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**RESPONSE TO CONSULTATION –
CONSUMER CODE FOR HOME BUILDERS**

30 October 2015

ABOUT HOMES FOR SCOTLAND

Homes for Scotland is **the** voice of the home building industry.

With a membership of some 200 organisations together providing 95% of new homes built for sale in Scotland each year as well as a significant proportion of affordable housing, we are committed to improving the quality of living in Scotland by providing this and future generations with warm, sustainable homes in places people *want* to live.

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CONSUMER CODE FOR HOME BUILDERS CONSULTATION – SEPTEMBER 2015

HOMES FOR SCOTLAND RESPONSE

Introduction

Homes for Scotland is *the* voice of the home building industry in Scotland, with a membership of some 200 organisations together providing 95% of all new homes built for sale across the country as well as a significant proportion of affordable housing.

Homes for Scotland makes submissions on national and local government policy issues affecting the industry. Its views are endorsed by committees and advisory groups, utilising the skills and expertise of key representatives drawn from our member companies. This consultation response has been informed by responses from members and discussion with our Customer Relations Task Group.

We welcome the opportunity to provide input into the consultation on the Consumer Code. Set out below are our responses to the questions set out in the consultation.

Section 1: Proposed revisions to the Consumer Code requirements and the non-mandatory good practice guidance for Home Builders

Q 1. Do you agree with the approach to extend the exclusion from all registers run by Home Warranty Bodies that take part in the Code Scheme or CTSI's scheme to prevent Home Builders from "Code or Warranty hopping" should they fail to meet the requirements? Please say if not why not and what difficulties you might perceive. Conversely, what benefits do you perceive by extending the exclusion to other warranty bodies operating under CTSI's scheme?

We can see the case for this, although would note that a protocol would be required to set out the necessary steps (including for an appeal) which would need to be followed for any process put in place.

Q 2. Do you agree that having the Code on display within sales offices/at point of sale should be mandatory? If not, please explain what difficulties you foresee in complying and further what you think could be done to raise (or maximise) awareness of the Code.

We agree with this and do not foresee any difficulties in relation to it.

Q3. Do you agree that making the on-line training compulsory will help with the provision of appropriately trained customer service staff? If not, what alternative methods could be introduced that would help Home Builders and/or their agents comply and raise awareness of the Code?

We believe that online training is of significant importance and value, but it may not be viable to make it compulsory for all organisations.

Linked to this, one of our members - a recruitment agency – has noted that the current arrangements do not allow them to secure online training for temporary staff on the basis that they do not have a NHBC registration number. Whilst this company always informs temporary staff of any updates regarding the Code and where to find them, they are reliant on the builder they are assigned to for any formal training and further information. We understand that this can be problematic given the short term nature of many assignments. With this in mind, we would ask that arrangements are made such that temporary staff can easily access on line any training and updates so that they can effectively adhere to the Code.

In terms of alternative approaches, a training course pack could be delivered in the workplace.

Q4. Do you foresee any difficulties in amending the guidance to comply with the change in legislation [from Property Misdescriptions Act 1991 which was repealed in October 2013 and replaced with the Consumer Protection from Unfair Trading Regulations 2008]? If so, please explain why and/or what else you would expect to see.

Consideration should be given to the definition of “clearly important”, noting that different things are important to different customers. Further clarity on this would be helpful.

Careful consideration is also required to in terms of assessing the extent of information which it is reasonable for the home builder to know, on the basis that changes can occur which are outwith the selling party’s direct control. A purchaser’s solicitor should accordingly still have a responsibility in terms of undertaking the appropriate due diligence.

Q5a. Do you agree that all known fees should form part of the pre-sale information to be provided to Home Buyers? If not, please explain.

It should be straightforward to predict standard charges that happen for every transaction. We would suggest that the Code could nevertheless usefully set out a list of such charges to ensure that nothing is missed or considered not important enough to include.

Pre-sale information may however be subject to change. A local authority could, for example, alter their position on the long term future of maintenance of open space or

play areas prior to the purchaser paying for the property but after the conclusion of missives. Such a change could not be the responsibility of the seller but should be picked up by the purchaser's solicitor in due diligence.

Q5b. Do you consider the provision of the costs is best done at Reservation Agreement stage? If not please explain when you consider it is appropriate for the information to be provided and why.

We would broadly support this, although with the caveat that in large multi-developer sites it may only be possible after reservation and missive conclusion but prior to settlement.

Q5c. Do you consider that the choice of a Home Buyer's financial adviser should not be restricted? Do you perceive any difficulties in including this requirement within the Code? If so, please explain what those difficulties might be.

We have no difficulties with the Code setting out that the choice of an adviser should not be restricted.

Some home builders may however refer a potential customer to a particular organisation for an initial check in order to give confidence at the outset that the customer will be in a position to buy. This initial step provides protection to customers and should not be seen to contravene any new requirement set out in the Code.

The home builder may subsequently recommend that a customer uses that particular adviser, or a panel of advisers, in then applying for a mortgage, on the basis that those companies have a detailed understanding of the new build market and are in a position to help the customer and ensure that the process is as smooth as possible. There is however absolutely no obligation on the customer to make use of that adviser or advisers - they have complete freedom of choice.

