate, in conjunction with stakeholders, the introduction of a local qualification enabling persons with a specific qualification of licensed conveyancer to carry out property transactions independently of law firms.  | CM        | Accept                             | A lack of qualified professionals creates the risk that the property transactions process could be slowed down as a result of insufficient resources to deal with the number of property sales. As above, the Chief Minister will liaise with the Law Society to see what actions can be taken to encourage a greater number of people to train as conveyancers, which may include the introduction of a local qualification.  | May 2019   |



|   | <b>Recommendations</b>  | <b>To</b> | <b>Accept/<br/>Reject</b>          | <b>Comments</b>  | <b>Target<br/>date of<br/>action/<br/>completion</b> |
|---|---|-----------|------------------------------------|--|--|
| 4 | The Chief Minister should investigate, in conjunction with the Law Society and Jersey Estate Agents' Association, the introduction of a standard practice for a potential buyer to produce evidence of sufficient funds from their bank or mortgage broker, before making a formal offer on a property. Progress should be reported to the States before the end of May 2019. | CM        | Accept                             | The requirement for a person to provide a 'mortgage in principle' certificate before viewing properties is a sensible recommendation. It is a practice adopted by a number of estate agents in the Island already when they first meet with prospective buyers.<br><br>It is for estate agents to decide whether they wish to make this part of the process they use when selling a property, but further consideration will be given to how take-up can be promoted with industry.  | May 2019   |
| 5 | The Chief Minister should consult with the Bailiff, with regard to the feasibility or otherwise for introducing a second date in the weekly Royal Court calendar for conducting property transactions, as is the current practice in Guernsey. The findings of the consultation should be reported before the end of May 2019.  | CM        | Neither<br>accept<br>nor<br>reject | The Chief Minister will liaise with the Bailiff regarding the feasibility of introducing a second day each week in order to conduct property transactions.<br><br>The Bailiff has already provided his comments on this issue during the review. The Bailiff stated that he did not believe that it would be feasible to split the dates for passing contract across different weekdays, owing to the difficulty of manging an already busy court diary and the disruption this may cause other court users.<br><br>Nonetheless, if there is evidence to suggest that the Friday-only court date is causing a hindrance, further consideration will be given to how the process might be improved and its resource implications. | September<br>2018                                    |
| 6 | The Chief Minister should consult with the stakeholders, whether there is potential scope for property transactions to complete outside of the current Royal Court process. He should report the findings of these consultations to the States before the end of May 2019.  | CM        | Neither<br>accept<br>nor<br>reject | This recommendation would require further substantial consultation with the legal profession to understand whether there is potential scope for property transactions to be completed outside of the Royal Court, and the benefits that this might deliver. As such, the Chief Minister will liaise with the Law Society to better understand whether there would be merit in taking forward this recommendation.  | May 2019   |

|   | <b>Recommendations</b>   | <b>To</b> | <b>Accept/<br/>Reject</b>          | <b>Comments</b>  | <b>Target<br/>date of<br/>action/<br/>completion</b> |
|---|--|-----------|------------------------------------|--|--|
| 7 | The Chief Minister should consult with all interested parties, as to the desirability of establishing a land registry in Jersey. The Chief Minister should report his findings to the States before the end of May 2019. | CM        | Reject                             | As noted in Finding 14, establishing a land registry in Jersey would require significant investment. The Chief Minister will consider the issue further with interested parties such as the Law Officers' Department and the Law Society, but is minded to reject the recommendation as it stands, as it would not be a priority given the financial challenges facing the Jersey Government at this time.   | N/A  |
| 8 | The Chief Minister should introduce a means requiring all Jersey estate agents to be members of an approved professional body and to adhere to a code of conduct. This work should be completed by the end of May 2019.  | CM        | Neither<br>accept<br>nor<br>reject | <p>It is vital that estate agents adopt good standards of practice in their business activities, and a regulatory framework has the potential to support this aim.</p> <p>Nonetheless, before any form of statutory regulation is introduced, other forms of non-statutory industry-led regulation need to be considered, which might be a more proportionate response.</p> <p>The issue will, therefore, be investigated further with the support of the Jersey Estate Agents' Association.</p> <p>It should be noted that a number of estate agents in Jersey are already members of professional industry bodies, either locally (the JEAA) or of the U.K. (e.g. RICS and the NAEA). As such, there is more that can be done to encourage estate agents to adopt voluntary self-regulation before a statutory form is considered.</p> <p>This, in turn, would provide consumers with greater clarity and protection in their interaction with estate agents, and ensure a level playing field for all agents in the local market.</p> | N/A  |

## **CONCLUSION**

The Minister for Children and Housing and I will now consider the Panel's Findings and Recommendations in more detail. Where appropriate, we will take action to strengthen the property transactions process, and improve standards of practice in the property market.

It is likely that, where actions have been identified by the Panel, they will be considered by a housing policy board to drive forward the proposed changes as part of wider work on housing affordability.

The property transactions process in Jersey is robust and generally works effectively for the vast majority of buyers and sellers, as indicated by the Panel's own evidence, which shows that the speed of the transaction process in Jersey is twice as fast as in the U.K.

Nevertheless, there is always room for improvement and a number of changes may be necessary to improve the existing property transactions process and make sure that it is fit-for-purpose in the modern era.

I thank the Residential Property Transactions Review Panel for its Findings and Recommendations, as well as the contributions made by the legal profession, estate agents and members of the Public. The Minister for Children and Housing and I will work together with interested parties to ensure that policy development in this area is informed by their knowledge and expertise going forward.