



Redress for Purchasers of New Build Homes and the New Homes Ombudsman

Homes for Scotland Response

Introduction:

Homes for Scotland (HFS) and its' members who together provide 95% of all new homes built for sale in Scotland each year are fully committed to increasing standards for each and every purchaser of a new build home. Improving customer satisfaction and build quality are core objectives that are engrained throughout the newly published Homes for Scotland Strategy which clearly sets out how HFS, as the major representative body of home builders in Scotland will work with our members to ensure they strengthen their existing processes in relation to customer protection and satisfaction.

Our members support moves to appoint a New Homes Ombudsman and have been proactively engaging with Westminster, the Home Builders Federation (HBF), warranty bodies, the Consumer Code for Home Builders and mortgage lenders to achieve this. It is essential that any improvement to the system of home purchase covers new home sales across the whole of the UK, to give consumers adequate protection and developers clarity of what is required of them, wherever the homes are being built.

There has been significant progress made by the industry and relevant stakeholders in reforming the current consumer redress landscape over the last two years, not least, evidenced by the industry customer satisfaction survey. Results from the last four years National New Homes Survey operated by NHBC has demonstrated the consistently high level of satisfaction customers have with their purchase:

	2017/18		2016/17		2015/16		2014/15	
Response % (weighted by Builder size)	Scotland	All UK	Scotland	All UK	Scotland*	All UK	Scotland	All UK
Recommend	88.9	86.8	89.9	86.1	88.9	84.3	89.3	85.0

However, the industry fully recognises more needs to be done to build on this and maintain consistent high levels of customer satisfaction. As such the industry has been working on two key workstreams which together would form a new 'code of practice' that will provide a set of guidelines for builders as to what they need to deliver, and set out for consumers what they should expect from their builder and provide a set of rules against which disputes can be independently adjudicated against by an ombudsman.

- Acknowledging that the creation of more than one consumer code for purchasers of new homes has led to widespread confusion for purchasers, the home building industry is now in the final

stages of combining the main consumer codes, Consumer Code for Homes Builders (CCHB), The Consumer Code for New Homes (CCNH), to create one single unified code. Warranty provider Checkmate, that until recently operated its own Trading Standards Institute approved Code is now part of the CCHB. Whilst the existing consumer codes broadly cover the same areas of the sales process, most complaints cases raised occur during years one and two of occupation. Therefore, the new consumer code will include additional clauses that clearly set out requirements on home builders to:

- Address any snagging or defects that may arise in clear transparent time scales.
 - Have a clear complaints process in place
 - An option for purchasers to inspect the property before they move in
- In addition, the industry has been meeting regularly over the last two years with the largest nine warranty providers, covering approximately 95% of the new homes market, to develop a set of mandatory warranty standards. This is required to bring the warranty providers under the umbrella of a future unified consumer code.

Once the new unified code is established, it is envisaged that it will be taken forward by a new fully independent Code Body. Whilst industry representation will be required, it will not form the majority on the new Code Body to ensure true independence.

Given the limited parliamentary time available to Government, the industry believes that an external ombudsman body could be appointed to provide the independent dispute resolution service. This could be by the new consumer code body, or an individual or board appointed outside of the code depending on what shape the final framework takes. The ombudsman body should be approved and operate to the standards set up by the Ombudsman Association and Trading Standards Institute. Further we believe that:

- All home builders should fall within the remit of the New Homes Ombudsman
- Matters raised by purchasers will be addressed first with the builder through their own complaints' procedure; secondly, failing satisfaction from the builder, with warranty providers through their own dispute resolution services; and finally, by referral to the independent dispute resolution service
- Adjudications by the dispute resolution service will be offered free of charge to purchasers
- All adjudication decisions will be made public to facilitate transparency
- Decisions must be binding up to specified levels and an appropriate disciplinary process will need to be introduced for non-compliance.
- The new arrangements will be funded by the industry
- We remain flexible as to the exact structure of the new framework and believe that it should be independent of industry. However, it will still require representation from the home building industry to properly reflect its views and knowledge, in particular with regards to the code of practice to ensure the industry can continue to deliver new homes.

For further detail on the ongoing work the home building industry is engaged in and what is currently being done to address gaps in consumer protection, we would refer you to the response from HBF (our equivalent body in England and Wales).