Section 2: Revisions to the Code - Chartered Trading Standards Institute's Consumer Codes Approval Scheme

Q6. Do you believe these proposals go far enough in saying how Home Buyers should be treated when Home Builders are dealing with them in their own home [taking into account the Home Buyer's vulnerability]? Conversely, do you consider [the proposals outlined] too wide? How do you consider taking a Home Buyer's vulnerability might be measured to ensure compliance?

We would support the idea of introducing a process, or some form of education or guidelines to cover instances of visiting someone in their home. Further consultation may be helpful to consider this in more detail however, including to pick up on good industry practice.

Q7. Are you aware of any high pressure selling techniques not addressed by the Code? If so, please provide further details. Do you consider that the suggested revision to the guidance goes far enough to protect Home Buyers in relation to high pressure selling techniques? If not, please explain why and what further protection you require.

We have no additional suggestions with regard to this. As noted elsewhere, following reservation a customer has a period of several weeks and consultation with a solicitor prior to committing to missives, which provides protection.

Q8a. Do you consider the proposed definition of vulnerable consumer to be appropriate for the new home building market? If not, what alternative definition would you propose? How do you envisage the Code monitoring compliance with this requirement?

The proposed definition is very broad and would catch a wide range of situations. Further consultation may be helpful to help identify those situations or customers deemed of greatest concern.

In terms of this, however, we would note that:

- Following reservation, a customer has a period of several weeks to change their mind - and consultation with a solicitor prior to committing to missives.
- There are checks and trigger points throughout this process, at each of which customers are reminded clearly about the implications of their decision and given an opportunity to make sure they are happy with it.
- Our understanding is that (i) cancellation rates following the reservation of new homes are low; and (ii) that the vast bulk of transactions falling through stem from issues related to the availability of mortgage finance or breakdown of relationships.

Q8b. How do you envisage that any future revisions to the training, requiring Home Builders to take into account the Home Buyer's vulnerability when dealing with them during the pre-purchase and sales process, can best be delivered?

This may require specialised training and possibly specialised staff. An online approach would be helpful, backed by constant reminders.

Q9a. Given the legislative requirement to comply with the Alternative Dispute Resolution Directive, do you foresee any difficulties with the timeframes that are defined in which a Home Buyer can bring a complaint to the Independent Dispute Resolution Scheme? If so, please explain.

We do not foresee any difficulties.

Q9b. Given that the Directive requires a “nominal fee” to be charged to the Home Buyer, do you consider £120 inclusive of VAT is still appropriate or should this sum be reduced. If the latter, please state what sum you think this should be and why?

We do not have sufficient evidence to comment on this point.

Section 3: General Code Matters

Q10a. What further changes, if any, would you wish to see in relation to the IDRS? Please explain your reasons for the change and give examples where appropriate.

We have no changes to suggest.

Q10b. Do you consider the current anonymised case summaries are helpful to Home Builders and Home Buyers in understanding what the dispute resolution process covers and what is considered to be unacceptable practice? If not, what further information in relation to the adjudications do you consider would be helpful and why?

Our understanding is that home builders find these helpful. We have no suggestions to make in terms of additional information.

Q10c. Do you consider the application process for IDRS easy and the overall timeframe for having complaints dealt with reasonable?

We agree that the process is easy and the timeframe reasonable.

Q11. Are you satisfied with the current arrangements for feeding back compliance of the Code to a Home Builder? If not, what further would you like to see? Please explain your answer giving examples where appropriate.

We are satisfied with the current arrangements, although one member has suggested that more regular feedback would be of assistance.

Q12. What further information, if any, would you like to see on the Code’s website? Please explain how this might assist you.

We have no proposals on this point.

Q13. Are you satisfied with the current governance arrangements for the Code and that there is the right blend of independence, industry and consumer representation? If not, please explain your answer stating how you would like to see it strengthened and the benefits you would expect to see from doing so.

We are content with the current arrangements.

Q14a. Are you satisfied that the current Guidelines for applicants to become a User of the Code are, in general, fair and reasonable for applicants while ensuring that the warranty bodies who operate the Code follow good practice so that consumers are provided with adequate financial protection to meet their needs? Please explain your answer.

We received mixed views on this point. Alongside support for the current guidelines, it was suggested that the code should set a level of minimum standards for warranty providers in order to establish a base level with which all have to comply. It should then be up to the warranty providers themselves to consider this in a competitive market place.

Q14b. There is a range in the level of financial protection and scope of cover provided in the New Home Cover market. Do you consider it would be in the interests of consumers to have a single standard of cover? Alternatively, do you consider there should be minimum levels of financial protection and scope of cover specified for the principal elements of the warranty required by the User Guidelines stated below, and if so please explain your answer:

- **Insolvency protection;**
- **two year builder liability protection;**
- **Structural insurance period protection (eight years) and**
- **Contaminated Land and Building Regulations cover where applicable.**

We received mixed views on this point. Some respondents took the view that minimum levels should apply, allowing each warranty provider – and customers – to make an informed decision. In this context, the level of cover provided by NHBC warranties was cited as offering protection and comfort to buyers. Not all respondents agreed that there should be a single standard however.

Q15. What, if anything, do you consider could or should, be removed from the existing Code and why?

We have no suggestions with regard to this.

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