

Ministry of Housing, Communities and Local Government  
New Homes Ombudsman Consultation  
Housing Diversification  
3rd Floor Fry Building  
2 Marsham Street  
London SW1P 4DF

22 August 2019

By email to: [NewHomesOmbudsman@communities.gov.uk](mailto:NewHomesOmbudsman@communities.gov.uk)

Dear Sir/Madam

## **Re: Redress for Purchasers of New Build Homes and the New Homes Ombudsman**

Please find enclosed our response to your technical consultation on the Redress for Purchasers of New Build Homes and the New Homes Ombudsman.

By way of background, the Consumer Code for Home Builders (“the Code”) was established in April 2010 following extensive consultation with the Office of Fair Trading, the Department for Communities and Local Government and the devolved administrations and covers the whole of the UK.

It currently covers 95% of the new build market, which equates to approximately 16,000 builders and sets mandatory Requirements that all home builders registered with the supporting home warranty providers (NHBC and MD Insurance Services trading as Premier Guarantee and LABC Warranty and Checkmate<sup>1</sup>), must meet in their marketing and selling of new Homes and their after-sales customer service.

It has since been adopted by HM Treasury and MHCLG, the Scottish Government and the Welsh Assembly as a criteria for compliance with their respective Help to Buy schemes.

We are supportive of Government’s desire to improve consumer protection within the housing sector, but we do not believe that it should be in isolation to what is happening in the rest of the UK and neither do we believe a single housing Ombudsman is the only solution in addressing the issues that this, and previous consultations, have raised.

An Ombudsman, for example, will not deal with issues of build quality and customer service which have concerned consumers, but would simply address the problems that arise. A more fundamental approach to improving the quality of all new homes, which is underpinned by a strong regulatory compliance and sanctions regime is therefore essential, and that is what the

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<sup>1</sup> With effect from 1 June 2019.

Consumer Code for Home Builders (“the Code”) has been working to achieve and has appointed an independent monitoring team to report on matters of compliance.

Furthermore, we believe there needs to be consistency across the UK. Our Code operates across England, and all the devolved nations to offer new build customers the same level of protection anywhere in the UK. This is extremely important as a consistent approach not only eases understanding for the consumer, it ensures warranty and mortgage lender buy-in across the UK.

Since its launch, the Code has led to a step-change in how builders deal with customers through the sales process and is now in its fourth edition. It has been reviewed three times with wide consultation across the industry; consumer groups and Government, most recently in 2016 whereby the review was overseen by a former Director General of Fair Trading. Each time, the Code has been updated and improved to provide greater protection for consumers.

However, we accept that more can be done to further improve consumer protection and address any identified gaps when dealing with new home problems. We have therefore been working closely with the Home Builders Federation, Homes for Scotland, home warranty providers, UK Finance and other Code bodies to help deliver an industry-led solution given the lack of current parliamentary time.

This work includes three critical work strands which support the improvements needed to be made to tackle current challenges.

- 1. The creation of a unified Code across the industry:** While the existing consumer codes broadly cover the sales process, most complaints cases raised occur during years one and two of occupation. Therefore, the new 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 and an option for home buyers to inspect the property before they move. This work is well advanced but not yet complete. When the draft Code is available it will need to be the subject of wide consultation with stakeholders. Our recommendation is that this process is undertaken under independent Chairmanship by a suitably qualified individual appointed by a new Code Board (see below).
- 2. A best practice warranty standard:** Warranties play an important part in consumer protection but there is currently a significant variation in warranty standards across the industry which consumers – and sometimes solicitors – are unaware of. This is a key issue and a unified standard across the providers is required to bring the home warranty providers under the umbrella of a future unified Code.
- 3. Tackling widespread concerns about build quality:** The creation of an Ombudsman will build confidence in complaint management but will not resolve the issue of build quality. That remains the primary responsibility of developers. It is a widely held view that the industry will need to focus on accredited quality management processes if these concerns are to be resolved. The HBF is reviewing how this can be improved.

