

Review of the Regulation of Jersey Estate Agents

Economic and International Affairs
Scrutiny Panel

9th March 2022

S.R.3/2021



States of Jersey
States Assembly



États de Jersey
Assemblée des États

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1. Chair's Foreword

In 2018, the Residential Property Transactions Review Panel presented a report following its review of the process of transacting property in Jersey. In addition to the findings and recommendations about the property transaction process, a number of areas of improvement were identified by the Panel regarding the regulation of Jersey estate agents. In particular, the Residential Property Transactions Review Panel highlighted that estate agents in Jersey are not required to adhere to a code of conduct, have no specific regulatory oversight and are not required to obtain membership of any key industry bodies or redress schemes.

The Panel acknowledges that the regulation of estate agents is not currently within the scope of Government policy. However, following initial representations made by the Jersey Estate Agents Association (JEAA) in February 2021, the Panel decided to undertake a public survey and, whilst the responses identified specific concerns (as shown in section 5 of this report), analysis of the overall results showed that a substantial majority of respondents (86%) were in favour of some form of regulation. The Panel therefore decided it appropriate to conduct this review to identify more clearly the areas of concern and that, if evidence was indeed to the effect that some form of regulation of estate agents was needed, to consider how best this might be addressed.

The Panel undertook a process of formal evidence gathering in the second half of 2021, and wrote to key stakeholders including the Chief Minister, the Minister for Housing and Communities and the Minister for Economic Development, Tourism, Sport and Culture announcing the Panel's review and Terms of Reference. The Panel also wrote to key industry stakeholders such as estate agents, local law firms and surveyors, and also the Jersey Financial Services Commission, Propertymark, The Property Ombudsman and the Trading Standards Service. Public Hearings were also held with the Minister for Housing and Communities, the Jersey Estate Agents Association, the Law Society of Jersey and Broadlands Estates. The evidence there taken confirmed the results of our public survey, that there was overwhelming support for some form of mandatory regulation to be applied to all estate agents operating in Jersey.

Whilst there is no estate agent-specific regulation in Jersey, it should be noted that 41% of Jersey estate agents voluntarily belong to either the JEAA and/or The Property Ombudsman and Propertymark, providing a measure of regulation over some estate agents and access to redress; these are referred to in the Panel's key findings and recommendations (and more particularly in section 6 of the report).

It therefore follows that the majority of estate agents are not members of any professional body or redress scheme, and this in turn raises the question about how best to introduce professional and regulatory standards to the sector in Jersey.

As will be noted from the Panel's key findings, all estate agents in the U.K. are required to join one of two independent U.K. Government approved redress schemes, these being either The Property Ombudsman or the Property Redress Scheme. The Panel believe this is a key area where Jersey could align with UK requirements, to commence the process of introducing best practice into the sector. Therefore, a key recommendation made in this report is that all estate agents in Jersey should be required to obtain membership of a redress scheme approved by the Government of Jersey.

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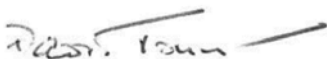
The Panel has also made a number of other recommendations based around the introduction of a requirement that all Jersey estate agents join an approved redress scheme. These range from ensuring that Jersey estate agents can meet the requirements of existing redress schemes, to investigating the potential for some form of local Jersey redress. In addition, the Panel has made recommendations to consult on the introduction of estate agent-specific legislation for Jersey and a recommendation that Jersey keeps pace with regulatory developments affecting estate agents in the UK.

From the evidence received during its review, the Panel is in no doubt that the overwhelming weight of opinion is that some form of regulation needs be introduced, and it hopes that the Minister will accept its findings and recommendations in that light. It should also be noted that, whilst this review is confined to the role of estate agents when conducting sales and purchases, many of the comments may apply equally to letting agents and, if legislation as to regulation of estate agents is to be introduced, the Minister may wish to take that aspect into consideration as well.

Finally, I take the opportunity of thanking all those who have contributed to this review and without whose valuable co-operation we would have been unable to reach the conclusions contained in this report. I also thank our Scrutiny Officer for all his work in compiling the report and my Panel colleagues for their contributions throughout the review.



Deputy David Johnson

A handwritten signature in black ink, appearing to read 'David Johnson', written over a horizontal line.

Chair, Economic and International Affairs Scrutiny Panel

2. Executive Summary

In September 2021, following representations made by the Jersey Estate Agents Association (JEAA) and concerns expressed in responses to a public survey about the estate agency market in Jersey, the Panel decided to undertake a review as to the need for regulation of estate agents. The Panel agreed that it would follow up on the 2018 Residential Property Transactions Review which raised a number of concerns about the lack of regulation of estate agents in Jersey, before considering the state of the Jersey estate agency market in 2021 including relevant industry bodies and representatives, the current legal protections available to consumers in Jersey and the potential for on-Island regulation of estate agents.

During the course of evidence gathering and research for its review, the Panel tried to quantify the exact number of estate agents registered to facilitate residential property transactions in Jersey but found that there was a lack of publicly available data to provide this statistic. A number of stakeholders expressed concerns that there appeared to be a high number of estate agents operating in Jersey, indicating a lack of regulation and low barriers to entry into the estate agency market.

The Panel undertook its own research, requesting official data from the Jersey Financial Services Commission about the number of estate agents registered to facilitate residential property transactions in Jersey, and categorised this data based on agents which are members of an industry body or representative. The Panel makes the recommendation that official information about the number of estate agents operating in Jersey, and their membership of various industry bodies and representatives, should be published.

Jersey Estate Agents: Regulatory Bodies

The Panel found three key industry bodies and representatives that currently provide some oversight and monitoring of businesses operating in the estate agency market in Jersey, these being the JEAA, The Property Ombudsman (TPO) and Propertymark.

The JEAA is a local estate agents association that provides automatic membership of TPO and Propertymark, local insights and training opportunities for Jersey estate agents. TPO is one of two independent UK consumer redress schemes (the second being the Property Redress Scheme) that are mandatory for all estate agents operating in the UK and include a number of protections such as an established Code of Practice and independent consumer redress. However, there is no requirement of estate agents in Jersey to obtain membership of a redress scheme (or indeed any professional organisation), and a key recommendation made by the Panel in this report, is that membership of a Jersey approved consumer redress scheme should be a requirement of all Jersey estate agents, enforced through a locally monitored registration scheme. In addition, the Panel have recommended that the Minister for Economic Development, Tourism, Sport and Culture consult on the introduction of a local, Jersey redress scheme. The third organisation the Panel has considered is Propertymark, which is a key membership body for UK property agents and focuses on assisting estate agents with changes to compliance requirements, business promotion and the uptake of professional development opportunities.

Current Legal Protections

The Panel has identified that there is no legislation specifically governing the activities of estate agents in Jersey. There are two pieces of legislation that govern estate agents in Jersey in a general way, these being the recent Consumer Protection (Unfair Practices) (Jersey) Law 2018 (Consumer Protection Law), which predominantly deals with criminal offences and applies to all business sectors in Jersey, and the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008, which has specific provisions for estate agents in relation to anti-money laundering and the counter-financing of terrorism.

The Panel found throughout its process of evidence gathering that the Consumer Protection Law is considered by the local Trading Standards Service to be the main form of local consumer protection for Islanders facing a dispute with a Jersey estate agent. The Consumer Protection Law is based on the UK's Consumer Protection from Unfair Trading Regulations 2008, and supplementary guidance in relation to the local Consumer Protection Law is provided by the Trading Standards Service in Jersey through The National Trading Standards Guidance on property sales. However, the Panel has expressed concern that this is a key piece of guidance for consumers and estate agents in Jersey, and yet important features of the guidance such as a requirement of estate agents to join a redress scheme and UK legislative provisions such as the Estate Agents Act 1979, do not apply to Jersey estate agents.

Regulating Estate Agent Practices

In the UK, property agents are governed by numerous pieces of estate agent specific legislation, this includes comprehensive and established legislation; such as the Estates Agents Act 1979, which makes provision for the various complexities associated with a residential property transaction and the requirement that estate agents must join an approved redress scheme.

The Panel has considered mechanisms for introducing a requirement that all Jersey estate agents obtain membership of a redress scheme approved by the Government of Jersey, such as the UK Estate Agents (Redress Scheme) Order 2008, which introduced the requirement in October 2008 that all UK estate agents join an approved redress scheme. The Panel has also explored options for establishing a local registration scheme to ensure that Jersey estate agents comply with such a requirement.

In **Appendix 1 'Comparisons with other jurisdictions'** of this report, the Panel has provided some analysis of the Estate Agents Act 1979 (EAA 1979), which draws on comparisons between the UK's Consumer Protection Regulations and the EAA 1979, the meaning of estate agency work under the EAA 1979 and how estate agents should deal with clients, declarations of personal interests, negotiations and enforcement of the EAA 1979. The Panel has therefore recommended in this report that the Minister for Economic Development, Tourism, Sport and Culture should undertake a process of consultation with industry, Trading Standards, NTSEAT and redress schemes on the development of estate agent legislation for Jersey.

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However, despite the requirements imposed on UK estate agents through legislative provisions such as the Estate Agents Act 1979 and the requirement to obtain membership of an approved redress scheme, there remains no legal obligation on estate agents in the UK to attain a professional qualification, or any licensing regime for estate agents. The Panel has therefore acknowledged some of the key recommendations of the Regulation of Property Agents Working Group (RoPA), which align with a number of concerns provided to the Panel by key stakeholders relating to estate agent regulation, codes of practice and qualifications. The Panel considers it important that the Government of Jersey monitors developments in this area and recommends that the Minister for Economic Development, Tourism, Sport and Culture should consider the recommendations of the RoPA report in any future regulation of estate agents in Jersey.

Conclusion

The Panel believe it is important to introduce regulation of the estate agency market in Jersey, to bring the standards and requirements expected of Jersey estate agents into alignment with their UK counterparts. Whilst the Panel remains concerned about the significant body of evidence it received during its review, relating to the lack regulation and accountability of estate agents in Jersey, it does believe that the evidence-based recommendations it has proposed in this report, offer sensible 'steppingstones' towards a regulatory environment that improves the sector for both consumers and estate agents. Therefore, the Panel believe that it has presented a series of credible options for the Minister for Economic Development, Tourism, Sport and Culture in relation to estate agent regulation in Jersey. In light of its review of the well-established legislation and rules governing estate agents in the UK, the Panel considers that it is time for Government to consider a 'phased in' approach to the regulation of Jersey estate agents.

Key Findings

KEY FINDING 1: In the UK, estate agents must join one of two independent UK Government approved redress schemes, either The Property Ombudsman or the Property Redress Scheme.

KEY FINDING 2: There are 46 businesses registered as estate agents involved in transacting property in Jersey (not including property letting agents).

KEY FINDING 3: 41% of estate agents that are registered by the Jersey Financial Services Commission to transact property in Jersey, are members of either the Jersey Estate Agents Association or The Property Ombudsman and Propertymark (National Association of Estate Agents). The Panel considers this figure to be low in comparison with other jurisdictions.

KEY FINDING 4: All estate agents in Jersey that choose to voluntarily self-regulate, as members of the Jersey Estate Agents Association or independently, are members of both The Property Ombudsman and Propertymark (National Association of Estate Agents).

KEY FINDING 5: UK consumers can verify whether an estate agent is correctly registered with a redress scheme via the National Trading Standards 'Property Agent Checker' website.

KEY FINDING 6: The Jersey Estate Agents Association is involved with the promotion of education and opportunities for future estate agents, conveyancers and surveyors.

KEY FINDING 7: Since 2018, the Jersey Estate Agents Association incorporates membership of The Property Ombudsman and Propertymark (National Association of Estate Agents) as a condition of membership.

KEY FINDING 8: Propertymark (National Association of Estate Agents) offers a range of specialist, regulated qualifications including an Award in Introduction to Sale of Residential Property (Level 2) and an Award in Sale of Residential Property (Level 3).

KEY FINDING 9: All Propertymark (National Association of Estate Agents) members must adhere to The Property Ombudsman's code of practice once their application is successful. The application process requires evidence of professional indemnity insurance, a designated client account, a company registration/Value Added Tax number or owner identification and evidence of membership of a Client Money Protection Scheme and can be approved within 24 hours subject to applicants possessing all the necessary documentation.

KEY FINDING 10: The UK's National Trading Standards Estate Agency Team is the lead enforcement authority for the Estate Agents Act 1979 which approves and monitors consumer redress schemes.

KEY FINDING 11: The requirement of estate agents to join a redress scheme and the UK legislative provisions such as the Estate Agents Act 1979, are important features of the National Trading Standards Guidance on property sales, and yet cannot apply to estate agents in Jersey.

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KEY FINDING 12: Based on the evidence received from the Jersey Financial Services Commission, the estate agent sector does not pose an Anti-Money Laundering/Counter-Financing of Terrorism risk to Jersey.

KEY FINDING 13: There is no estate agent specific legislation that covers the activities and conduct of estate agents in Jersey or provides consumers with a means of redress.

KEY FINDING 14: It has been a mandatory requirement of estate agents in the UK, under the Estate Agents (Redress Scheme) Order 2008, to join an approved consumer redress scheme since 1st October 2008.

KEY FINDING 15: Organisations in the UK that wish to apply to become an estate agency redress scheme operator, require approval by the National Trading Standards Estate and Lettings Agency Team.

KEY FINDING 16: The Trading Standards Service in Jersey has engaged with The Property Ombudsman in the development of the Consumer Protection (Unfair Practices) (Jersey) Law 2018.

KEY FINDING 17: The Estate Agents Act 1979 is comprehensive legislation which includes a broad definition of estate agency work, the meaning of residential property, the considerations that estate agents must have for their clients, how estate agents must approach a personal interest and the powers of enforcement. There is no equivalent legislation in Jersey.

Recommendations

RECOMMENDATION 1: The Minister for Economic Development, Tourism, Sport and Culture should publish a list of estate agents registered with the Jersey Financial Services Commission to transact residential property in Jersey, including their status as members of an approved independent redress scheme.

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.

RECOMMENDATION 3: The Minister for Economic Development, Tourism, Sport and Culture should consult on options for introducing local, independent redress in Jersey.

RECOMMENDATION 4: Alongside a legal requirement to obtain membership of a redress scheme, the Minister for Economic Development, Tourism, Sport and Culture should ensure that transparent mechanisms are in place to hold estate agents to account to the minimum standards laid down in any redress scheme Codes of Practice or guidance.

RECOMMENDATION 5: The Minister for Economic Development, Tourism, Sport and Culture should introduce a requirement that estate agents in Jersey, as defined by Schedule 2, Part B, Article 3 of the Proceeds of Crime (Jersey) Law 1999, must join a Jersey approved redress scheme.

RECOMMENDATION 6: The Minister for Economic Development, Tourism, Sport and Culture should consult with the redress schemes to ensure that all Jersey estate agents can meet their requirements.