Consultation Questions:

1. Are you responding as?

1.1. We are responding on behalf of an organisation.

2. If you are an individual, in which capacity are you completing these questions?

2.2. N/A

3. If you are an organisation, which of the following best describes you?

3.1. A sector representative body

3.2. Homes for Scotland.

4. Who should be required to belong to a New Homes Ombudsman?

4.1. Any developers that build and sell homes on the open market, including developers who convert and sell properties should belong to a New Homes Ombudsman, ensuring that protections for consumers are robust and widespread as possible.

5. Should a New Homes Ombudsman only cover complaints in relation to a purchaser's new build home where redress cannot be sought elsewhere?

5.1. HFS believes that the New Homes Ombudsman should only cover complaints in relation to a purchaser's new build home where redress cannot be sought elsewhere. The role and remit of the New Homes Ombudsman needs to be defined in a way that is clear and understandable for consumers and we believe this best achieved by limiting its scope to those areas where a gap in protections has been identified.

5.2. Purchasers of new homes should always in the first instance approach their builder; who has a responsibility to address any problems customers have with their home in the first two years of occupation. The new industry code of practice sets clear requirements for builders in terms of the time they must respond to and address problems or complaints.

5.3. In addition, major warranty providers offer an independent dispute resolution service for cases where a purchaser is not satisfied with their builder's response to the complaint. As well as covering for the rare events of major structural damage arising.

5.4. Therefore, to ensure that there is a clear, straightforward process for consumers to access, we believe that any complaints, in respect of the whole new home buying process, should be considered in their entirety by one ombudsman body, only once redress has been sought through the home builder and warranty provider.

6. Is there anyone else who should be able to seek redress through a New Homes Ombudsman?

6.1. No.

7. Should anyone or anything be excluded from a New Homes Ombudsman's remit?

7.1. No.

- 7.2. We believe that to ensure consistency and transparency for all purchasers of new build homes, all home builders, whether they are large PLCs, SMEs, sole traders or conversion developers should be covered under a New Homes Ombudsman remit.

8. How can the Government best ensure that organisations are aware of the requirement to belong to a New Homes Ombudsman?

- 8.1. With any new government initiative, it will ultimately be the responsibility of the UK Government to ensure that all relevant legislation is disseminated in a clear transparent manner, with guidance available to all industry stakeholders affected by the New Homes Ombudsman proposals.
- 8.2. Warranty providers have a pivotal role to play in this regard. We believe that the requirement to belong to a New Homes Ombudsman should flow through the registration with the home warranty bodies under the Code of Practice. As such, it will form part of the terms and conditions of registration of all the warranty bodies and it will be mandatory therefore that they belong to the requisite New Homes Ombudsman attached to that Code.
- 8.3. As the major representative of the home building industry in Scotland, representing home building organisations who together build approximately 95% of all new homes in Scotland, Homes for Scotland has a major role to play in spreading awareness throughout the industry of the requirements of the New Homes Ombudsman. Additionally, similar organisations such as the Home Building Federation, Federation of Master Builders and others will need to spread awareness across their membership.
- 8.4. We would suggest that the media, who have been at the forefront of bringing stories in respect of the quality of new homes into the spotlight, should also be used to raise awareness.

9. Should there only be a single New Homes Ombudsman?

- 9.1. Given the current confusion arising from the variety of consumer codes in existence related to the sale of new build homes, we believe that a single New Homes Ombudsman is more straightforward for consumers to understand. It will avoid issues that arise from variance in standards regarding terms of quality, decisions, or time taken for the decision to be made.

10. How long after the initial complaint should a purchaser of a new build home be able to access a New Homes Ombudsman?

- 10.1. We believe that the current timescales set out within the Consumer Code for Home Builders, allowing up to 8 weeks for a complaint to be resolved is the correct amount of time for a developer to address and remedy any complaints as necessary.

11. Are there any other circumstances that a purchaser of a new build home should be able to access a New Homes Ombudsman?

- 11.1. We are not aware of any other circumstances where a purchaser of a new build home should be able to access a New Homes Ombudsman.

