



## Cyprus property mis-selling disputes

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Many British people have been contacting their MPs about property mis-selling disputes in Cyprus. Buyers have for instance found themselves unable to meet drastically increased mortgage payments, and/or have discovered that their homes were to be sold in order to pay off their developer's debts. One particular issue is the Alpha Bank/Alpha Panareti dispute, which concerns British people who bought property in Cyprus using Swiss Franc mortgages and allege that they were not properly advised by the bank or by lawyers.

The British Government does in some circumstances raise property issues with the Cypriot government, and provides information and advice on its High Commission website, but it cannot give individuals legal advice.

Bill Cash MP is co-ordinating a new All-Party Parliamentary Group on British Property Owners in Cyprus, set up after a meeting between MPs and people facing legal action by banks in Cyprus. The European Parliament has also taken an interest in this issue.

Some people are pursuing cases against Cypriot developers and banks in UK and Cypriot courts.

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## 1 The disputes

Many UK nationals who bought property (some of it unfinished) in Cyprus, often using Swiss franc mortgages, have alleged malpractice in marketing and investment schemes. Some buyers have found themselves unable to meet drastically increased mortgage payments, and argue that they were not properly advised by their lawyers or banks of the risks of currency fluctuation, and/or that they were defrauded when persuaded to give Cypriot solicitors power of attorney to arrange their mortgages.

In some cases, buyers have discovered that developers took out mortgages using the title deeds on these properties as collateral. The developers' creditors can then call in the debt which leads to the properties being sold. Other allegations include properties being sold with rent guarantees that were not honoured, or promised amenities such as a golf course or a spa that never materialised. Purchasers claim that if they had been fully informed before signing the legal documents, they would not have gone ahead with the purchases.<sup>1</sup>

Many of the complaints are about Alpha Bank Cyprus Ltd and Alpha Panareti, a property development company. Alpha Bank has reportedly offered a "repayment moratorium" to borrowers who have fallen behind on their mortgage repayments, and said that it is ready to resolve matters in an amicable way.<sup>2</sup>

## 2 UK representations and government advice

The British government does in some circumstances raise property issues with the Cypriot government. For instance, in response to parliamentary questions in 2009 about a related property problem, the then Foreign Office Minister Lord Malloch-Brown said:

Our high commissioner in Cyprus recently raised the issue of title deeds not being supplied to purchasers on completion of a property purchase in Cyprus with the Republic of Cyprus Ministry of the Interior, and received assurances that the Cypriot Government intend to introduce a Bill to address this issue. The Government recognise that this issue has the potential to affect a large number of British citizens who have purchased property in Cyprus, and will continue to take a close interest in the measures by which the Cypriot Government attempt to resolve this problem.<sup>3</sup>

The Minister for Europe, David Lidington, has agreed to meet members of the new all-party group (see below) to discuss the Alpha Bank case.<sup>4</sup>

The website of the [British High Commission in Nicosia](#) includes advice on buying property in Cyprus which mentions the issue of fluctuations in currency and interest rates affecting mortgages. The High Commission cannot get involved in individual property problems or legal disputes, but it supports community associations – such as the [Cyprus Property Action Group](#) – which aim to resolve the problems of property buyers. Its website gives information on 'self help', including lists of local English-speaking lawyers and information on the [Cyprus Ombudsman](#).

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<sup>1</sup> See for example "[Hundreds of villa buyers facing ruin](#)", *Cyprus Property News*, 27 October 2012

<sup>2</sup> "[Bank opens dialogue in Cyprus property mis-selling](#)", *Cyprus Property News*, 9 November 2012

<sup>3</sup> HL Deb 12 January 2009 c93WA

<sup>4</sup> [HC Deb 5 March 2013 c818](#)

### 3 New All-Party Parliamentary Group

Bill Cash MP is co-ordinating a new [APPG for the Defence of the Interests of British Property Owners in Cyprus](#), and has asked people involved with these issues to contact their MPs to ask them to join it.<sup>5</sup>

The group was set up after ten MPs and staff, including Mark Lazarowicz, Paul Goggins, Simon Kirby, James Wharton, and representatives from the offices of Fiona Bruce, Bill Cash and Roberta Blackman-Woods, met a group of around 25 people facing legal action by banks in Cyprus, on 31 October 2012.<sup>6</sup>

### 4 EU law

There may be some EU law relevant to these disputes. One piece of legislation which is often cited is the [EU Unfair Commercial Practices Directive](#)<sup>7</sup> (UCPD), which came into force on 12 December 2007 and applies to transactions made on or after that date. The UCPD protects consumers against misleading and aggressive commercial practices by traders, including traders marketing real estate to consumers. Its provisions require traders to operate with professional diligence and not to distort the economic behaviour of consumers by inducing them to enter transactions they would not have entered otherwise.