RECOMMENDATION 7: The Minister for Economic Development, Tourism, Sport and Culture should investigate whether compensation awards made by the redress schemes are similarly available to Jersey residents, whether mechanisms are in place to challenge decisions of the Jersey approved redress schemes in relation to compensation and whether these mechanisms are reasonably accessible.

RECOMMENDATION 8: The Minister for Economic Development, Tourism, Sport and Culture should ensure that there are no barriers to registration of Jersey estate agents onto the redress schemes.

RECOMMENDATION 9: The Minister for Economic Development, Tourism, Sport and Culture should undertake a process of consultation with industry, local Trading Standards, the National Trading Standards Estate Agency Team and Jersey approved redress schemes on estate agent legislation for Jersey.

RECOMMENDATION 10: The Minister for Economic Development, Tourism, Sport and Culture should consider the recommendations of the Regulation of Property Agents report in any future regulation of estate agents in Jersey.

3. Introduction

The Panel's Review

In September 2021, the Panel announced it was undertaking a review of the Regulation of Jersey Estate Agents. This followed exchanges between the Jersey Estate Agents Association (JEAA) and a public survey which indicated concern about a lack of regulation of the estate agency market in Jersey.

Methodology

In February 2021, the Panel received representations from the JEAA that expressed concern about the lack of regulation of the estate agency market in Jersey. The Panel decided to undertake a public call for evidence using a survey designed to capture views about the Jersey estate agency market.

The Panel then wrote to key stakeholders which included the Chief Minister, the Minister for Housing and Communities and the Minister for Economic Development, Tourism, Sport and Culture announcing the Panel's review and Terms of Reference. The Panel invited the JEAA to provide a submission and wrote to other key industry stakeholders which included local estate agents that voluntarily self-regulate through professional memberships and unregulated estate agents, local law firms, local surveyors, the Jersey Financial Services Commission (JFSC), Propertymark, The Property Ombudsman (TPO) and the Trading Standards Service. The Panel did not engage the services of any private consultants or advisors during its review.

The Panel held Public Hearings with the Minister for Housing and Communities, Broadlands Estates, the JEAA and the Law Society of Jersey. The Panel also followed up with additional written correspondence to a number of key stakeholders following the Public Hearings, including with the Trading Standards Service in Jersey, TPO and Propertymark.

Ministerial Responsibility for the Regulation of Jersey Estate Agents

On 27th October 2021, the Panel received the Minister for Housing and Communities (Minister) for the first of three Public Hearing's as part of its review of the Regulation of Jersey Estate Agents. During the Hearing the Panel asked the Minister to what extent the Panel's review of the Regulation of Jersey Estate Agents would affect the Department he has ministerial responsibility for, and was informed that responsibility for regulation of estate agents in Jersey would lay with the Minister for Economic Development, Tourism, Sport and Culture (EDTSC):

The Deputy of St. Mary:

"This review into estate agents' conduct, to what extent do you believe that affects your department?"

The Minister for Housing and Communities:

“...if estate agents are to be regulated, that does not come under my area of responsibility. That would be the Minister for Economic Development, Tourism, Sport and Culture.”

Following the Hearing, the Panel wrote to the Minister for Economic Development, Tourism, Sport and Culture (Minister) on 2nd November 2021, setting out the Panel's Terms of Reference and inviting the Minister to provide his views on the regulation of Jersey estate agents. On 8th November 2021, the Minister for Economic Development, Tourism, Sport and Culture responded and confirmed that he had ministerial responsibility for the regulation of estate agents in Jersey

Letter – Minister for Economic Development, Tourism, Sport and Culture – 8th November 2021:

“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.”¹

The recommendations that follow in this report in relation to the regulation of Jersey estate agents, are therefore made to the Minister for Economic Development, Tourism, Sport and Culture.

Key Terminology: ‘Estate Agents’ and ‘Estate Agencies’

The Panel has used the terms ‘agents’ and ‘agencies’ throughout this report to mean the businesses that consumers in Jersey transact with. However, it should be noted that the estate agency sector recognises that these terms have different meanings, for example, one agency could have numerous agents (or negotiators) working on their behalf, resulting in hundreds of ‘agents’ operating on-Island. The Panel believe its use of these terms is self-explanatory and that they apply interchangeably for the purposes of this report.

¹ [Transcript – Public Hearing with the Minister for Housing and Communities re Regulation of Jersey Estate Agents – 27th October 2021](#)

4. Previous Scrutiny: 2018 Residential Property Transactions Review

In the second half of 2015, a number of issues had been identified by Islanders in relation to the process of buying and selling residential properties in Jersey, and the matter was referred for [review](#) by the [Residential Property Transactions Review Panel \(Review Panel\)](#) in March 2016.

The review was established to examine issues relating to:

- The length of time from offer and acceptance to completion of property transactions.
- Whether there is evidence of a widespread problem with late-stage transaction failure and abortion.
- The impact of failed property transactions on utility providers and third parties.
- The legal, financial, administrative and other complications that remain unidentified until the final days of the property transaction process.
- Specific bottlenecks affecting the progress of transactions and options for alleviating these.
- Other matters relating to the existing system of residential property transactions.

The review engaged a wide range of stakeholders across the private and public sector, and the Panel held Public Hearings with the Law Society of Jersey, mortgage brokers, members of the public, the Jersey Consumer Council and local estate agents.

Stakeholder engagement: concerns about Jersey estate agent conduct

Whilst the review undertaken by the Review Panel was focused on the processes and systems in place for transacting residential property in Jersey, a number of concerns were raised about the conduct of estate agents in [written submissions](#) provided to the Panel.

These concerns included:

- Little or no regulation enacted to ensure estate agents adequately or ethically guide buyers or sellers.
- No requirement for estate agents to be members of any association.
- Low barriers to entry into estate agency with no legally binding qualifications necessary.
- Feeling misled by the buyer's estate agent and their lawyer.
- Unrealistic dates sometimes set by estate agents.
- Suggestions that estate agents could become regulated by an independent ombudsman.

The Review Panel also held Public Hearings with key stakeholders in 2017 and noted comments about the potential benefits of greater regulation of estate agents in Jersey:

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Peter Seymour, Managing Director, The Mortgage Shop:

“...there certainly is a good reason for there to be greater control because it is a well-known fact that most estate agents will recommend one vendor and will recommend one lawyer and that one particular legal practice is responsible for about 50 or 55 per cent of all transactions in Jersey.”²

The Review Panel received evidence from one estate agent about the variation in the quality of the services provided by estate agents in Jersey:

Roger Trower, Broadlands Estates:

“...there are an awful lot of people who have not got a clue what they are doing...they can literally one day decide to be an estate agent and walk through the door. So, you are going to find people who do not know what they are doing, but then that is down to people like us, who look after the negotiators.”

The Review Panel also noted evidence from another estate agent, that suggested compulsory adherence to a code of practice might be necessary:

Gill Hunt, Hunt Estates:

“Maybe we need to say to the public, “Use an agent who does step up to the plate and adheres to these codes of conduct and looks after their clients and carries out best practice.”³

Residential Property Transactions Review: findings and recommendations

On 19th March 2018, the Review Panel issued a report following its review of Residential Property Transactions ([S.R.2/2018](#)) in Jersey.

The report included a number of findings and recommendations relating to the conduct and practices of Jersey estate agents.

The Chief Minister presented a [Ministerial Response](#) to the findings and recommendations of the Review Panel’s report on 27th September 2018.⁴

The Review Panel’s findings and the Ministerial Responses relating specifically to estate agents, included:

- *“Finding 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.”*

² [Transcript – Residential Property Transactions Review Panel – Public Hearing with Mortgage Providers/Brokers – 3rd October 2017](#)

³ [Transcript – Residential Property Transactions Review Panel – Estate Agents – 3rd October 2017](#)

⁴ [Ministerial Response – Residential Property Transactions Review – 27th September 2018](#)

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In response to Finding 15, the Chief Minister noted that professional bodies such as the Jersey Estate Agents Association are *“important to the property sector because they encourage good practice and contribute towards professional standards.”*

- *“Finding 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.”*

In response to Finding 16, the Chief Minister indicated support for a statutory requirement of estate agents to join a professional organisation or a consumer redress scheme, stating *“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.”*

- *“Finding 17: The public has no complaints process to follow if required because there is no local Ombudsman for estate agents in Jersey.”*

In response to Finding 17, the Chief Minister acknowledged the lack of a complaints process and noted that independent consumer redress is beneficial, *“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.”*

- *“Finding 18: 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.”*

The Chief Minister was supportive of the introduction of the Consumer Protection Law (Unfair Practices) (Jersey) Law 2018, stating in response to Finding 18 that *“Once in force, the Consumer Protection (Unfair Practices) (Jersey) Law 2018 will help to protect consumers from unfair, misleading and aggressive sales practices.”*

One of the key recommendations of S.R.2/2018, was a requirement that all Jersey estate agents take up membership of an approved professional body and adhere to a code of conduct:

- *“Recommendation 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.”⁵*

Recommendation 8 was neither accepted nor rejected, and the Chief Minister advised that this matter would be *“investigated further with the support of the Jersey Estate Agents Association”*.⁶

⁵ [Residential Property Transactions Review Report](#)

⁶ [Ministerial Response – Residential Property Transactions Review – 27th September 2018](#)

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The Chief Minister's response to Recommendation 8 of S.R.2/2018, prompted the current Panel to write to the Chief Minister to ascertain what work, if any, had been undertaken. The Chief Minister responded on 21st April 2021 stating that *"I am not aware of any work having been undertaken in relation to the regulation of estate agents, including the development of a code of conduct but have asked for your enquiry to be looked into."*

The Panel was disappointed to learn that Recommendation 8 of S.R. 2/2018 was not, per the 2018 Ministerial Response, *"investigated further with the support of the Jersey Estate Agents Association"*. However, the Panel note that the Chief Minister has stated that a *"good quality code is important, albeit I do not have a firm view on it requiring a regulatory footing."*⁷

Following this response, the Panel agreed the regulation of estate agents should be explored further and invited the Jersey Estate Agents Association (JEAA) to a meeting.

Jersey Estate Agents Association (JEAA): regulating Jersey estate agents

On 17th May 2021, the Panel held a meeting with the JEAA to discuss the regulation of estate agents in Jersey and invited them to highlight their concerns within the industry.

During the meeting, the Panel acknowledged the concerns expressed by the JEAA in previous correspondence that there should be a requirement for estate agents to be appropriately qualified, and that the JEAA was working with Propertymark (UK National Association of Estate Agents) to *"develop an additional course that deals with property transactions in Jersey, which is of course different from the UK"*.

The JEAA also made representations in support of a mandatory requirement that estate agents join the JEAA *"The JEAA is working with Propertymark to develop an additional course that deals with property transactions in Jersey, which is of course different from the UK. In addition, the Association would like the support of Government to make it mandatory for all Jersey estate agents to become a member of the Jersey Estate Agents' Association, because as an Association, all members automatically become members of Propertymark, the UK's "go to" association for estate agents, The Property Ombudsman scheme, offering redress to consumers, have to adhere to a strict code of conduct and have professional indemnity insurance in place."*⁸

Following its meeting with the JEAA, the Panel issued a public call for evidence and an online survey, to understand the public's view about estate agent conduct and the need to regulate estate agents in Jersey. In response to these findings and from the information gleaned from the previous review undertaken into Residential Property Transactions, the Panel requested that Terms of Reference and scoping documentation be drafted for a scrutiny review of estate agent regulation in Jersey, and the review of the Regulation of Jersey Estate Agents was launched on 13th September 2021.

⁷ [Letter – Chief Minister to Chair of the EIA Scrutiny Panel re Regulation of Jersey Estate Agents – 21st April 2021](#)

⁸ [Email Correspondence – Jersey Estate Agents Association – 5th February 2021](#)

5. Jersey Estate Agents in 2021

Consultation and Stakeholder Engagement

Following its initial meeting with the Jersey Estate Agents Association, and as part of research into this area of interest, the Panel decided to undertake a public survey to gather feedback from Islanders about their experiences of buying and/or selling property in Jersey through local estate agents, to assess the potential need for a review of estate agent regulation.

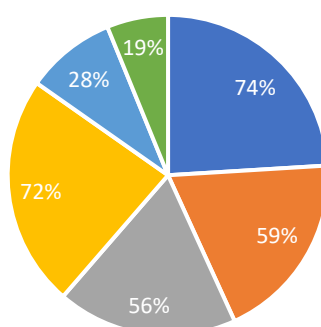
The areas of questioning focused on the type of property and the costs incurred during the property transaction, the buyer and seller experience and the public's views about regulating Jersey estate agents.

The Panel launched the survey on 16th July 2021, and this was shared publicly across its various social media platforms. The survey received a total of 65 responses over a 2-week period.

Regulation of Jersey Estate Agents Public Survey: Results

Following completion of the survey on 30th July 2021, the following data was provided to the Panel for its consideration:

- **Transacting property in Jersey: property type and costs incurred:**
 - 54% of respondents both sold and purchased a property.
 - 26% of respondents transacted between 1-6 months ago.
 - 71% of respondents purchased or sold a house.
- **Buyer and seller experiences:**



- Respondents advised that there were no hidden charges or additional costs introduced by an estate agent
- Respondents did not instruct more than one estate agent
- Estate agent was unhelpful resolving property issues with the vendor
- Respondents believe their estate agent had sufficient knowledge of the Jersey property market
- Vendors believed their estate agent provided an 'average' level of communication

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- **Respondents' views on regulating Jersey estate agents:**
 - Overall, 86% of respondents to the Panel's survey believe regulation of Jersey estate agents would offer greater protections for consumers and improve the experience of transacting property in Jersey.
- **Survey Results – key recurring themes and issues:**
 - Estate agents in Jersey lack basic knowledge about the properties they are marketing.
 - Estate agents in Jersey lack professionalism.
 - Estate agents in Jersey engage in dishonest working practices.
 - Issues with unregulated estate agents exacerbated by Jersey's 'hot' property market.

Stakeholder Engagement

Following analysis of the results of the public survey, the Panel found that a substantial majority of respondents (86%), were in favour of regulating Jersey estate agents.

Throughout October 2021, the Panel began a process of gathering evidence from the Chief Minister, the Minister for Housing and Communities, the Minister for Economic Development, Tourism, Sport and Culture and key industry stakeholders. This process involved holding Public Hearings with key stakeholders, including the Minister for Housing and Communities, Broadlands Estates and the Jersey Estate Agents Association (JEAA). The Panel also received targeted written submissions from a number of industry stakeholders which included:

- Estate agents that are members of the JEAA.
- Estate agents that are not members of the JEAA.
- Estate agents that are members of The Property Ombudsman and Propertymark but are not members of the JEAA.
- Local law firms.
- Local surveyors.
- Jersey Financial Services Commission (JFSC).
- Propertymark.
- The Property Ombudsman (TPO).
- Trading Standards Service.