12. Are there any specific standards to the new build sector that a New Homes Ombudsman should meet?

- 12.1. We believe that to ensure a New Homes Ombudsman meets the standards of independence, accessibility, efficiency and transparency, it should adhere to the requirements of both the

13. Should a New Homes Ombudsman be delivered by a public sector body?

- 13.1. As referenced at the beginning of our response, we acknowledge that the Government has limited legislative time at present to deliver a New Homes Ombudsman. However, the industry has been working proactively over the last few years to create a viable industry led solution and is now nearing the end of two core workstreams:
- The creation of new industry code of practice – to combine the various consumer codes in operation into one single unified version. This will cover the sales process, a mandatory set of warranty standards, extension of the code to cover defects in years one and two of the occupation. In addition, it will also reference a set of expected industry finishing standards, equivalent to the NHBC Chapter 9 standards.
 - Structure – work has also been undertaken to establish where the new code of practice will sit. In addition, work has started on the creation of a new body responsible for the implementation and development of the code moving forward.
- 13.2. HFS alongside HBF have been working with the Consumer Code for Home Builders (CCHB), who have been working with their legal advisors to develop a draft organisational structure for a new code body. The CCHB is now working with the next largest code, the Consumer Code for New Homes on this process. (Warranty provider Checkmate, that until recently operated its own Trading Standards Institute approved Code is now part of the CCHB). The new code body would comprise a new governance structure, chair and board populated with the relevant experienced people from home building, warranty providers, lenders, consumer groups, legal groups with the required balance to ensure it had the ability to create effective revisions to the code in the future and be truly impartial and independent. The code body would have responsibility for implementing and taking the new code forward.
- 13.3. We believe that whilst a new independent code body could work on a standalone basis there is also potential to appoint an independent person or board outside that to oversee and monitor the effectiveness of the code board and ombudsman service.
- 13.4. Dependent on the agreed structure, we envisage that the code body, or independent person/board above that would then appoint a suitable independent ombudsman service approved by both the Ombudsman Association and Trading Standards Institute to provide the independent resolution facility and adjudicate against the code of practice.

14. How should a New Homes Ombudsman be chosen for approval by Government if it is to be delivered by a private sector body?

- 14.1. If the Government decides to proceed with a voluntary ombudsman as proposed by the industry to provide an independent dispute resolution service; it would be appointed by the relevant independent body within the new structure providing it can demonstrate they could provide the service efficiently whilst meeting all of the requirements established by the Ombudsman Association and the Chartered Trading Standards Institute.

15. Should approval of a New Homes Ombudsman be withdrawn or removed if they fail to deliver effective service standards?

- 15.1. Yes. This will be essential to maintain confidence of both consumers and developers. If the New Homes Ombudsman is falling short of the expected service standards, approval should be

withdrawn.

16. If so, what should count as shortcomings in service standards to merit disapproval, how can this be verified and by whom?

- 16.1. The Ombudsman Association Service Standards Framework measures its members on five key commitments, which include, accessibility, communication, professionalism, fairness and transparency. These principles are considered to be best practice as set out by the Association and members are expected to assess and report on their performance towards meeting these.
- 16.2. Additionally, the Ombudsman Association only gives recognition to those schemes which meet the requirements set out within 'criteria for the recognition of ombudsman offices'. The five key criteria are, independence, fairness, effectiveness, openness and transparency and accountability. The Ombudsman Association will not recognise an ombudsman body as such unless they meet the above criteria.
- 16.3. The frameworks outlined above therefore should ensure that it is straightforward for both consumers and developers to understand if the New Homes Ombudsman has fallen short of the expected standards. As such a complaints process should be established for both consumers and developers to access if they are dissatisfied with the way a New Homes Ombudsman has handled their case.

17. Are there any alternative sanctions, other than withdrawal of approval, that could be used to ensure a New Homes Ombudsman or other housing redress scheme continue to deliver an effective service?

- 17.1. For extreme cases, where the New Homes Ombudsman has drastically fallen below the expected standards, the with-holding of payment could act as an effective measure to encourage the Ombudsman to deliver a better service.

18. Should access to a New Homes Ombudsman be free for purchasers of new build homes to access?

- 18.1. Yes, as outlined within the Ombudsman Association Service Standards Framework, members should ensure that their service is free to the complainant and that their procedures are customer focused and make reasonable efforts to support access to their services for any user. To introduce a charge or fee could subsequently prevent some consumers from being able to access redress.