Member States had to adopt their own laws and procedures to implement the requirements of the UCPD by that date. Some may have done so earlier, or – like the UK – gone beyond the minimum requirements of the UCPD. Cyprus transposed the directive into national law with the Law on the Unfair Commercial Practices from Businesses to Consumers of 18 July 2007.

In February 2012 the European Commission replied to the many individuals who had complained to it about problems in the Cyprus property industry, saying that it is up to national authorities and courts to determine whether there has been unfair practice in specific cases, but that in its view “the lack of pre-contractual information to property buyers about the existence of developers’ mortgages on the Cypriot properties offered for sale is an aspect which can be assessed in the light of Article 7 of the UCPD concerning misleading omissions”. One international lawyer suggests that the UCPD does not necessarily provide a *remedy* for people who bought property in Cyprus subject to developer mortgages, and that the answer would probably lie in the Cypriot courts.<sup>8</sup>

There are also other consumer protection Directives which may be relevant and which applied between May 2004 (when Cyprus joined the EU) and December 2007 (when the UCPD came into force):

- [Directive 84/450/EEC on misleading advertising](#) (as amended), which protected consumers against misleading advertising by businesses.
- [Directive 93/13/EEC on unfair terms in consumer contracts](#), which provides that contract terms should be written in a plain and intelligible language and that a contract term

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<sup>5</sup> “MP to co-ordinate Cyprus property defence group”, *Cyprus Property News*, 6 November 2012

<sup>6</sup> “All-party MP group to help property buyers”, *Cyprus Property News*, 2 November 2012

<sup>7</sup> Directive 2005/29/EC

<sup>8</sup> Chris Christoffi, “Cyprus Property EU Unfair Commercial Practices Directive”, *Healys LLP*, November 2010

causing a significant imbalance between the parties to the detriment of the consumer shall be regarded as unfair and as such shall not be binding.<sup>9</sup>

In individual cases much depends on the national legislation which implements the Directive: it is that national legislation which consumers would have to rely on in the national courts where their case is being heard.

Cross-border misleading practices and unfair terms fall under the competence of the EU-wide enforcement network established by the Regulation on Consumer Protection Cooperation. The national enforcement authority of a consumer's country of residence may be able to request further investigation from their Cypriot counterparts. For people who live in the UK, the enforcement authority is:

**Office of Fair Trading**

Fleetbank House

2-6 Salisbury Square

London EC4Y 8JX

E-mail: [enquiries@oft.gsi.gov.uk](mailto:enquiries@oft.gsi.gov.uk)

Website: <http://www.oft.gov.uk>

There may also be other areas of EU or Cypriot law (on banking, for example) which could apply. Constituents' solicitors would be able to advise on this.

## 5 European Parliament Questions

In the European Parliament (EP) questions have been asked as to whether Alpha Panareti is in breach of the UCPD and/or other consumer protection legislation.

For instance, in reply to David Martin's [Parliamentary question](#) of 7 April 2011,<sup>10</sup> Commissioner Viviane Reding [replied](#) on 27 May 2010 that the Commission's jurisdiction in this area was limited, but that it was contacting the relevant authorities:

The remit of the European Union, and consequently of the Commission, regarding real estate property and planning law is limited. These matters are primarily within the competence of the Member States, provided of course that they exercise such competence in compliance with EC law, in particular with the freedom of establishment provided for in Article 49 TFUE. The existing EU consumer protection legislation on contracts of sale, Directive 99/44/EC, does not apply to the purchase and construction of immovable property.

The Unfair Commercial Practices Directive ('the directive') protects consumers against misleading and aggressive commercial practices by traders, including traders marketing real estate to consumers. The directive has been transposed in Cyprus by the Law on the Unfair Commercial Practices from Businesses to Consumers of 18 July 2007. It is for the national authorities and courts to ensure that the provisions of the law transposing the directive are properly enforced. Infringement proceedings against a Member State for inadequate enforcement of the directive could only be considered if there is evidence of a systemic failure to enforce its provisions, which deprives consumers of adequate and effective means of redress against unfair commercial practices.