The evidence the Panel has received is analysed, where relevant, across a number of sections in this report. This section primarily considers public and anonymised evidence from estate agents and local surveyors as well as the JFSC.

Written Submissions: Key Themes – Lack of Regulation, Qualifications and Codes of Practice

The Panel received 28 submissions, those which are public included a mixture of responses from estate agents, surveyors, the Jersey Financial Services Commission, The Property Ombudsman, Propertymark, Trading Standards Service, the Children’s Commissioner, the Chief Minister and the Minister for Economic Development, Tourism, Sport and Culture. The full submissions can be found on the [States Assembly website](#). The Panel also received a number of confidential and anonymous submissions.

The Panel note a number of recurring themes and potential issues raised in each submission in relation to the estate agency industry in Jersey, that express the need for regulation of Jersey estate agents. In particular, the Panel noted three key themes that include:

- A requirement that estate agents must adhere to an agreed code of conduct.
- A need to introduce local estate agent regulation.
- A requirement that estate agents are suitably qualified.

Following the Panel’s targeted call for evidence, it received the following submissions and categorised these based on key themes.

Key theme: Estate agents should adhere to an agreed code of conduct

The Panel note that a substantial number of the submissions are in favour of a requirement that Jersey estate agents adhere to a ‘code of practice’. Many of these submissions also indicate a need for Jersey estate agents to follow an ‘agreed’ or ‘common’ code of practice. The Panel wishes to highlight that an established code, such as [The Property Ombudsman’s \(TPO\) Code of Practice for Residential Estate Agents in the Channel Islands](#) includes a comprehensive range of protections, with key provisions including a duty of care owed by agents to those involved in a property transaction, management of conflicts of interest, property valuations, client instructions, agent terms of business, commissions, complaints handling and referrals to TPO.⁹

The Panel understands that UK estate agents must join a UK Government approved consumer redress scheme, such as [The Property Ombudsman \(TPO\) and must also follow its code of practice](#).

Some of these key submissions relating to estate agent codes of practice, include:

“There is no doubt that ALL those claiming to be Estate Agents and dealing with any property transaction should have a recognised qualification covering the local law for where they practice, a code of conduct to be enforced and have clients bank accounts.”¹⁰

⁹ [The Property Ombudsman – Code of Practice for Residential Estate Agents in the Channel Islands – 1st November 2020](#)

¹⁰ [Edward Trevor \(Surveyor\) – 20th September 2021](#)

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“We are members of the Jersey Estate Agents Association and various other associated schemes in the UK (NAEA) as we feel that as a responsible and professionally run office, such as ours, needs to show that estate agents should abide by an agreed code of conduct.”¹¹

“Yes, I agree adopting the UK code of practice would be beneficial to the local property industry and for the consumers using it’s services.”¹²

“My opinion is that all estate agencies should adhere to a code of conduct as we do at (ANONYMISED), even though we are not currently affiliated to any of the associations in Q1.”¹³

“For the same reasons we have no objection to qualifications being introduced for employees, Troys would have no objection with adhering to a common Code of Practice for estate agents, as well as any appropriate or proportional regulation.”¹⁴

Key theme: Local regulation of estate agents is needed

In correspondence with key stakeholders, the Panel asked a number of general questions about regulation, the potential benefits and whether stakeholders were in favour of some form of estate agent regulation.

The Panel found broad support for regulation of Jersey estate agents. However, it noted that there is a great deal of variation amongst stakeholders about what ‘regulation’ of estate agents means in practice. Some examples from the evidence in relation to regulation, include a cap on the maximum amount of commission an estate agent can earn on each transaction to introducing an estate agent licensing regime. The potential regulation of estate agents in Jersey is considered in more detail in **8. ‘Regulating Estate Agent Practices’**.

Some of these key submissions relating to estate agent regulation, include:

“They need to be regulated and charge no more than 0.25%, or in some cases 0.5%. I can’t see how they justify the money they earn. One other point you should know, there is going to be a housing crash, and who is to blame, the estate agents.”¹⁵

“We think that membership of these various bodies is extremely important, and that local legislation needs to be put in place. Jersey’s housing market and the way it conducts transactions is different from the UK.”¹⁶

¹¹ [Broadlands Estates – 6th October 2021](#)

¹² [Anonymous 4 – 12th October 2021](#)

¹³ [Anonymous 5 – 15th October 2021](#)

¹⁴ [Troys Estates – 15th October](#)

¹⁵ [Anonymous 2 – 6th October](#)

¹⁶ [Broadlands Estates – 6th October 2021](#)

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“I think that the lack of regulation can allow any person to become a property agent with little or no experience.”¹⁷

“I think that estate agents should adhere to a standard of Code of Practice and as such this would come from regulation, although with the current supervision by the JFSC I believe that the regulation should not be so excessive that it reduces our agents ability to operate efficiently within the set guidelines.”¹⁸

“Therefore, some kind of regulation on the number of agents (perhaps through a licensing scheme) may well aid the market, rather than agents themselves.”¹⁹

“I have been of the opinion for well over a decade that Estate Agents should be regulated.”²⁰

Key theme: Estate Agents should be qualified

However, the Panel also observed that many stakeholders believed estate agents should be appropriately qualified, and that this should form part of the regulation of Jersey estate agents.

Consistent with the previous theme on regulation, the Panel also noted variation in stakeholder submissions about the requirements that should be introduced in relation to estate agent qualifications. These ranged from a requirement that estate agents specify what qualifications they hold, to a transition period for all non-qualified estate agents to obtain an appropriate qualification.

In **8. ‘Regulating Estate Agent Practices’**, the Panel analyses the key recommendations of the [UK Regulation of Property Agents Working Group \(RoPA\)](#) on regulation, codes of practice and qualifications, which include a requirement that all estate agents operating in the UK hold at least a Level 3 qualification.

Some of these key submissions relating to estate agent qualifications, include:

“There should be more than one qualification and any letters after the name should specify what that qualification is.”²¹

“I have already stated that ALL agents should have a qualification to practice as estate agents. They should be guided by a professional body in Jersey and be part of best practice in the UK.”²²

“I would agree with this statement if it read ‘all client facing staff working for an estate agent’. Whilst it would be good to encourage all staff to be qualified, for me, the model

¹⁷ [Anonymous 4 – 12th October 2021](#)

¹⁸ [Anonymous 5 – 15th October 2021](#)

¹⁹ [Troys Estates – 15th October 2021](#)

²⁰ [Anonymous 6 – 24th October 2021](#)

²¹ [Edward Trevor \(Surveyor\) – 20th September 2021](#)

²² [Broadlands Estates – 6th October 2021](#)

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should follow that for independent financial advisers (IFAs), whereby the person offering the advice and conducting the regulated sale needs to be qualified to an appropriate level, and then listed as a qualified member of staff for the organisation they represent on a publicly available website (e.g. JFSC). In the same way as with the introduction of regulation of the IFA industry I would expect there to be a reasonable transition period to allow for all non-qualified individuals to become qualified to the designated standard.”²³

“I believe less experienced staff would benefit the most from a relevant qualification and thus the buyers and sellers experience would improve, but I do not see this to be the case with the vast majority of transactions that are handled by experienced agent where the experience is already good. Thus I believe there would be only minimal improvement.”²⁴

“As such, the company would have no objection for further training or qualifications to be introduced for agents operating in Jersey. That said, we would urge the panel to ensure any such measures are appropriate and scaled according to the same risk profile the JFSC applies to estate agents.”²⁵

Finally, the Panel also notes that a number of stakeholders expressed concern in their submissions about the number of estate agents operating in Jersey, which was considered by some stakeholders to be high.

The number of estate agents operating in Jersey

During the early stages of the review, the Panel was made aware of [local media reports](#) that suggested there were “50 estate agents in Jersey”, but acknowledged that many of these reports relied on anecdotal evidence as well as unconfirmed, publicly available information. Whilst information about JEAA membership (and by default membership of TPO and PropertyMark) was available on the [JEAA website](#), it was unclear in local reports and available public information, about how many independent estate agents were members of a redress scheme.

As previously stated, during the evidence gathering process some stakeholders expressed concern about the number of estate agents marketing properties in Jersey:


Submissions: Low barriers to entry and a lack of regulation


The Panel received a number of written submissions from industry stakeholders, attributing the high number of estate agents in Jersey to existing low barriers to entry and a lack of regulation:


²³ [Anonymous 3 – 13th October 2021](#)


²⁴ [Anonymous 5 – 15th October 2021](#)


²⁵ [Troys Estates – 15th October](#)


 *“At present there really are no barriers to entry within the industry, other than the JFSC requirements to be registered as a Schedule 2 business, for the purposes of AML & CFT. The existence of so many estate agencies within an Island of approximately 35,000 residential properties is testament to this fact.”²⁶*

 *“Whilst an open and competitive market can often only benefit the consumer, in the case of estate agents, we are of the firm view that it is, in fact, doing the exact opposite. At the time of writing this submission, there are an estimated 50-plus estate agencies attempting to market some 43,000 residential and commercial properties in Jersey... Therefore, some kind of regulation on the number of agents (perhaps through a licensing scheme) may well aid the market, rather than agents themselves.”²⁷*

 *“I truly believe if estate agents are regulated, educated and are part of a professional membership then it won't solve all the issues at hand however, it would reduce a large amount of them... So many single estate agents are now setting up with no experience or qualifications just so they can make a quick buck.”²⁸*


 *“Of over 40 agencies in Jersey, less than half are members pledging to adhere to the standards set. Government can help in ensuring all agents are signed up.”²⁹*

 *“There are no barriers to entry to set up an estate agency in Jersey, unlike many jurisdictions around the world. It is surprising that new entrants can come to the market with little or no experience.”³⁰*

 *“10 years on and having witnessed the amount of Estate Agents increase from early teens to over 50, just concerns me.”³¹*

During a Public Hearing on 28th October 2021, the Panel heard from Nigel Hurst, a Director of Broadlands Estates, who estimated that there were over 50 estate agents operating in Jersey:

Nigel Hurst, Director, Broadlands Estates:

 *“I think you will probably find ... you have probably done a count of how many agencies there are, but I believe there are over 50 agencies”³²*

On the 28th October 2021, the Panel also received the Jersey Estate Agents Association (JEAA) for a Public Hearing, and asked whether there was a list setting out the exact number of estate agents in Jersey, and the President of the JEAA responded that there was not:

²⁶ [Submission, Anonymous 3, 13th October 2021](#)

²⁷ [Submission, Troys Estates, 15th October 2021](#)

²⁸ [Submission, Anonymous 8, 2nd November 2021](#)

²⁹ [Submission, Hunt Estates, 8th November 2021](#)

³⁰ [Submission, Le Rossignol Estates, 8th November 2021](#)

³¹ [Submission, Gaudin & Co, 9th November 2021](#)

³² [Transcript – Public Hearing with Broadlands Estates re the Regulation of Jersey Estate Agents – 28th October 2021](#)

The Deputy of St. Martin:



“Is there anywhere where there is a definitive list of estate agents in Jersey, whether they are registered with you or not?”

President, Jersey Estate Agents’ Association:



“There is not a public list at present.”³³

Whilst consumers can check whether a Jersey estate agent is registered with a redress scheme via the TPO, PRS, Propertymark or the JEAA websites, the Panel is concerned following the evidence it received, that there is a substantial number of agents operating in Jersey which are not registered to any of the redress schemes, and that the distinction between self-regulated agents and unregulated agents is not clearly made to consumers in Jersey.

KEY FINDING 1: In the UK, estate agents must join one of two independent UK Government approved redress schemes, either The Property Ombudsman or the Property Redress Scheme.

RECOMMENDATION 1: The Minister for Economic Development, Tourism, Sport and Culture should publish a list of estate agents registered with the Jersey Financial Services Commission to transact residential property in Jersey, including their status as members of an approved independent redress scheme.

Jersey Estate Agents: Facts and Figures

The Panel looked at local estate agents in Jersey, in order to understand the size and nature of the market and quantify the exact number of estate agents involved in transacting residential property.

On 5th November 2021, following a request by the Panel, the Jersey Financial Services Commission (JFSC) confirmed that 46 businesses are registered as estate agents involved in transacting property in Jersey (not including property letting agents).³⁴

Using the JFSC’s official data, the Panel categorised these according to the proportion of estate agents that are:

Members of the Jersey Estate Agents Association (JEAA). ³⁵	15
Members of The Property Ombudsman (TPO) and Propertymark, but not members of the JEAA.	4

³³ [Transcript – Public Hearing with the Jersey Estate Agents Association re Regulation of Jersey Estate Agents – 28th October 2021](#)

³⁴ Data obtained from the Jersey Financial Services Commission

³⁵ [Membership of the JEAA also automatically confers membership of The Property Ombudsman and Propertymark](#)

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Not members of the JEAA, The Property Ombudsman or Propertymark.	27
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The data provided to the Panel indicates that 41% of estate agents that are registered to transact property in Jersey are members of either the JEAA or TPO and Propertymark. As discussed previously in this report, by contrast, in the UK all property agents must register with an approved redress scheme.

The Panel has found that all estate agents in Jersey that choose to voluntarily self-regulate through membership of an independent redress scheme, do so with TPO. The Panel has not seen any evidence that they register with the alternate [Property Redress Scheme](#).

KEY FINDING 2: There are 46 businesses registered as estate agents involved in transacting property in Jersey (not including property letting agents).

KEY FINDING 3: 41% of estate agents that are registered by the Jersey Financial Services Commission to transact property in Jersey, are members of either the Jersey Estate Agents Association or The Property Ombudsman and Propertymark (National Association of Estate Agents). The Panel considers this figure to be low in comparison with other jurisdictions.

KEY FINDING 4: All estate agents in Jersey that choose to voluntarily self-regulate, as members of the Jersey Estate Agents Association or independently, are members of both The Property Ombudsman and Propertymark (National Association of Estate Agents).

6. Jersey Estate Agents: Regulatory Bodies

Estate Agent Industry Bodies and Representatives

The Panel observed three key estate agency bodies and representatives, of which a substantial proportion of estate agents operating in Jersey hold membership, these being the Jersey Estate Agents Association (JEAA), The Property Ombudsman (TPO) and Propertymark. This section will provide an overview of JEAA, TPO and Propertymark and the evidence it received from each of these organisations in relation to potential estate agent regulation in Jersey.

Whilst there is no legal requirement for a Jersey estate agent to join estate agent industry bodies and representatives, the Panel has chosen to analyse the roles of the JEAA, TPO and Propertymark in the estate agency industry and their views on estate agent regulation, as they represent 41% of estate agents in Jersey as well as the minimum legal standard required in the UK.

The Panel also believes it is important to consider these regulatory bodies and industry representatives in the context of current and future regulation of estate agents in Jersey, and this is considered in subsequent sections of this report. The Panel believes this is important as, for example Propertymark, played a key role in the development of recommendations as part of the UK's Regulation of Property Agents Working Group (RoPA) which the Panel also analyses in **8. 'Regulating Estate Agent Practices'**.