19. What would be the most appropriate way for a New Homes Ombudsman to charge property developers?

- 19.1. The industry fully acknowledges that developers should be responsible for funding any new voluntary led New Homes Ombudsman. However, we would emphasise here that the services of an ombudsman should only be used after a consumer has exhausted the developer or warranty providers own complaints process.
- 19.2. It is expected that the new Unified Code Body will be funded by industry on a price per unit basis, as this is already common practice with the existing separate Consumer Code Bodies.
- 19.3. All new homes are required to have warranty provision, and currently, warranty providers charge a home builder a fee per home they register to fund the respective consumer codes. It is therefore envisaged that a similar funding arrangement will be created whereby home builders pay for the wider redress system on a per plot basis. While the precise funding mechanism for

such a model is still be determined, the current model of charging through the warranty providers is the most efficient and practical means to do so.

- 19.4. For cases where a consumer feels they have not had adequate redress from the home builder or warranty provider and is subsequently referred to the New Home Ombudsman over a case that is within its' jurisdiction to adjudicate on, the home builder should also be required to pay a case fee. We believe this would act as a further incentive for developers to invest heavily in resolving consumer complaints in the first instance, and ultimately driving up customer satisfaction.

20. Would any of these models have an adverse impact on smaller housebuilders?

- 20.1. This is entirely dependent on the rate applied with each model.
- 20.2. All home builders currently pay a relatively low flat rate on per plot basis via the warranty providers to fund the respective consumer codes. However further research is required to evaluate the costings of any model that is developed and agreed in regard to its operation. If the rate is set too high it will have a potentially adverse rate on smaller home builders. Larger home builders can more easily absorb such costs whereas SMEs have less flexibility in access to capital and this should be taken into account.

21. Should smaller housebuilders pay a smaller fee than larger housebuilders?

- 21.1. Again, this would be entirely dependent on the mechanism used to secure payment. However, if it were to be on a payment per complaint basis, we believe that all home builders should pay the same fee. The industry is committed to providing the highest level of customer care and build quality, as such complaints should be low in number as to not be particularly burdensome for SME home builders.

22. If so, how should be achieved?

- 22.1. N/A

23. Are there different sanctions in addition to those available in other sectors of the housing market that a New Homes Ombudsman should have access to?

- 23.1. Different levels of financial awards to the consumer
Expulsion from the scheme unless a developer instigates and follows an improvement plan
Publish the details and reasons why developers have been expelled from a New Homes Ombudsman
Suspension from scheme until problems are rectified
Ability to make recommendations
Set timescales to rectify faults/defects with a property
- 23.2. HFS believes that all the above sanctions should be available to the New Homes Ombudsman, as they align with the disciplinary and sanctions process set out in the unified consumer code.

24. Are there any other powers or sanctions a New Homes Ombudsman should have?

- 24.1. We believe that the sanctions listed in Q23 contains all the powers that would be expected of a New Homes Ombudsman.

25. If a New Homes Ombudsman offers awards, what should the maximum amount be?

- 25.1. We believe that the maximum amount of compensation awarded should be £25,000, in line with the Unified Consumer Code and wider consumer redress schemes.

26. What information should be published by a New Homes Ombudsman to empower consumers?

- 26.1. There is already some data published on home builders which home buyers can use to make informed decisions when thinking of purchasing a new home. The Home Builders' Federation's national new homes customer satisfaction survey of house builders was launched in 2005 in response to recommendations in the Barker Review of Housing of 2004. It is a self-completion census done by the purchasers of new build homes. Survey results are published annually in March each year, additionally the scheme has recently been extended to home builders that operate only in Scotland, giving consumers a wider geographical spread of data.
- 26.2. Almost 100,000 surveys are sent out, believed to be one of the biggest of its kind in the UK, with an extremely high return rate of 60%. The statistical methodology used in the analysis of this survey has been approved by the Statistical Services Centre, University of Reading and industry results are weighted by builder to take account of the number of eligible homes they have built in the year, albeit individual company results are not weighted. From this, the home builder is awarded a star rating which home buyers can take account of. Further as a result of the APPG findings, the New Homes Review was launched in November 2016 and has published its second annual report.
- 26.3. However, we do believe home buyers would benefit from having further information to help them make an informed buying decision. A future ombudsman scheme could publish decisions and information regarding complaints cases.

27. What is the best way to publish complaints data so that it incentivises developers to improve their service?

- 27.1. The industry believes that to best incentivise developers, all the following methods should be used to publish complaints data:
- Complaints data provided to the Ministry of Housing, Communities and Local Government
 - Data published in an annual report
 - Publication of case studies on the Ombudsman's website

28. What data from a New Homes Ombudsman would be useful for consumers when they are making a decision about purchasing a new home?