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<sup>9</sup> Both Directives are being replaced by the [Consumer Rights Directive](#) which was adopted on 11 October 2011 and will come into force in 2014.

<sup>10</sup> Question for written answer E-003397/2011

The Commission has been made aware of certain problems related to the sale of real estate in Cyprus. Thus, the Commission has decided to contact the relevant authorities in order to investigate this matter more closely.

On 30 March 2011, Scottish Liberal Democrat MEP, George Lyon, asked if the Commission was taking any action against Alpha Panareti or any other major Greek or Cypriot agents or banks.<sup>11</sup> The Commission replied on 2 May 2011 that it has no power to take direct action against private companies.

Other parliamentary questions about property irregularities in Cyprus include [E-6793/08](#) by Mary Honeyball, [E-6513/08](#) by Caroline Jackson, [E-0110/09](#) by Syed Kamall and [E-4116/2010](#) by Daniel Hannan. The Commission replied on 13 August 2010 that it had no power to intervene in the matter, and that concerns should be addressed to the Cypriot authorities.

The Commission is aware of the difficulties faced by buyers of immovable property in Cyprus in relation to developer mortgages and withheld title deeds. Under the Treaty on European Union and the Treaty on the Functioning of the European Union, the Commission can only intervene if an issue of European Union law is involved. As explained in the answer to Written Questions [E-6513/08](#), [E-6793/08](#) and [E-0110/09](#) given by Commissioner McCreevy, the Commission contacted the Cypriot authorities in 2009 asking for detailed information on the situation. Based on the analysis of the reply received, the Commission concluded that the matter falls outside Union law as it concerns the establishment and application of the legal framework governing the acquisition and transfer of immovable properties in Cyprus covered by Article 345 TFEU. Since the provisions of the TFEU shall in no way prejudice the rules governing the system of property ownership in a Member State, the Commission has no powers to intervene in this matter. For this reason, the Commission is not in a position to organise a fact-finding mission. The Commission believes that the questions raised by the Honourable Member should be addressed to the competent national authorities in Cyprus.

The draft legislation which is said to address and regulate the issue of title deeds is still under negotiation in the Cypriot Parliament. The Commission trusts that the Cypriot authorities will adopt legislation on this specific matter in conformity with their international obligations, and in particular, the European Convention of Human Rights.

Diana Wallace MEP published a booklet on 1 December 2011 called [European Property Rights & Wrongs](#) which describes some of the problems faced by property purchasers in both Cyprus and Spain.

## 6 Legal cases

Questions about jurisdiction (should the cases be heard in Cyprus or the UK?) and EU law are at the forefront of legal cases alleging property mis-selling in Cyprus.

On 23 November 2012 the High Court in London gave its judgment that the UK courts could have jurisdiction in a misrepresentation case against Alpha Panareti.<sup>12</sup> This is in accordance with Brussels Regulation<sup>13</sup> Article 6, which states that such buyers are consumers, not

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<sup>11</sup> Question for written answer E-002885/2011

<sup>12</sup> *Barclay-Watt and others v Alpha Panareti Public Ltd and others*, Case No: HQ11X02379, 20 July 2012

<sup>13</sup> Council Regulation (EC) No 44/2001

investors, and therefore can only be sued in the country of residence. The claimants will therefore be pursuing their cases of negligent misrepresentation and breach of contract against their developer in the UK; but an appeal is expected.<sup>14</sup>

However, in another case brought in Cyprus against a bank rather than a developer (for the alleged mis-selling of Swiss Franc mortgages) the Cypriot court has reportedly ruled that Cyprus had jurisdiction.<sup>15</sup>

There is an interesting [comment by Michael Kyprianou and Co LLC](#), in a September 2011 newsletter, on various legal aspects of the property cases. [Cyprus Property News](#) has covered the Alpha Panareti cases and others involving the Cypriot property industry closely. A recent article alerts potential claimants to a new Cypriot limitation law that came into force in July 2012, under which contract claims must be brought within six years.<sup>16</sup>

Anybody considering bringing legal action should consult an appropriately qualified and experienced lawyer.

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<sup>14</sup> ["UK jurisdiction granted in High Court ruling"](#), *Cyprus Property News*, 16 June 2012

<sup>15</sup> See ["Marshall case creates conflict of law"](#), *Cyprus Property News*, 9 March 2013

<sup>16</sup> ["Limitation time bomb awaits British home buyers"](#), *Cyprus Property News*, 9 March 2013