Jersey Estate Agents Association (JEAA):

The JEAA is an industry body that was established in Jersey in 1965, and aims to “*provide support, advice and training to its members*” and to ensure that JEAA members “*follow best practice to safeguard consumers and promote professional and ethical methods*”.³⁶

Since 2018, JEAA membership incorporates membership of The Property Ombudsman (TPO) and Propertymark (National Association of Estate Agents), as a condition of membership.

The JEAA also offers members:

- The opportunity to attend local government seminars and industry talks.
- Engagement with government bodies in relation to regulation issues affecting estate agents.
- Provision of up-to-date insights on industry related legislation for sales and lettings.

³⁶ [Jersey Estate Agents Association](#)

Propertymark:

Propertymark is described as the UK's "*leading membership body for property agents*", and promotes estate agent's business interests through best practice, assists members with changes in compliance and promotes the professional development of estate agents.³⁷

The Panel notes that Propertymark offers a number of benefits to its members, including:

- Access to key industry information: including regular newsletters, fact sheets, guides, FAQ's, toolkits on legislation and Primary Authority Assured Advice.
- Access to discounted events, training, industry suppliers and qualification workbooks.
- Access to legal documents and templates including a property information questionnaire and tenancy agreements.
- Access to tools to promote their membership and a 'Find an Expert' listing on the Propertymark website.
- Unlimited access to legal helplines as part of Propertymark membership.

As membership of an approved redress scheme is a legal requirement of estate agents in the UK, members of Propertymark must also be members of a redress scheme. For estate agents currently operating in Jersey, this means that agents that are members of JEAA are automatically members of TPO and Propertymark.

In addition to residential property sales, the Panel notes that Propertymark's services also extend to property lettings and, whilst this is not an area covered by this review, a follow-up review might be necessary if property lettings are also subject to regulation.

The Property Ombudsman (TPO):

TPO is an independent UK Government approved consumer redress scheme that provides a "*free, impartial and independent Ombudsman service, resolving disputes between Consumers and Property Agents*" and provides a number of tailored Codes of Practice for England, Wales and Northern Ireland, Scotland and the Channel Islands.³⁸

As previously mentioned, the UK legally requires all estate agents to obtain membership of one of two independent redress schemes, the TPO or the Property Redress Scheme (PRS) (redress schemes).

Redress scheme membership requirements can vary, and a comparison of both redress schemes requirements is made in **8. 'Regulating Estate Agent Practices'**. However, a condition of membership of TPO is that members adhere to its Code of Practice. In addition, TPO requires that members promote their membership in their physical premises, websites as well as in their physical and digital correspondence.³⁹

³⁷ [Propertymark](#)

³⁸ [The Property Ombudsman](#)

³⁹ [TPO Code of Practice for the Channel Islands](#)

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In the UK, an online database of estate agents registered with a redress scheme is accessible through a number of different forums, including individual redress scheme websites and the UK National Trading Standards (NTS) service's online 'Property Agent Checker' database.

The mandatory register of estate agents in the UK forms part of the legal requirement that all estate agents must join a redress scheme, and that information about membership of either of these schemes is made publicly available. This is in contrast to Jersey where there is only a confidential list of estate agents maintained by the Jersey Financial Services Commission.

In addition, both redress schemes maintain a public list of 'expelled' members, and operate a [Memorandum of Understanding](#), that prevents an expelled member joining the alternate redress scheme.

According to the NTS, its 'Property Agent Checker' helps consumers and enforcement bodies to:

- **“Check:** *whether an agent is correctly registered*
- **Find:** *agents that are correctly registered, searching by town or postcode*⁴⁰

The Panel acknowledges that UK consumers benefit from an accessible public database of estate agents registered with a redress scheme, because they can easily check whether a business undertaking estate agency work is correctly registered, as required by law in the UK.

KEY FINDING 5: UK consumers can verify whether an estate agent is correctly registered with a redress scheme via the National Trading Standards 'Property Agent Checker' website.

Feedback from Regulatory Bodies

Following its own research, the Panel was keen to understand the views of each of the regulatory bodies and representatives in relation to estate agent regulation in Jersey, and this was provided during the course of its evidence gathering.

The JEAA was one of the first stakeholders to provide evidence to the Panel about the need for regulation of estate agents in Jersey via a Public Hearing on 28th October 2021.

During the Hearing, the Panel learned about the work that had been undertaken by the JEAA so far, in relation to estate agent practices, and was provided with a snapshot of the estate agent industry in Jersey by the President of the JEAA (President).

The President advised that the JEAA had been involved with Propertymark for a number of years, and noted that the JEAA's position with regards to regulating estate agents was not to focus regulation on experienced and well-established agents, but to address the high start-up rate of individual newly formed estate agents in Jersey, and expressed concern that some new entrants to the market lacked sector-specific experience:

⁴⁰ [UK National Trading Standards \(NTS\) 'Property Agent Checker' \(website\)](#)

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

“We have some questions here but would you like, President, to just outline your overall position and your concerns as to the reputation of the profession in the Island possibly?”⁴¹

President, Jersey Estate Agents’ Association:

“...We have been closely involved with the N.A.E.A. (National Association of Estate Agents) Propertymark for a few years now. Following their submissions on what is known as R.O.P.A. (Regulation of Property Agents) in the U.K. (United Kingdom)...What we are saying is probably if you have someone who has done 15 to 20 years agency in Jersey, maybe reaching the end of their career, there is little merit in someone of that stature, who has been well established and is well-known, to be taking an exam where they have clearly established their own business and practised through the years and are well-learned. But what we have been looking at is Jersey has quite a high start-up rate of individual estate agents. Some of them have not necessarily got the experience that perhaps one would in any other form of business.”⁴²

The Panel notes that one of the benefits of JEAA membership includes automatic membership of Propertymark. In their written submission dated 18th November 2021, Propertymark provided the Panel with further details about the benefits of its membership, which include key industry information, discounts on events and training, legal documentation, membership promotion and free legal advice:

[Submission, Propertymark to Chair of the EIA Scrutiny Panel, 18th November 2021:](#)

“Once in membership there are five main member benefits and a requirement for members to undertake at least 12 hours of Continued Professional Development. Firstly, members have access to key industry information. This includes regular newsletters, Fact Sheets, guides, FAQs, Toolkits on legislation and Primary Authority Assured Advice. Secondly, members receive discounts on events, training, industry suppliers and qualification workbooks. Thirdly, members are provided with legal documents and templates including a Property Information Questionnaire and tenancy agreements. Fourthly, members are given tools to promote their membership and a ‘Find an Expert’ listing on our website. Fifthly, members have unlimited access to legal helplines as part of their membership. Propertymark also provides training through online and classroom courses. The training is offered at foundation, intermediate and advanced levels, catering for everyone at different stages of experience and covering all areas of property related subjects. Our training courses do not equate to a qualification but a certificate of attendance. We also provide training through a series of regional meetings and workshops across the UK, national conferences, road show events and webinars. The training is provided face to face and online.”

⁴¹ [Transcript – Public Hearing with the Jersey Estate Agents Association re Regulation of Jersey Estate Agents – 28th October 2021](#)

⁴² [Transcript – Public Hearing with the Jersey Estate Agents Association re Regulation of Jersey Estate Agents – 28th October 2021](#)

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In its submission to the Panel, TPO also highlighted additional benefits of an independent Ombudsman, noting that the mandatory estate agent redress arrangements in the UK, enabled TPO to provide the UK Government with data about enquiries, complaints and membership to identify areas that require policy consideration, and for the benefit of consumers:

Submission, TPO to Chair of the EIA Scrutiny Panel, 10th November 2021:

“In this respect, as an Ombudsman, the Property Ombudsman provides the UK Government with a monthly data set for enquiries, complaints and membership to help them identify areas that require policy consideration. We are able to do this under the mandatory redress arrangements that exist for UK agents. Furthermore, we are also able to use this data and insight to provide appropriate consumer guidance, advice and signposting which, along with the requirement to feedback best practice recommendations to the sector, is a key service which only Ombudsmen are required to provide and which assists in preventing disputes from occurring in the first instance.

TPO went on to recommend that the Government of Jersey consider the benefits of recognising a single, independent and mandatory redress scheme for estate agents in Jersey. TPO then stated that the benefits included data and insights that could be provided to the Government of Jersey regarding issues facing Jersey consumers in relation to estate agents.

The Panel is supportive of TPO’s recommendation that the Government of Jersey recognise a single approved property Ombudsman, and a mandatory requirement that Jersey estate agents obtain membership following recognition and approval by the Government of Jersey. The Panel is of the opinion that, joining a redress scheme with clear protections for consumers and established codes of practice to which estate agents must adhere would ensure a means of redress for consumers facing a dispute with an agent.

TPO’s submission to the Panel also included an overview of its credentials as an independent estate agent Ombudsman. These can be viewed in more detail [here](#).

The President of the JEAA stated that one of its aims was to promote education and opportunity for future estate agents, conveyancers and surveyors. This, the Panel believes is good practice and in line with what is offered by the TPO:

President, Jersey Estate Agents’ Association:

“Our aim, and particularly, the vice-president, recently has been looking at educational aspects of the association since we both became president and vice-president to see whether we can push it in that direction that youngsters may be looking for a career, that they can see that they could start in an agency, they can either carry on as an agent or perhaps they might want to go off into one of the other branches of property such as conveyancing, surveying.”⁴³

⁴³ [Transcript - Public Hearing with the Jersey Estate Agents Association re Regulation of Jersey Estate Agents – 28 October 2021](#)

KEY FINDING 6: The Jersey Estate Agents Association is involved with the promotion of education and opportunities for future estate agents, conveyancers and surveyors.

At its hearing with the JEAA, the Panel asked why some local estate agents would not want to become members of the JEAA, and the President explained that with the existing benefits of membership, he could not think of a reason why an estate agent would not wish to join the JEAA:

The Deputy of St. Martin:

“So, your members get something back for your money then. You are meeting them, you are providing them training and you are trying to invest in... can you identify any other than the obvious reason of cost of why more estate agents locally do not want to join or do not join?”

President, Jersey Estate Agents’ Association:

“We have requirements that we must see the Public Indemnity insurance of estate agents and public liability, so whether that is something. Where agents take client money if they are doing lettings, we require to see client money protection and it is a requirement of PropertyMark, client money protection insurance. So, I cannot honestly comment why people would not want to be a member. It is not particularly onerous at the moment, but this is perhaps why there should be some legislation.”⁴⁴

Qualifications for Estate Agents

After learning that JEAA membership includes membership of PropertyMark and that this offers estate agents a number of benefits, the Panel decided to investigate the qualifications that PropertyMark offer to those working in the estate agency industry. The Panel understands that PropertyMark offers a range of specialist, regulated property qualifications and notes that these are “*nationally recognised by employers and recruiters*”. In particular, the Panel note that PropertyMark provide ‘sale of residential property’ qualifications which include an introductory Level 2 and Level 3 sale of residential property award:

- [Award in Introduction to Sale of Residential Property \(Level 2\)](#): *“This is an introductory qualification ideal for someone who wants to enter the profession or is new to the property industry.”*
- [Award in Sale of Residential Property \(Level 3\)](#): *“If you are currently working (or aspiring to work) as an estate agent, sales negotiator, property valuer or sales/office administrator, this is the qualification for you.”*

The Panel notes that membership of the JEAA incorporates all the benefits of PropertyMark which includes a substantial number of development opportunities for estate agents, and TPO

⁴⁴ [Transcript - Public Hearing with the Jersey Estate Agents Association re Regulation of Jersey Estate Agents – 28 October 2021](#)

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which offers consumers independent redress and can provide Government with useful data and insights in relation to enquiries, complaints and membership.

The Panel is also encouraged that Propertymark offers Level 2 and Level 3 estate agent qualifications in residential sales.

In **section 8 ‘Regulating Estate Agent Practices’** of the report, the Panel considers the recommendations of the Regulation of Property Agents Working Group with regards to the introduction of mandatory estate agent qualifications in the UK.

KEY FINDING 7: Since 2018, the Jersey Estate Agents Association incorporates membership of The Property Ombudsman and Propertymark (National Association of Estate Agents) as a condition of membership.

KEY FINDING 8: Propertymark (National Association of Estate Agents) offers a range of specialist, regulated qualifications including an Award in Introduction to Sale of Residential Property (Level 2) and an Award in Sale of Residential Property (Level 3).

Unregulated estate agents: residential property knowledge and marketing

On 21st October 2021, the Panel wrote to Propertymark and asked for feedback about its views on the regulation of Jersey estate agents.

In their submission dated 18th November 2021, Propertymark responded that, in an unregulated estate agency market, they would have concerns about estate agents’ level of knowledge about the properties they are marketing:

[Submission, Propertymark to Chair of the EIA Scrutiny Panel, 18th November 2021:](#)

“Yes, Propertymark would have concerns about estate agents’ level of knowledge about properties they are marketing in a market where agents are not regulated. The level of knowledge about properties being marketed is fundamental to ensuring buyers and sellers have the right information at the right time to ensure they can make informed decisions.”

In contrast, TPO noted that whilst it did not have a specific concern about estate agents lacking property knowledge, it did highlight that it had received a significant number of enquiries and disputes relating to communication shortcomings by estate agents:

[Submission, TPO to Chair of the EIA Scrutiny Panel, 10th November 2021:](#)

“Based on the cases referred to the Property Ombudsman, while we do not have a concern about agents’ level of knowledge about the properties they market, we do see a significant number of enquiries and disputes where it is apparent that consumers have experienced communication shortcomings surrounding either aspects of a property, the transaction or the agent’s services.”

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Propertymark also noted the TPO Code of Practice for the Channel Islands, due to membership being voluntary in nature, meant there was a lack of transparent mechanisms to hold estate agents in Jersey to account against the TPO's standards:

Submission, Propertymark to Chair of the EIA Scrutiny Panel, 18th November 2021:

“The Property Ombudsman (TPO) Code of Practice for Residential Estate Agents in the Channel Islands, at, sets out the requirements around Published Material and Information about a Property, but while residential estate agents in Jersey are not legally mandated to register with the TPO there is no transparent mechanism to hold agents to account against these standards.”

Propertymark submitted that the absence of estate agent specific legislation gave rise to potential problems for buyers and sellers in Jersey:

Submission, Propertymark to Chair of the EIA Scrutiny Panel, 18th November 2021:

“Propertymark believes that the absence of such estate-agent specific legislation is problematic for buyers and sellers because it leaves them extremely vulnerable to bad practice and questionable standards from non-professional agents who do not voluntarily adhere to the Code of Practice for residential estate agents in the Channel Islands, as members of The Property Ombudsman and/or a professional body such as Propertymark and the Jersey Estate Agents' Association (JEAA).