- 28.1. HFS believes that any information relating to the performance of a builder on an individual level, including the number and nature of complaints against them, would be useful to consumers.

29. Should a New Homes Ombudsman remit be UK-wide?

- 29.1. Yes, we would strongly encourage that any changes made to strengthen the existing structure regarding customer redress for purchasers of new build homes are UK wide to give consumer adequate protection and developers clarity of what is required of them, wherever the homes are being built.

30. Are there distinct practices in the different countries of the United Kingdom that require consideration for how a New Homes Ombudsman should operate if it were to be UK-wide?

- 30.1. While practices in selling and buying new homes largely do not differ across the UK, there is distinct differences in terminology that will need to be considered as a result of the different legal practices across the devolved nations. For example, the terms Contract of Sale, Contract Exchange and Legal Completion are terms used primarily in England and Wales. Whereas the formal stages that occur during the sale of a property are known in Scotland as Missives and

Conclusion of Missive.

30.2. These slight differences have been considered and reflected in the work done to create a new unified code, and industry has been liaising with official across the devolved administrations to ensure any slight legislative differences are also acknowledged.

31. What should be included in a Code of Practice for developers of new build homes?

31.1. As referenced previously in the response, HBF and HFS have been working with all concerned stakeholders to establish a new unified consumer code. The final draft of the code is close to being finished and we believe that all of the below should feature within a Code of Practice for developers of new build homes:

- Complaints procedures
- Pre-purchase information and reservation agreements
- Customer service standards
- Sales and advertising standards including, but not limited to, the requirement to provide clear information in for; energy performance ratings, warranty provision, management services, leasehold charges, future development phases and connectivity.
- Protection of deposits
- Minimum warranty standards
- Specifications that new homes should meet
- Transparency in relation to the receipt of fees a developer receives if they recommend a product or service, such as a solicitor
- Clear after-care responsibilities of builders
- Contracts to allow homeowners to appoint an independent building consultant/surveyor to review and agree with builders.
- Timescales for responding to complaints, rectifying defects and compliance with requirements of a New Homes Ombudsman
- Standardised Contracts
- A right of access for the purchaser to view the property prior to completion
- The ability of homebuyers to carry out surveys before final completion

32. Should a Code of Practice for developers of new build homes be underpinned by statute?

32.1. In consideration of the limited legislative time available to the UK Government at present, we believe, along with HBF that the new Unified Code of Practice, supporting Code Body and New Homes Ombudsman are established on a voluntary basis as soon possible.

32.2. We believe that the robust protections proposed in the voluntary solution could be underpinned by statute in the future if the Government determines this to be the best way to proceed.

33. How should failure to belong to a New Homes Ombudsman be enforced?

33.1. HFS is fully committed to ensuring 100% of the home building industry belongs to the New Homes Ombudsman. We believe that the industry engagement with lenders and warranty providers throughout the process will ensure the home builders who are not members of such a scheme would be unable to obtain warranties and lenders will be unable to provide mortgages to consumers purchasing a new build home outside of the scheme.

33.2. In addition, both the UK Government and Scottish Government have the ability to make sure that any home builder registered with initiatives such as Help to Buy or other similar schemes must be a member of the new code and ombudsman scheme to participate.

34. Who should enforce this?

- 34.1. Representative bodies such as HFS, HBF and the Federation of Master Builders will have a vital role in ensuring that their members are aware of the requirement to belong to a New Homes Ombudsman and provide clear advice on what is required of them.
- 34.2. As outlined earlier, warranty bodies and lenders will also have a significant part to play and could enforce this requirement by refusing to provide mortgages to consumers of new build homes provided by developers outside of the scheme and warranty bodies by virtue of the fact that every new build home is required to have one.
- 34.3. Equally, if the Government decides it is appropriate, legislating for home builders to be a member of the New Homes Ombudsman in the future would also ensure compliance.

35. What should the penalty for non-compliance be?

- 35.1. Penalties for non-compliance with a New Homes Ombudsman should be:
 - Developers prohibited selling new build home on the open market.
 - For developers that consistently attempt to sell new build homes without adhering to the requirements of a New Homes Ombudsman, consideration could be given to issuing criminal or civil prosecution.

For further information relating to any of this please contact Homes for Scotland at the address below.

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