

Gazumping

In 1999, the Commission published its [Report on Gazumping](#). The Report was in response to a request by the Attorney General that the Commission examine the practice of taking booking deposits on prospective sales of residential property.

First, the Commission found, from responses to a Questionnaire issued to associations, representative of consumers, the construction industry and auctioneers, and local solicitors' bar associations in the State, that gazumping occurred in only a handful of cases, when compared to the sale of approximately 40,000 new houses in 1998. Where gazumping does occur it is almost always on the sale of new houses.

The Commission's Report analysed the prerequisites which the law requires for an enforceable contract, the reasons for them and whether reform would be practicable at this point. A number of possible reforms such as forcing the vendor to complete the sale to the original prospective purchaser; changing the requirements for the existence of a legally binding contract; or providing compensation for 'gazumped' purchasers were all appraised.

The conclusion reached, and supported by responses to the Questionnaire, is that the current legal position which does not confer any interest in property upon the payment of a booking deposit, generally benefits the purchaser more than the vendor. For example, it allows the purchaser to conduct the necessary preliminary investigations, whether it be in the financial, physical or legal field, before committing to an irrevocable agreement. Furthermore, any change in the law which was heavily weighted in favour of the prospective purchaser could be open to abuse in a different economic climate where supply exceeded demand.

The Commission considered alternative routes by which gazumping could be prevented or minimised. While the Report commends self-regulation by those involved in the building industry, it further proposes consumer protection legislation to ensure that purchasers have ample information so as to avoid acting to their detriment in the mistaken belief that payment of a booking deposit secures a binding contract.

Main Consumer Protection Recommendations

- Legislation to provide as follows:

~ a minimum set of specific terms to be included in all receipts for booking deposits;
~ all advertisements for new housing developments to include certain information, such as the actual number of houses to be sold at each price level;
~ booking deposits not to exceed 0.5% of the purchase price and, in all cases, to be refundable if the sale is not completed;
~ failure to comply with any of the proposed legislative provisions would result in criminal sanction.

The initiation of, and adherence to voluntary Codes of Practice among the industry such as the Home Purchase Protection Pledge established by the Irish Home Builders Association.