Propertymark then informed the Panel that they believed that one of the first requirements of Jersey estate agents should be a legal obligation to attain professional membership before being permitted to practice as an estate agent:

Submission, Propertymark to Chair of the EIA Scrutiny Panel, 18th November 2021:

“Monitoring compliance with a statutory code of practice requires regulatory oversight which is why estate agents in Jersey should, in the first instance, be legally required to attain professional membership before being permitted to practice.”

Propertymark then went on to state the requirement that all members must follow TPO's Code of Practice and the rigorous nature of the application process:

“All Propertymark members must adhere to the TPO's code of practice once their application is successful. An application for membership is a rigorous process which begins with individuals completing a form which asks for individual details, employment status and work details, the membership grade the individual is applying for as well as divisional interests and marketing sign up information.”

KEY FINDING 9: All Propertymark (National Association of Estate Agents) members must adhere to The Property Ombudsman's code of practice once their application is successful. The application process requires evidence of professional indemnity insurance, a designated client account, a company registration/Value Added Tax number or owner identification and evidence of membership of a Client Money Protection Scheme and can be approved within 24 hours subject to applicants possessing all the necessary documentation.

The Panel shares Propertymark's concerns about unregulated Jersey estate agents marketing residential properties, without sufficient levels of knowledge as to the properties they are marketing. This is because a consumer's knowledge about the property plays a crucial role when influencing a transactional decision. The Panel note TPO's feedback that it has experienced a significant number of enquiries and disputes relating to communication shortcomings by estate agents in the UK.

The Panel also agree with Propertymark and TPO that membership of a redress scheme should be a mandatory requirement for all estate agents registered to transact residential property in Jersey, with mechanisms in place to ensure agents uphold the minimum standards set out in the relevant redress scheme Codes of Practice and guidance. However, the Panel also believe that options for introducing local independent redress in Jersey, should be explored by the Minister for Economic Development, Tourism, Sport and Culture, to ensure that all redress scheme rules governing Jersey estate agents, fall within the purview of regulation by the Government of Jersey.

In addition, the Panel also believes that this requirement should be enforced through a mandatory local registration scheme that provides details of Jersey estate agent's membership of the Jersey approved redress schemes, and that this is updated and monitored by the Government of Jersey. This is because a local registration scheme will introduce a mechanism to enable the Government of Jersey to make sure that all local estate agents are correctly registered with a redress scheme and allow the status of membership to be verified.

However, there are a number of non-estate agent specific legal protections on offer to consumers in Jersey, in particular the Consumer Protection (Unfair Practices) (Jersey) Law 2018, which applies to all businesses in Jersey including estate agents.

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.

RECOMMENDATION 3: The Minister for Economic Development, Tourism, Sport and Culture should consult on options for introducing local, independent redress in Jersey.

RECOMMENDATION 4: Alongside a legal requirement to obtain membership of a redress scheme, the Minister for Economic Development, Tourism, Sport and Culture should ensure that transparent mechanisms are in place to hold estate agents to account to the minimum standards laid down in any redress scheme, Codes of Practice or guidance.

7. Current Legal Protections

Whilst Jersey does not have its own set of estate agent specific regulations, the Panel has identified two pieces of legislation which govern the activities of estate agents in Jersey in a general way, these are the [Consumer Protection \(Unfair Practices\) \(Jersey\) Law 2018](#) (Consumer Protection Law) and the [Proceeds of Crime \(Supervisory Bodies\) \(Jersey\) Law 2008](#) (Proceeds of Crime Law).

The Consumer Protection Law is designed to protect all consumers and businesses taking part in business to consumer transactions in Jersey, whereas the Proceeds of Crime Law requires that Jersey estate agents register with the Jersey Financial Services Commission (JFSC), for the purposes of supervising estate agent compliance with anti-money laundering and counter-financing of terrorism provisions.

This section of the report deals with the current regulatory position in Jersey. It will analyse how these pieces of legislation currently govern estate agent practices in the Island, the relevant guidance on this legislation and consider the evidence that the Panel has received from key stakeholders in written submissions and Public Hearings.

Consumer Protection (Unfair Practices) (Jersey) Law 2018

On 8th June 2018, the Consumer Protection Law came into force. The Trading Standards Service in Jersey published guidance about the law, its practical implications and the benefits for Jersey businesses on the Government of Jersey website. The Panel notes that the law *“bans traders in all sectors from using unfair commercial practices towards consumers and stops aggressive selling techniques and misinforming and misleading people about products or services.”*

In addition, the Trading Standards Service in Jersey published a separate note on the Consumer Protection Law in relation to estate agents and property sales, advising that the law *“applies to the full spectrum of property sales and letting businesses”* and *“It covers traditional high street estate agents that provide a wide range of services as well as businesses that provide a limited service such as introducing potential buyers and sellers or enabling them to exchange contact details and anyone who, as part of their business, supplies services related to letting of privately owned residential property.”*⁴⁵

The Panel notes that the Consumer Protection Law in Jersey is based on the UK’s Consumer Protection from Unfair Trading Regulations 2008 (Consumer Protection Regulations) and found that the Trading Standards Service in Jersey, provides UK guidance on the Consumer Protection Regulations, to Jersey estate agents and consumers in relation to the Jersey Consumer Protection Law.

In particular, the Panel has considered the UK ‘National Trading Standards Guidance on property sales’, which is referenced on the Government of Jersey website by the Trading

⁴⁵ [Trading Standards Service \(Jersey\) – Government of Jersey website – Consumer Protection \(Unfair Practices\) \(Jersey\) Law 2018](#)

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Standards Service and will now address some of the key aspects of this guidance in relation to the current regulation of Jersey estate agent conduct.⁴⁶

UK National Trading Standards Guidance on Property Sales

The National Trading Standards Guidance on property sales (Guidance), was produced by the National Trading Standards Estate Agency Team in “its role as the UK’s lead enforcement authority for the Estate Agents Act 1979”.⁴⁷

The Panel found that the [National Trading Standards Estate Agency Team](#) is responsible for:

- *“issuing individual banning or warning orders under the Act*
- *maintaining a public register of such banning or warning orders*
- *approving and monitoring consumer redress schemes*
- *providing generic advice and guidance on estate agency matters, in conjunction with Citizen’s Advice, the Chartered Trading Standards Institute and other partner agencies”*

The Guidance sets out key aspects of the UK’s Consumer Protection Regulations in relation to estate agent conduct. Many of the unfair practices listed below also apply to Jersey estate agents, through the Consumer Protection Law:

- *“Misleading actions: giving false or misleading information to consumers.*
- *Misleading omissions: hiding or failing to provide material information to consumers*
- *Aggressive practices: exerting undue pressure on consumers.*
- *Failure to show professional diligence: not acting with the standard of care and skill that is in accordance with honest market practice and in good faith.*
- *Banned practices: such as displaying a trust mark (a logo) without authorisation and claiming falsely to be a member of a professional body or an approved redress scheme where they are not members.”⁴⁸*

However, the Panel note that much of the Guidance also sets out how an estate agent should conduct their business in relation to the requirements of the mandatory estate agent redress schemes, specific legislative provisions which govern estate agents in the UK and the [Consumer Protection Regulations](#).

The Panel is concerned that the requirement of estate agents to join an approved redress scheme and the UK legislative provisions such as the [Estate Agents Act 1979](#), are important features of this Guidance, and yet cannot apply to estate agents in Jersey. The Panel believes that this is concerning because this is also a key piece of Guidance for Jersey estate agents and consumers in relation to the [Consumer Protection Law](#).

⁴⁶ [Trading Standards Service \(Jersey\) – Government of Jersey website – Estate Agents, Letting Agents and Property Sales](#)

⁴⁷ [National Trading Standards Estate Agency Team](#)

⁴⁸ [National Trading Standards Estate Agency Team – Guidance on Property Sales](#)

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The Guidance also notes key examples that apply to UK estate agents, for example under Annex A of the Guidance in relation to the [Estate Agents Act 1979](#), which among other requirements, specifies that estate agents must register as a member of a UK Government approved consumer redress scheme and, as stated above, there is no legal requirement for Jersey estate agents to follow the provisions of the Estate Agents Act 1979:

“Requires you, when carrying out estate agency work (as defined by the EAA), to comply with certain rules of conduct when acting for clients, for example:

- *Providing them with full and detailed information about fees and charges for your services.*
- *Disclosing any personal interest that you may have in the sale.*
- *Keeping them promptly informed about offers received.*
- *Handling their money properly and*
- *Being a member of or registered with an officially approved consumer redress scheme.”⁴⁹*

KEY FINDING 10: The UK’s National Trading Standards Estate Agency Team is the lead enforcement authority for the Estate Agents Act 1979 which approves and monitors consumer redress schemes.

KEY FINDING 11: The requirement of estate agents to join an approved redress scheme and the UK legislative provisions such as the Estate Agents Act 1979, are important features of the National Trading Standards Guidance on property sales, and yet cannot apply to estate agents in Jersey.

In earlier sections of this report, the Panel has expressed support for a requirement that all Jersey estate agents join a Jersey approved redress scheme, with a legal mechanism in place to implement this, to improve the protections for consumers dealing with estate agents in Jersey. The Panel is of the opinion that the Guidance highlights the fact that these protections are not guaranteed or legally enforceable in Jersey, as they are in the UK.

Estate Agent Regulation: Consumer Protection Law and the Jersey Trading Standards Service

At the Public Hearing with the Minister for Housing and Communities, the Panel sought more information about the position of the Government of Jersey in regard to redress schemes, the [UK Regulation of Property Agents Working Group’s](#) recommendations on estate agent qualifications, the costs and administration of regulating estate agents and the impact of estate agent conduct on housing availability and affordability.

The Panel’s lines of questioning also broadened to include the Consumer Protection Law and the role of the [Trading Standards Service](#) in investigating potential breaches of the Consumer Protection Law.

⁴⁹ [Annex A - National Trading Standards Estate Agency Team – Guidance on Property Sales](#)

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The Panel asked about the process that consumers can follow in the event that they have a dispute with a Jersey estate agent, and learned that consumers can directly access a confidential advice service provided by the [Trading Standards Service](#), which will determine whether an agent is a member of the JEAA and provide advice in relation to investigations for potential breaches of the Consumer Protection Law:

The Deputy of St. Mary:

“The other aspect about enforcement or who should judge on this, are you aware, if there is a breach by a member agent of the code to which he has subscribed; is it the local Estate Agents Association through their officers that determine the extent of that breach and what should happen?”

Head of Environmental and Consumer Protection:

“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 Panel was keen to understand the protections available to consumers in the event that a Jersey estate agent falsely markets a property. The Head of Environmental and Consumer Protection informed the Panel that the Consumer Protection Law was comprehensive and powerful legislation, that takes a strong position against the provision of misleading information to consumers:

The Deputy of St. Mary:

“...going back to the consumer protection side and the marketing which the Deputy has just mentioned, I think it is the case that if you falsely market a property that that will be a breach of that particular Act. Am I right in saying that?”

Head of Environmental and Consumer Protection:

“Yes. We have comprehensive legislation. I know I am over-selling it a little bit but it is really quite fundamentally powerful legislation and it is very strong on misleading information that is provided to consumers. In fact when it was introduced in the U.K. - and we have an almost identical copy - it led to the repeal of the Property Misdescriptions Act because all of the tools are available in the new legislation to repeal the entire Act in itself. It is very strong on what we call misleading actions but also misleading omissions...”⁵⁰

⁵⁰ [Transcript – Public Hearing with the Minister for Housing and Communities re Regulation of Jersey Estate Agents – 27th October 2021](#)

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However, whilst the Panel was assured about the strength of the Consumer Protection Law in relation to misleading actions and omissions that might influence a transactional decision, the Panel is concerned that the current rules do not account for all the nuance and complexity of marketing a property in Jersey. This is because the Consumer Protection Law covers all business to consumer transactions in Jersey and is not tailored to the property market. This was also one of the concerns raised by Propertymark in their submission to the Panel:

Submission, Propertymark to Chair of the EIA Scrutiny Panel, 18th November 2021:

“Marketing a property is not straightforward. Agents must deal with a product that will often come with significant history that is unique to it and can have a multitude of different things affecting it. Determining what counts as material information is complicated and will be different for each property, so compelling sales agents to comply with clearly defined guidance on what counts as material information can mitigate significant risks to consumer rights.”

The Panel followed up this line of questioning at the Public Hearing with the Minister for Housing and Communities and asked about the options for financial compensation of consumers that find that they have been misled by an estate agent, and was advised that the Consumer Protection Law predominantly legislates for criminal offences:

The Deputy of St. Mary:

“...I just wonder how much loss could be proved by a purchaser aggrieved, they have not been drawn into a transaction, which he subsequently finds out on inspection is not quite what he thought it was. It is a grey area I think but I do wonder whether there is much financial recompense a sort of disillusioned purchaser can get in those circumstances.”

Head of Environmental and Consumer Protection:

“Consumer protection legislation is predominantly around criminal offences, so it goes beyond the losses of perhaps a consumer who had made an offer or had decided to instruct a surveyor and, therefore, immediately becomes out of pocket if it all goes horribly wrong. But action could be taken against an estate agent where they have misled consumers to go and even view. It is such an incredibly broad piece of legislation, it covers the end to end. You could commit an offence by misleading a number of people to just view a property and even if there was no offer ever made.”⁵¹

The Panel then sought more information about the current process that consumers can follow, to lodge a complaint with the Trading Standards Service about an estate agent. The Panel found that three options are available once an investigation leads to legal action under the Consumer Protection Law, principally; invoking a ‘name and shame’ provision if the agent concerned is willing to admit and change their course of conduct, an injunction by the Attorney

⁵¹ [Transcript – Public Hearing with the Minister for Housing and Communities re Regulation of Jersey Estate Agents – 27th October 2021](#)

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General that forces an agent to cease and desist a particular course of conduct and finally criminal actions which can result in a Level 3 fine on the standard scale (£10,000).

However, as previously discussed in this report the Panel is concerned that unlike the UK, there is no legislation in Jersey that makes provision for consumer redress, and this was confirmed by the Head of Environmental and Consumer Protection during the Hearing:

Deputy M. Tadier:

“Then to do with the manoeuvrability of the law, if you like, from a consumer’s point of view, how easy is it for people to make a complaint about an estate agent if they wished to through your body? Does that happen very often? In terms of the burden of proof, the defences and then the penalties, do you think it is a feasible methodology to pursue or does it need a separate system, do you think?”

Head of Environmental and Consumer Protection:

“I think that it is very easy to make a complaint to the Consumer Advice Service through numerous ways; telephone, email, whatever. In terms of moving through the legislation, it was designed in a way that there were various routes, without having to go straight to full criminal or nothing. We introduced a number of other layers, so one of which is our powers in the legislation for the chief trading standards officer to enter into undertakings with businesses, effectively, where they will admit that they have done something wrong and they will cease and desist the course of conduct. That can be shared with the Attorney General and, if necessary, it can also be published.”

The Head of Environmental and Consumer Protection went on to say:

“Effectively, there is a name and shame provision and that is quite a relatively easy route to go down to come to a satisfactory resolution if the business is willing to admit and change their course of action. There is another alternative route where the Attorney General can take an injunction against that business to cease and desist that course of conduct, which is incredibly powerful because then if you breach a court order then there are some very serious penalties within the court. The third route of course is taking criminal action and it being an offence, which is a level 3 fine under that legislation.”⁵²

The Head of Environmental and Consumer Protection then confirmed that the legislation does not offer any provision for redress to consumers in Jersey and is predominately about the business and its practices.

Overall, whilst the Panel is confident that the Trading Standards Service can provide a confidential and effective advice service for consumers facing a dispute with a Jersey estate agent, the Panel is concerned that the outcomes of this service are limited to investigations of potential breaches of the Consumer Protection Law, which predominantly deals with criminal

⁵² [Transcript – Public Hearing with the Minister for Housing and Communities re Regulation of Jersey Estate Agents – 27th October 2021](#)

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offences, and may not be adequate to deal with a consumer complaint relating to the conduct and practices of a Jersey estate agent.

Therefore, the Panel is concerned that Jersey consumers are placed at a disadvantage when compared with the protections available to consumers in the UK. This is because the evidence that the Panel has received so far, points strongly to a lack of redress that can account for all the specific issues and complexities that consumers will likely face when buying and/or selling a residential property in Jersey. The Panel believes that this could be rectified by mandating that estate agents join a Jersey approved redress scheme.

The Panel will now consider estate agent compliance with another piece of legislation governing agents in Jersey, in relation to anti-money laundering and counter financing of terrorism provisions.

Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008

There are a number of pieces of primary and secondary legislation that have been implemented in Jersey, in order to combat money laundering and the financing of terrorism.⁵³

During the scoping and terms of reference stage of the review, the Panel identified [Schedule 2 of the Proceeds of Crime \(Jersey\) Law 1999](#), as a provision governing estate agents' activities for the purposes of anti-money laundering and counter financing of terrorism (AML/CFT).

During the evidence gathering stage of the review, it was submitted to the Panel by the JFSC that estate agents in Jersey are also required to register with the JFSC and abide by the Proceeds of Crime Law:

Submission – JFSC – 4th November 2021:

“Jersey estate agents are required to register with the JFSC under the Proceeds of Crime (Supervisory Bodies) (Jersey) Law 2008. Once registered, we supervise estate agents in respect of anti-money laundering and countering the financing of terrorism (AML/CFT).”

The JFSC have produced guidance for estate agents to assist with compliance with Jersey's AML/CFT provisions, the [‘AML/CFT Handbook for Estate Agents and High Value Dealers’](#) (Handbook). In particular, the Panel notes that estate agents have previously been used by criminals for money laundering and the purposes of financing terrorism in some jurisdictions:

JFSC – AML/CFT Handbook:

“Estate agents, art and antique dealers, jewellers, and the motor and yacht trade have all been used in some jurisdictions as a conduit for criminal property to enter the

⁵³ [Financial crime in the Channel Islands: Jersey: Overview offences – Thompson Reuters Practical Law](#)

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financial system. Estate agents and high value dealers in Jersey should be on guard to ensure that they are not used as such a conduit. Some have also been used to assist terrorists to plan and finance their operations.”

In addition, the Panel note that the Handbook clearly sets out the consequences for estate agents and Jersey’s reputation as an international finance centre, if an agent participates in Money laundering or the financing of terrorism:

JFSC – AML/CFT Handbook:

“Any estate agent or high value dealer in Jersey that assists in money laundering or the financing of terrorism, whether:

- with knowledge or suspicion of the connection to crime; or*
- acting without regard to what it may be facilitating through the provision of its services, will face the loss of its reputation, risk discipline by the Royal Court, damage the integrity of Jersey’s professional and finance industry as a whole, and may risk prosecution for criminal offences.”*

However, the Panel is assured to learn that the JFSC, as the AML/CFT supervisor of estate agents in Jersey, believes that estate agents are capable of fulfilling their AML/CFT obligations. The Panel found that a number of estate agents have taken part in JFSC thematic examinations to highlight areas of improvement for estate agents:

Submission – JFSC – 4th November 2021:

“Do you have concerns about the ability of estate agents to fulfil the requirements of Schedule 2 of the Proceeds of Crime (Jersey) Law 1999?”

At a sectoral level we consider that estate agents are able to fulfil their AML/CFT obligations. Without commenting on individual businesses, we would highlight that a number of estate agents have taken part in our recent thematic examinations. These examinations highlight areas of improvement which are expected of all businesses that we supervise.”

The Panel is also assured to learn that the JFSC does not believe that there is an AML or CFT risk to the Island as a result of unregulated estate agent practices:

Submission – JFSC – 4th November 2021:

Do you believe unregulated estate agents are a potential risk to Jersey’s strong international reputation?

“As we are the AML/CFT supervisor for estate agents and we monitor the regulatory perimeter, we consider that this question does not apply to AML/CFT regulation. We consider that there is a potential risk through the lack of formal conduct and prudential

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regulation which are important aspects of what we do in respect of financial services businesses.”

However, the Panel acknowledges that the JFSC, consistent with the evidence the Panel has received from other stakeholders, believes there is a potential risk associated with a lack of “*formal conduct and prudential regulation*” of estate agents in Jersey:

“...We consider that there is a potential risk through the lack of formal conduct and prudential regulation which are important aspects of what we do in respect of financial services businesses. While we are not aware of estate agents causing reputational damage as a result of poor practices, there are clear benefits from our conduct and prudential work and these benefits include protecting the Island’s strong international reputation. We do not think that we would be the right body to regulate estate agents for non-AML/CFT matters, yet we do think that a right-sized conduct and (if appropriate) prudential regime would be beneficial.”

KEY FINDING 12: Based on the evidence received from the Jersey Financial Services Commission, the estate agent sector does not pose an Anti-Money Laundering/Counter-Financing of Terrorism risk to Jersey.

KEY FINDING 13: There is no estate agent specific legislation that covers the activities and conduct of estate agents in Jersey or provides consumers with a means of redress.

A comparative analysis and breakdown of estate agent regulation between Jersey, Guernsey, the United Kingdom (UK) and the European Union (EU), can be found in **Appendix 1 ‘Comparisons with other jurisdictions’** of this report.

8. Regulating Estate Agent Practices

During the course of its review, the Panel has established that there is limited protection against unfair estate agent practices and conduct available to consumers through the Consumer Protection Law (7. Current Legal Protections). However, the Panel also established that the Consumer Protection Law predominately deals with criminal offences, and that there is no means of redress for Jersey consumers or estate agent specific legislation in Jersey.

The Panel has recommended that the Minister for Economic Development, Tourism, Sport and Culture introduce a mandatory requirement that all Jersey estate agents become members of a redress scheme approved by the Government of Jersey (see Recommendation 2). This section of the report will analyse the mechanisms that have been used to introduce this requirement in the UK and how this might be replicated in Jersey. It will also consider the impact of introducing a requirement to join a redress scheme by analysing the requirements, types, costs of memberships and compensation awards.

The latter half of this section will analyse the potential for comprehensive regulation of estate agents in Jersey through estate agent specific legislation. The Panel has considered key pieces of legislation already governing agents in the UK, principally the [Estate Agents Act 1979 \(EAA 1979\)](#) and the [Consumer Protection from Unfair Trading Regulations 2008 \(Consumer Protection Regulations\)](#) which is considered in **Appendix 1 ‘Comparisons with other jurisdictions’** of this report. The Panel believes it is important that following the introduction of a requirement that Jersey estate agents join a redress scheme, the Minister for Economic Development, Tourism, Sport and Culture should consult with industry and relevant UK authorities on specific legislative provisions for estate agents operating in Jersey, similar to that of the Estate Agents Act 1979.

Finally, the Panel will address the future regulation of estate agents in the UK following the publication of the [Regulation of Property Agents Working Group \(RoPA\) report in 2019](#), and the subsequent developments in the regulation of estate agents in the UK, to introduce estate agent regulation, a mandatory code of practice and qualifications.

United Kingdom: Estate Agents (Redress Scheme) Order 2008, redress scheme membership requirements, types, costs and consumer compensation

As previously stated in this report, it is a legal requirement of estate agents in the UK to obtain membership of one of two UK Government approved consumer redress schemes, [The Property Ombudsman](#) (TPO) or the [Property Redress Scheme \(PRS\)](#).

This has been a mandatory requirement of estate agents in the UK since 1st October 2008 and was initially brought into force by [the Estate Agents \(Redress Scheme\) Order 2008 \(Redress Scheme Order\)](#). The Panel notes that the Redress Scheme Order required “*every person who engages in estate agency work in the United Kingdom in relation to residential property to be a member of an approved redress scheme for the purpose of dealing with complaints relating to that work.*”⁵⁴

⁵⁴ [The Estate Agents \(Redress Scheme\) Order 2008 – Explanatory Note](#)

KEY FINDING 14: It has been a mandatory requirement of estate agents in the UK, under the Estate Agents (Redress Scheme) Order 2008, to join an approved consumer redress scheme since 1st October 2008.

The requirement of estate agents to join a redress scheme is now provided for in Schedule 3 of the EAA 1979. In the UK, organisations that wish to apply to become a redress scheme, are now approved by the National Trading Standards Estate and Lettings Agency Team (NTS) and subject to the requirements of the EAA 1979.⁵⁵

KEY FINDING 15: Organisations in the UK that wish to apply to become an estate agency redress scheme operator, are now approved by the National Trading Standards Estate and Lettings Agency Team.

The Panel acknowledges that the definitions set out in the EAA 1979 do not directly apply to Jersey estate agents because there is no equivalent Jersey legislation. However, the Panel note under Schedule 2, Part B, Article 3 of the Proceeds of Crime (Jersey) Law 1999 (Schedule 2), the definition of estate agents for the purposes of compliance with anti-money laundering provisions:

Schedule 2, Part B, Article 3 of the Proceeds of Crime (Jersey) Law 1999:

- “(1) *The business of providing estate agency services for or on behalf of third parties concerning the buying or selling of freehold (including flying freehold) or leasehold property (including commercial and agricultural property), whether the property is situated in Jersey or overseas.*
- (2) *The business of providing estate agency services for or on behalf of third parties concerning the buying or selling of shares the ownership of which entitles the owner to occupy immovable property, whether the property is situated in Jersey or overseas.”*

The Panel believes that the requirement to join a redress scheme should apply to all estate agents registered with the JFSC under Schedule 2. This is because the Schedule 2 definition currently applies to all Jersey businesses that are registered with the JFSC to facilitate residential property transactions in Jersey.

RECOMMENDATION 5: The Minister for Economic Development, Tourism, Sport and Culture should introduce a requirement that estate agents in Jersey, as defined by Schedule 2, Part B, Article 3 of the Proceeds of Crime (Jersey) Law 1999, must join a Jersey approved redress scheme.

Impact: redress scheme membership requirements

The Panel decided to analyse some of the redress scheme joining requirements to assess the potential barriers that unregulated estate agents in Jersey might face. The Panel learned that

⁵⁵ [National Trading Standards Estate and Lettings Agency Team – Redress Scheme Approval](#)

the membership criteria for estate agents that wish to join either of the redress schemes generally consist of a requirement to provide evidence of:

- 1. Professional Indemnity Insurance (PI insurance):** PI insurance is an important cover for businesses that give advice or provide a professional service to clients. For example, TPO requires that estate agents PI insurance must have a claim limit of no less than £100,000 and a maximum excess of £1,000.
- 2. Designated Client Account (residential lettings):** this is required for residential lettings and is used to hold tenant deposits or rent payments before funds are transferred to a client.
- 3. Company registration/VAT number or Identification:** an applicant estate agent must provide either a company registration number, VAT number or identification of the business owner such as a utility bill dated within 3 months of the application and a copy of valid photographic identification.
- 4. Client Money Protection Schemes (residential lettings):** Lettings agents must evidence membership of a government approved Client Money Protection Scheme as of 1st April 2019.

The Panel accepts that these requirements are targeted at estate agents in the UK. However, the Panel also believes that these requirements can be developed further in consultation with redress schemes in the UK, to ensure that all Jersey estate agents can meet the equivalent requirements. This is because the Trading Standards Service in Jersey has already undertaken work in consultation with TPO in the UK, to develop a Code of Practice for the Channel Islands that reflected Jersey's regulatory framework. The Panel believes this prior engagement will assist the Minister for Economic Development, Tourism, Sport and Culture with any future regulation of Jersey estate agents, and this was demonstrated by the Head of Environmental and Consumer Protection during a Public Hearing with the Minister for Housing and Communities on 27th October 2021:

RECOMMENDATION 6: The Minister for Economic Development, Tourism, Sport and Culture should consult with the redress schemes to ensure that all Jersey estate agents can meet their requirements.

Head of Environmental and Consumer Protection:

"...I have done quite a bit of extensive work with the director of policy for the Property Ombudsman, specifically around the introduction of new consumer protection legislation that came in 2018. The work was to revise their code of practice, which they have produced for the Channel Islands, to make sure that it was up to date and it reflected the regulatory framework, not just in relation to property sales, but also letting agents."⁵⁶

⁵⁶ [Transcript – Public Hearing with the Minister for Housing and Communities re Regulation of Jersey Estate Agents – 27th October 2021](#)

KEY FINDING 16: The Trading Standards Service in Jersey has engaged with The Property Ombudsman in the development of the Consumer Protection (Unfair Practices) (Jersey) Law 2018.

The Panel has also considered the types and costs of redress scheme memberships available to local agents and noted two 'tiers' of membership in relation to residential estate agent sales. The Panel decided to analyse these two types of membership to further understand the potential implications for Jersey estate agents.

Impact: redress scheme membership types and cost

The Panel found that each redress scheme has two key membership types that apply to estate agents dealing in residential sales in the UK. TPO provide a 'membership option' which applies to agents dealing in residential sales, lettings, buying services, commercial sales and lettings, international sales and lettings, auctions and chattels and also includes their basic 'registration only' membership:

- **TPO – Membership:**
 - Membership fee: £238 plus VAT
 - Joining fee: £63 plus VAT
 - Total for each branch: £361.20 including VAT
 - Full review fee: £365 plus VAT

The Panel note that TPO's 'Registration Only' option costs the same amount as the 'Membership' option, and is the "*minimum legal requirement for all agents dealing in residential sales (UK only) and residential lettings (England only)*".

- **TPO – Registration Only:**
 - Membership fee: £238 plus VAT
 - Joining fee: £63 plus VAT
 - Total for each branch: £361.20 including VAT
 - Full review fee: £365 plus VAT⁵⁷

By contrast, the Panel found that the PRS offered redress scheme membership at a lower cost than TPO. The comparable PRS membership options include an 'Enhanced Model' which provides members with one annual fee for an agents head office and each agency branch, and no additional 'complaint fees' for sales and lettings subject to a fair usage policy:

- **PRS – Enhanced Model:**
 - £199 (plus VAT) per application (Head Office/person) +
 - £199 (plus VAT) per extra Branch if applicable.

PRS also offer an 'Entry Model' arrangement, which is lower in price but charges £100 plus VAT for complaints arising from sales and lettings:

⁵⁷ [The Property Ombudsman – Membership Types](#)

- **PRS – Entry Model:**
 - £125 (plus VAT) per application (Head Office/person) +
 - £125 (plus VAT) per extra Branch if applicable.
 - £100 complaint fee (plus VAT) ⁵⁸

Finally, the Panel has considered the circumstances where a redress scheme could make an award of compensation to be paid by an estate agent to a consumer. The Panel believes that the extent to which compensatory awards made by redress schemes are enforceable, challengeable or accessible to Jersey residents needs to be explored further. This is because redress schemes do not currently have any authority over estate agents in Jersey and compensation is one of the key functions of the redress schemes.

Impact: compensation awards

In the UK, if a redress scheme chooses to support a consumer complaint, it can take a number of actions against a member agent, these actions range from asking the agent to formally apologise to changing their internal procedures or awarding the payment of compensation.

The Property Ombudsman can award compensation of up to £25,000, however, the Panel notes that *“amounts over £500 are not awarded very often – only when there is absolutely no doubt that an agent has caused you significant financial loss.”*⁵⁹

The Panel believes it is important to establish whether introducing a requirement that Jersey estate agents join a redress scheme will automatically entitle consumers in Jersey to compensation awards made by the redress schemes, whether there are mechanisms in place for Jersey residents to challenge decisions made by the redress schemes and whether such mechanisms are reasonably accessible to Jersey residents or would, for example, require off-Island travel and additional expenses. The Panel also believes it is important that the Minister for Economic Development, Tourism, Sport and Culture investigate these potential issues to determine whether there are any barriers to redress schemes making compensation awards in Jersey and whether these could be challenged. This is because the ability of a redress scheme to order compensation is an important function of the redress service, in situations where a redress scheme determines that an estate agent has caused a consumer significant financial loss.

RECOMMENDATION 7: The Minister for Economic Development, Tourism, Sport and Culture should investigate whether compensation awards made by the redress schemes are similarly available to Jersey residents, whether mechanisms are in place to challenge decisions of the Jersey approved redress schemes in relation to compensation and whether these mechanisms are reasonably accessible.

⁵⁸ [Property Redress Scheme – Membership Types](#)

⁵⁹ [The Property Ombudsman – Our Final Decision and Compensation](#)

Regulation of Property Agents Working Group: Licensing and Qualifications

[A UK research briefing on 'Regulation of estate agents'](#) produced by the House of Commons in August 2021, noted that in recent years, there have been calls on the UK Government to require that all estate agents are properly licensed and qualified.

In October 2018, the [Regulation of Property Agents: Working Group](#) was set up to advise the UK Government on a new approach to regulation of property letting, management and estate agents in the UK, following the UK Governments [calls for evidence in 2017](#).

In July 2019, the [Regulation of Property Agents Working Group published its report \(RoPA report\)](#) making the case for regulation of estate agents in the UK, which considered the case for and against regulation, the outcomes of considerations about regulation, the scope of the report, details about potential estate agent licensing, how codes of practice could set industry standards, an approach to estate agent qualifications, issues specific to the leasehold sector, governance and formal powers for a new estate agent regulator and addresses the existing enforcement structure for property agents and how this could be adapted into a new system.

Based on the evidence that the Panel has received from key stakeholders in relation to qualifications, codes of practice and regulation, this section will analyse the RoPA report with regard to mandatory regulation of estate agents, codes of practice and qualifications.

Estate Agent Regulation

The RoPA report is in favour of regulation of estate agents in the UK, in particular, the need for a regulator that can take preventative steps to minimise the risk of bad estate agent practice and conduct. It is stated in the RoPA report that despite the protections currently available through local Trading Standards, redress schemes and industry self-regulation, that each existing protection has limitations that can only be addressed by a new regulatory framework. In addition, the Panel notes that the RoPA report makes reference to the EAA 1979 as one of the key provisions applying to property agents in the UK and that the NTSEAT operates two lead enforcement authorities for the EAA 1979 in the UK:

[RoPA Working Group: Final Report:](#)

“These authorities, based at Powys County Council (for sales) and Bristol City Council (for lettings), operate under a joined-up superstructure as the National Trading Standards Estate and Letting Agents Team. The lead enforcement authorities receive funding from Government to provide support and guidance to local authorities, and have powers to take on cases in extremis and to ban sales agents from practice.”

In particular, the Panel found that whilst the RoPA report was supportive of Trading Standards current involvement in relation to “*dealing with illegal behaviour by agents*”, the RoPA Working Group believe the current system is reactive rather than proactive. The Panel is also supportive of a proactive approach to estate agent regulation and believe it is important that the Government of Jersey monitor developments in the regulation of estate agents in the UK.

Review of the Regulation of Jersey Estate Agents

This is because it will help ensure that Jersey estate agent regulations keep pace with the most up to date UK legislation:

[RoPA Working Group: Final Report:](#)

“However, the traditional approach to policing this sector by passing laws and asking Trading Standards to enforce them will not, in our view, tackle the increasing number of complaints about property agents and the pervasive lack of consumer trust. Trading Standards’ role is reactive rather than proactive – they investigate after a problem has occurred.”

The RoPA report is supportive of an estate agent regulator that can use tools to take greater preventative action. The Panel believes that the Government of Jersey should monitor any future developments regarding the establishment of a UK estate agent regulator and assess to what extent its jurisdiction could be extended to Jersey. This is because, as previously stated, each of the current protections available to consumers in the UK has limitations which could only be addressed by an independent regulator:

[RoPA Working Group: Final Report:](#)

“A regulator, on the other hand, could use tools such as a code of practice and mandatory qualification requirements to prevent the problem from arising in the first place.”

One of the key recommendations in this report relates to a mandatory requirement that all Jersey estate agents join a Jersey approved redress scheme. The Panel note in the RoPA report that the redress schemes deal with a high volume of individual consumer complaints each year and whilst they possess significant powers to resolve individual issues, it is not always possible for the redress schemes to address systemic problems in the estate agency market. However, the Panel learned that redress schemes are in a strong position to deal with individual consumer complaints:

[RoPA Working Group: Final Report:](#)

“All residential property agents are required by law to belong to a redress scheme, and so the schemes are in a stronger bargaining position with their members than the professional bodies. However, the redress schemes focus on individual cases; they cannot mandate that agents be qualified or adhere to a code of practice. They can order agents to pay financial awards where those agents have harmed consumers, but the value of these awards cannot exceed the individual harm done.”

However, the Panel is concerned to learn that there is evidence in the UK that not all estate agents are members of one of the approved redress schemes, and that consumers may not know or feel able to complain to a third party:

RoPA Working Group: Final Report:

“Moreover, while agents are required to join a redress scheme, there is evidence that not all do; even where they do so, consumers may not know how – or feel able – to formally make a complaint to a third party.”

The Panel believes this provides further supporting evidence of the need for a mandatory requirement that all Jersey estate agents join a Jersey approved redress scheme, enforced through a local registration scheme that is monitored and updated by the Government of Jersey. The Panel also believes the RoPA report highlights the need for a local campaign in Jersey to raise awareness about the redress schemes, consumers rights to redress and means to report individuals or businesses that undertake estate agency work without membership of a redress scheme. This is because a significant number of agents in Jersey are not members of a redress scheme, and consumers may not be aware of their rights to redress if a requirement to join a redress scheme is introduced.

In respect of the regulation of estate agents, the Panel note one of the key **recommendations of RoPA is “that all those carrying out property agency work be regulated, even if it is not their largest or traditional core function.”**⁶⁰

Codes of Practice

The Panel notes that there is no mandatory code of practice for property agents in the UK, this is despite redress schemes such as The Property Ombudsman developing codes of practice for its members throughout the UK and the Channel Islands. Whilst a member of a redress scheme may be subject to investigation if it does not follow the redress scheme code of practice, there is no overarching code applying to all UK property agents. However, the Panel learned from the RoPA report that a number of these existing codes are admissible as evidence in proceedings before a court:

RoPA Working Group: Final Report:

“There is no mandatory code of practice for property agents. However, there are two codes – the Royal Institution of Chartered Surveyors (RICS)’ code, Service Charge Residential Management Code,²² and the ARHM Code of Practice for England²³ (relating to retirement housing management) – which the Secretary of State for Housing, Communities and Local Government has adopted under section 87 of the Leasehold Reform, Housing and Urban Development Act 1993. The existing codes do carry weight and are admissible as evidence in relevant proceedings before a court or tribunal whether or not the agent in question has signed up to the code.”

The Panel is supportive of codes of practice for the estate agency industry. This is because as RoPA noted in its report, mandating a code of practice for estate agents can “drive forward sector improvement and, by doing so, support the professionalisation of the sector”. The Panel has highlighted the four key benefits that a code of practice can bring to the estate agency sector, from the RoPA report:

⁶⁰ [Regulation of Property Agents Working Group – Final Report](#)

RoPA Working Group: Final Report:

- *“Firstly, codes of practice provide consumers with a clear statement of standards with which to hold their service provider to account.*
- *Secondly, a code of practice can form the basis for judgements for a redress scheme.*
- *Thirdly, a code of practice provides aspirational goals. Where suggested ‘shoulds’ (i.e. points of best practice) complement obligatory ‘musts’ (legal requirements).*
- *Fourthly, a code of practice gives industries a more flexible way to adapt to change than relying on legislation alone.”*

The Panel found that one of the key **recommendations from RoPA in relation to codes of practice was “a single, high-level set of principles applicable to all property agents which is set in statute (the ‘overarching’ code). Then, underneath these core principles, there should be codes specific to various aspects of property agent practice, which would be binding only on those providing the services described: these would comprise the ‘regulatory’ codes.”**

Qualifications

Another consistent theme that the Panel observed throughout its evidence gathering process was a belief that all estate agents in Jersey should be ‘qualified’. Whilst this is discussed earlier in this report, the Panel wishes to highlight the importance of this topic and its discussion within the RoPA report which recommends that all estate agents attain a Level 3 qualification (equivalent to an A-Level) and all estate agency company directors and management agents attain a minimum Level 4 qualification. The RoPA report notes that once agents obtain the right qualifications, it can be of significant benefit to consumers:

RoPA Working Group: Final Report:

- *“Qualifications provide agents with the skills they need;*
- *They provide a mark of competence to reassure consumers; and*
- *They require commitment from agents, potentially discouraging people from entering the sector for reckless, short-term reasons.”*

Grandfathering

However, during the evidence gathering process, the Panel noted support for appropriate transitional arrangements and ‘grandfathering’ if a requirement to attain estate agent qualifications was introduced in Jersey. Support for grandfathering was expressed by the Minister for Housing and Communities during a Public Hearing on the 27th October 2021:

The Deputy of St. Martin:

“Do you think there is a case for grandfathering here or should we be insisting that everybody who has some sort of interface with the general public when it comes to property has at least shown that they have some basic qualification?”

The Minister for Housing and Communities:

“There is a definite case for grandfathering and the Jersey Estate Agents Association also believe that. There are highly-reputable men and women who have been working in this industry for decades. It would be an insult to suggest that they need to take an A-level exam to continue work however long until their retirement. It is for new start-ups that it would be reassuring if they had just done the basic qualification.”⁶¹

The RoPA report also makes the case for transitional arrangements and grandfathering to ensure that unqualified estate agents can meet future minimum qualification requirements:

RoPA Working Group: Final Report:

“Many agents would not meet our proposed qualification requirements were they to be introduced tomorrow, so an appropriate phasing-in approach will be necessary. We noted the Scottish experience of regulating letting agents, where there was great pressure on training providers in the run-up to mandatory qualifications coming in to force.”

In addition, the Panel notes that RoPA suggests a number of steps that could be taken by a new estate agency regulator to alleviate pressures on agents in relation to compliance with a qualification requirement:

RoPA Working Group: Final Report:

- *“Offering an incentive (such as reduced licence fees or a longer licence period) for early adopters;*
- *Ensuring there is no loss of licence length if agents acquire licenses before the introduction date;*
- *Supporting qualification and training providers to use e-learning, which unlike classroom learning does not have a physical limit on uptake; and*
- *Allowing agents who have some (if insufficient) qualification extra time to meet requirements.”*

The Panel is keen to highlight that the RoPA report contains important recommendations about the future of estate agency work in the UK and that the evidence the Panel has received indicates that these should be considered as part of any consultation on the future of estate agent regulation in Jersey. The Panel is supportive of a phased in approach to mandatory estate agency regulations, a code of practice and qualifications in a way that provides a transitional period from an unregulated estate agency market to a regulated market that can

⁶¹ [Transcript – Public Hearing with the Minister for Housing and Communities re Regulation of Jersey Estate Agents – 27th October 2021](#)

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be made accessible to all agents in Jersey. This is because unregulated Jersey estate agents will need time to prepare for any future changes to the Jersey estate agency market.

Overall, the Panel believes that the Minister for Economic Development, Tourism, Sport and Culture should introduce a requirement to join a redress scheme along with a local registration scheme to ensure compliance. In addition, the Panel believes that a process of consultation with the redress schemes and any relevant authorities needs to be undertaken to ensure that redress scheme membership is accessible to all estate agents in Jersey and that there are no barriers to registration of Jersey estate agents. This is because consultation with the redress schemes and any other relevant authorities such as Trading Standards in the UK and Jersey, will support the process of introducing a requirement for all Jersey estate agents to join a redress scheme. The Panel learned that the local Trading Standards Service has previously engaged with TPO on the introduction of the Consumer Protection Law and believes this will assist with future consultation to introduce Jersey approved consumer redress and estate regulation in Jersey.

RECOMMENDATION 8: The Minister for Economic Development, Tourism, Sport and Culture should ensure that there are no barriers to registration of Jersey estate agents onto the redress schemes.

However, the Panel also believes that consumers in Jersey would benefit from comprehensive legislative reforms to introduce estate agent regulation to Jersey. This is because there is no estate agent specific regulation which benefits local consumers, and key pieces of UK estate agent law such as the EAA 1979 cover aspects other than the requirement to join a redress scheme; these include details about the lead enforcement authority for the EAA 1979, provision of information, entry and inspection under the EAA 1979, dealings with client money and accounts, regulation of other aspects of estate agency work and supervision, enforcement and publicity of estate agency work. As previously stated, the Panel believes it is important that the Minister for Economic Development, Tourism, Sport and Culture consult with key stakeholders to determine to what extent estate agent legislation could be introduced in Jersey as well as monitoring of future developments in estate agent regulation in the UK.

RECOMMENDATION 9: The Minister for Economic Development, Tourism, Sport and Culture should undertake a process of consultation with industry, local Trading Standards, the National Trading Standards Estate Agency Team and Jersey approved redress schemes on estate agent legislation for Jersey.

RECOMMENDATION 10: The Minister for Economic Development, Tourism, Sport and Culture should consider the recommendations of the Regulation of Property Agents report in any future regulation of estate agents in Jersey.

9. Conclusion

The Panel has made a number of recommendations within this report which it believes will assist with the regulation of estate agents in Jersey. The Panel considers the recommendations offer a 'phased in' approach towards a regulated estate agency market that can be developed in consultation with key local stakeholders such as the Jersey Estate Agents Association and the Trading Standards Service in Jersey, as well as key stakeholders in the UK such as the National Trading Standards Estate Agency Team and redress schemes. Jersey is already regarded as a well-regulated environment, particularly with regards to the financial services industry, and the Panel believes that proportionate, estate agent specific rules and regulations need to be extended to all estate agents operating in Jersey. The Panel is supportive of an estate agency market that protects all parties to a residential property transaction, and believes it is important to follow best practice and follow examples set in the UK, which already has in place established rules governing the conduct and practices of estate agents. These are referenced throughout this report and the Panel is strongly of the view that, with proportionate on-Island regulation of estate agents, the sector can be improved for the benefit of consumers and estate agents alike.

Appendix 1 - Comparisons with other Jurisdictions

The Panel has analysed the regulation of estate agents in other jurisdictions to compare and contrast the current position in Jersey. A brief overview of these is as follows however, more detail can be found in the tables following this summary.

Jersey and the United Kingdom (UK)

- Neither Jersey nor UK estate agents are required to be licensed or qualified to operate an estate agency.
- The principal regulations governing UK estate agent conduct are the Estate Agents Act 1979 (EAA 1979) and the Consumer Protection from Unfair Trading Regulations 2008. In contrast, Jersey estate agents are only expected to comply with the Consumer Protection (Unfair Practices) (Jersey) Law 2018 which is based on UK legislation.
- The National Trading Standards Estate Agency Team is the UK's lead enforcement authority for the EAA 1979. There is no estate agent specific legislation in Jersey.
- An Estate Agents Public Register is maintained to provide details of individuals and/or businesses who are currently prohibited from engaging in estate agency work or who have received a formal warning under the EEA 1979. No such register exists in Jersey.
- Anti-Money Laundering compliance: Both Jersey and UK estate agents must abide by anti-money laundering regulations. In the UK, estate agents are also required to register with Her Majesty's Revenue and Customs.

United Kingdom: Estate Agents Act 1979 (EAA 1979)

The Panel has established in this report that there are key pieces of legislation that specifically govern agents in the UK, including the EAA 1979.

The EAA 1979 is a comprehensive piece of legislation which governs the conduct and practices of estate agents, including agents that facilitate residential property transactions. The EAA 1979 operates to legislate estate agents in a number of ways, this includes among other provisions a wide definition of estate agency work, a definition of residential property, provisions relating to the lead enforcement authority for the EAA 1979, estate agent's personal interests, standards of competency and redress schemes.

In the UK, the National Trading Standards Estate and Letting Agency Team that deals with property sales is run by Powys County Council, which is the lead enforcement authority for the EAA 1979. The Panel learned that the National Trading Standards Estate Agency Team is responsible for:

- *“issuing individual banning or warning orders under the Act*
- *maintaining a public register of such banning or warning orders*
- *approving and monitoring consumer redress schemes*
- *providing generic advice and guidance on estate agency matters, in conjunction with Citizen's Advice, the Chartered Trading Standards Institute and other partner agencies”*

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In addition, the National Trading Standards Estate Agency Team maintains a 'Public Register of Orders' which details individuals and/or businesses that are currently prohibited from engaging in estate agency work or who have received a formal warning under the EAA 1979.⁶²

The Panel will consider the operation of the UK's Consumer Protection Regulations alongside the EAA 1979, to highlight the different ways both pieces of legislation protect consumers in the UK.

The Panel will also analyse some of the key areas of the EAA 1979 that relate to estate agents and residential property transactions, this will build on the recommendation that the Panel has already made to introduce a registration scheme that requires all estate agents in Jersey join one of the UK's approved redress schemes.

EAA 1979 and the Consumer Protection from Unfair Trading Regulations 2008

The Panel has previously established in this report that Jersey's Consumer Protection Law is based on the UK's Consumer Protection from Unfair Trading Regulations 2008 (Consumer Protection Regulations). In the UK, estate agents must abide by the EAA 1979 as well as the Consumer Protection Regulations.

The Panel believes it is helpful to make a brief distinction between the areas where protection is offered by the Consumer Protection Regulations and the protections offered by the EAA 1979, as both pieces of legislation operate to protect consumers in the UK in different ways:

Consumer Protection Regulations	Estate Agents Act 1979
The Consumer Protection Regulations apply to all business sectors, including estate agents.	The Estate Agents Act 1979 regulates the role of estate agents and sets out the duties and responsibilities estate agents have to the seller.
The Regulations prohibit estate agents from engaging in unfair commercial practices when dealing with consumers.	Whilst the estate agent's duty of care is to the seller, it must treat both buyers and sellers fairly and honestly.
This means that if you are considering using an estate agent's services, have a contract with an estate agent to sell your property, or are an actual or potential buyer of a property, then the estate agent must treat you fairly.	The estate agent must, by law, give the prospective seller written terms of business, which include fees charged and details of services it offers prospective buyers, such as arranging mortgages.
The Regulations apply to the full range of estate agent activities that affect consumers.	The marketing, negotiating, sale process and the way clients' money is handled are also regulated ⁶³

⁶² [Powys County Council – Public Register of Orders – National Trading Standards Estate Agency Team](#)

⁶³ [Bromley Borough Website – Trading Standards Institute Advice – Agents and Agencies](#)

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The Panel believes that both the Consumer Protection Regulations and the EAA 1979 are beneficial to consumers in the UK. This is because the Consumer Protection Regulations deal with more serious breaches of UK consumer protection law and criminal offences, and apply to all business sectors including estate agents, whereas the EAA 1979 specifically governs estate agent conduct and practices and legislates to ensure that consumers are treated fairly whilst accounting for all aspects of estate agency work. The EAA 1979 also ensures that a lead enforcement authority can take action against estate agents that do not comply with the provisions. The Panel believes that, with sufficient consultation, the regulation of local estate agents could offer similar protections to consumers in Jersey.

The EAA 1979 offers a number of protections for consumers dealing with an estate agent involved in a residential property transaction. The EAA 1979 provides a broad definition of estate agency work, the meaning of residential property, the considerations that estate agents must have for their clients, how estate agents must approach a personal interest, negotiations of the sale price and the powers provided to the relevant authorities to enforce the provisions of the EAA 1979.

KEY FINDING 17: The Estate Agents Act 1979 is comprehensive legislation which includes a broad definition of estate agency work, the meaning of residential property, the considerations that estate agents must have for their clients, how estate agents must approach a personal interest and the powers of enforcement. There is no equivalent legislation in Jersey.

EAA 1979: Estate Agency Work

The EAA 1979 provides a comprehensive definition of estate agency work and the meaning of residential property, however, some of the key indications that a business or individual is an estate agent, is if there are:

- Dealings with people who want to buy or sell freehold or leasehold property throughout the UK, including commercial and agricultural property.
- These dealings are done as part of a business
- An individual or business is acting on instructions from a client.

The Panel has also found that the EAA 1979 prohibits a business taking part in estate agency work if they have been declared an 'undischarged bankrupt', referring to the process of continuing to owe money until a debtor is declared bankrupt.

EAA 1979: Clients

Under the EAA 1979, an estate agent must provide potential clients with information about fees and charges, services to potential buyers and the agents terms of business. This information must be provided to the client as soon as possible and before the estate agent agrees to act for the client.

Estate agents must provide information to potential clients in writing, in advance, that relate to:

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- All the circumstances under which an agent will charge a fee.
- The fee amount and the details of any extra charges.
- Any other circumstances in which the client would have to pay an additional fee and the amount of any additional fee.

In addition, the Panel notes that the EAA 1979 states rules about quoting a percentage or fixed agency fee via advertisements and following receipt of instructions from a client, and that these quoted prices should be inclusive of VAT.

EAA 1979: Declaring a personal interest

It is a requirement under the EAA 1979, that estate agents promptly reveal in writing a personal interest that the agent or a connected person (which means an employer, employee or associate of an employer or employee) has to a transaction, to a client as soon as possible before negotiations relating to the transaction commence.

EAA 1979: Handling negotiations

The Panel learned during its analysis of the legislation, that the EAA 1979 requires that estate agents ensure that clients are treated equally, fairly and promptly when informing clients about offers made on a property and when informing clients about the agent's services to buyers. It is contrary to the EAA 1979 for an estate agent in the UK to make misleading statements, falsely describe a property or show bias against potential buyers.

EAA 1979: Enforcement of the act

The powers conferred to the National Trading Standards Estate Agency Team (NTSEAT) mean that under the EAA 1979, the NTSEAT can take enforcement action against agents that do not comply with the rules governing estate agent conduct and practices.

The Panel understands that the NTSEAT can issue warning and prohibition orders that cease individuals or businesses from conducting estate agency work. The Panel also understands that the NTSEAT can require anyone, including clients and potential buyers, to provide information or produce documents before a decision is made to issue an order or carry out enforcement activity.

The NTSEAT can issue a warning order if an estate agent breaks the law in relation to:

- Information on charges
- Definition of terms
- A personal interest in a sale
- Information to clients about offers
- Information to clients about services provided to buyers
- Misleading statements
- Bias against buyers
- Interest on clients' money.

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The NTSEAT can also issue a prohibition order if an estate agent breaks the law in relation to:

- Breached a warning order
- Committed an offence of fraud or other dishonesty, or violence
- Committed racial or sexual discrimination during your work as an estate agent
- Committed certain specified offences
- Committed certain offences under the Act
- Breached certain provisions of the Act
- Engaged in a practice declared undesirable under the Act.⁶⁴

The Panel believes that many of the concerns expressed by the public and key stakeholders throughout its review, such as a lack of professionalism, dishonest working practices and the need for regulation of estate agents could potentially be addressed through similar estate agent specific legislation in Jersey. This is because, as the Panel has stated above, a number of provisions under the EAA 1979 offer a degree of protection to UK consumers in these areas.

However, the Panel also believes that the extent and scope of any new Jersey estate agent legislation should be determined by undertaking a process of consultation with industry, Trading Standards, NTSEAT and the Jersey approved redress schemes. This is because the Panel has demonstrated a significant body of evidence from members of the public and key stakeholders that expresses concern about the current estate agency market in Jersey. In addition, determining the extent and scope of new legislation is important to ensure that any new regulations are accessible and proportionate for local estate agents.

Jersey and the Guernsey

- Historically, Guernsey had no statutory civil rights for consumers when purchasing goods and services. In September 2020, Carey Olsen noted that in February 2020 the States of Guernsey intended to bring forward consumer protection legislation in Guernsey.⁶⁵
- Anti-Money Laundering compliance: Both Jersey and Guernsey estate agents must abide by anti-money laundering regulations.

Jersey and the European Union (EU)

- There is no pan-EU requirement for regulation of estate agents operating in EU Member States.
- In 2018, the EU published a [consumer market study \(see below chart\)](#) on the functioning of real estate services for consumers in the EU. The study found that more than 50% of Member States regulated for or required estate agents to possess a qualification, hold a licence, obtain compulsory insurance and uphold professional standards. In Jersey, with the exception of the broad requirements set out in the

⁶⁴ [Cooper Adams Estate Agents – Estate Agents Act 1979](#)

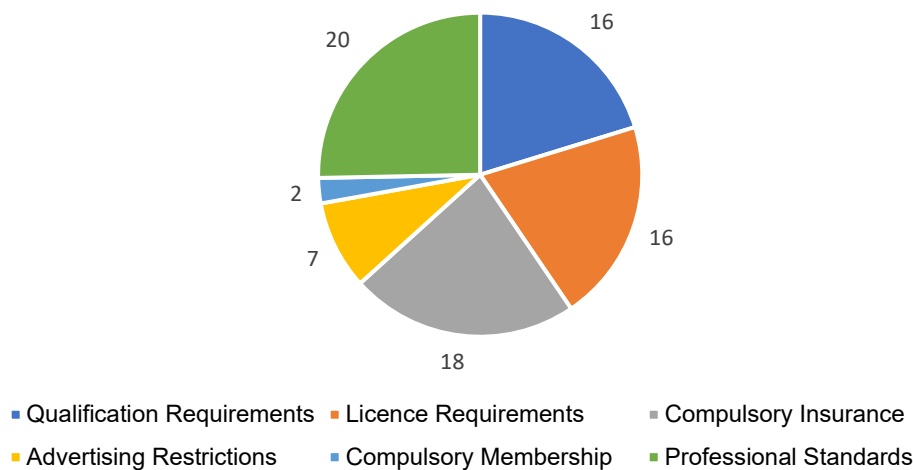
⁶⁵ [Carey Olsen – Consumer Protection Legislation in Guernsey](#)

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Consumer Protection (Unfair Practices) (Jersey) Law 2018, there are no further requirements imposed on estate agents.

- The European Association of Real Estate Professions published a 2018 European Code of Conduct and Ethical Behaviour for its Members. In contrast, a significant proportion of Jersey estate agents adhere to the UK Property Ombudsmen's Code of Practice.
- Anti-Money Laundering compliance: EU Member States are required to abide by Directive (EU) 2015/849 in respect of the prevention of the use of the financial system for the purposes of money laundering or terrorist financing. In Jersey, estate agents are required to comply with Schedule 2 of the Proceeds of Crime (Jersey) Law 1999 in relation to prevention of money laundering.

EU Consumer Market Study: Functioning of Real Estate Services for Consumers in the European Union



Appendix 2 – Panel Membership and Terms of Reference

Panel Membership



Deputy David Johnson (Chair)



Deputy Steve Luce (Vice-Chair)



Senator Steve Pallett



Deputy Montfort Tadier (Co-opted for Regulation of Estate Agents review)

Terms of Reference

1. To follow-up on the previous recommendations of the Residential Property Transactions Review Panel (2018).
2. To explore the current regulatory, or similar, oversight of Jersey estate agents, including compliance with Schedule 2 of the Proceeds of Crime (Jersey) Law 1999⁶⁶, and an assessment of Jersey estate agent accountability to codes of practice and professional bodies.
3. To examine the administrative burden and financial costs of establishing regulatory oversight of Jersey estate agents.
4. To assess the benefits to purchasers and vendors of regulating Jersey estate agent practices.
5. To examine any potential impact, positive and negative, from a change in the property transaction process brought about by regulation of estate agents in Jersey, on all relevant stakeholders.

⁶⁶A Law to provide for the confiscation and forfeiture of the proceeds of crime, to establish new offences of money laundering and new procedures to forestall, prevent and detect money laundering, and to enable the enforcement in Jersey of overseas confiscation orders, and for connected purposes



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