In addition, we are making progress on a further change to the governance arrangements in anticipation of a new unified Code with the creation of a totally Independent Board. While industry representation will be required, it will not form the majority on the new Code Body to ensure true independence and the legal framework is almost complete and on schedule for consultation with stakeholders through our Advisory Forum, other Code bodies, government departments and the devolved administrations.

The new Board will retain the critical role as regulator, overseeing Code compliance. This will ensure a focus on 'getting it right first time' to reduce the problems that beset consumers and minimise the need for referrals to the Ombudsman.

The new Board will also commission an Ombudsman by open competition. This will replace the current Independent Dispute Resolution Scheme. Commissioning the Ombudsman in this way will allow the Board to seek best value, ensure operational standards are maintained and give confidence to consumers that the Ombudsman will be held to account.

As mentioned, we are fully supportive of Government's plans to introduce a New Homes Ombudsman and strengthen redress in the new homes market but we are keen to ensure that sight is not lost of the significant progress that has already been made to date and that Government, by working with the existing Code bodies, retains the information in respect of previous compliance performance not only of the Codes, but that which many developers have put in place.

We believe the steps currently being taken provide an effective and quicker process to achieve the same outcomes. Our proposals are also built on the dual pillars of cost effectiveness and operational efficiency around a commissioning model.

Further details are provided in our responses to the questions raised in the consultation as set out below and I trust this information is of assistance to you, but I would be happy to discuss such matters further and can be contacted via the Code Secretariat at: [secretariat@consumercode.co.uk](mailto:secretariat@consumercode.co.uk)

Yours faithfully



**Noel Hunter OBE**  
Chairman Consumer Code Management Board

#### **Q4. Who should be required to belong to a New Homes Ombudsman?**

*A: Developers who build and sell homes on the open sales market and Developers who convert and sell properties*

We believe that all new built properties covered by a home warranty scheme should be included as this has three major benefits: a) quality matters can be informed by the home warranty providers' technical quality standards; b) home warranty providers provide the registration mechanism which will ensure developers sign up to the Ombudsman Scheme (see our response to question 20); and c) home warranty providers provide a process for enforcement of awards (see also our response to question 20).

Other categories could be added by exception and with the advantage that a less cumbersome register will be required for the minority of properties not covered by a warranty.

Self-builders may however fall outside of the same terms and conditions and it would be difficult to see how the New Homes Ombudsman could adjudicate in such matters which would be more akin to the home improvement sector.

#### **Q5. Should a New Homes Ombudsman only cover complaints in relation to a purchaser's new build home where redress cannot be sought elsewhere?**

A: No

Many developers of new build homes use estate agents to sell their homes. By allowing complaints raised during the sales process to be brought through any estate agency redress scheme, will allow the developer to absolve their responsibility and accountability.

As referenced in this consultation, most developers are required to adhere to a Code of Practice and those Codes make it clear that the developer is responsible for the whole process, pre-sales, sales and after-sales and for the actions of their agents.

Home buyers may have issues with one or more parts of that process and it may complicate matters further if they find that they have to bring a complaint for pre-sales issues to one redress scheme while matters re after-sales (occupation) to another.

We firmly believe that any complaints, in respect of the whole new home buying process, should be considered in their entirety by one body.

However, should Government consider there is merit in splitting who home buyers go to for their redress, then they need to be mindful of any double jeopardy i.e. the home buyer cannot raise the same, or similar complaint, with the one particular scheme that has already been considered and dealt with by the other. This would be grossly unfair on all parties and against the principles of natural justice.

**Q6. Is there anyone else who should be able to seek redress through a New Homes Ombudsman?**

A: No

**Q7. Should anyone or anything be excluded from a New Homes Ombudsman's remit?**

A: No

We believe all developers registered with a home warranty provider, for the purposes of building a new, or newly converted home, should be covered. This includes sole traders, SMEs and large PLCs.

Regardless of whom the home buyer has purchased from, they should be afforded the same protections.

**Q8. How can the Government best ensure that organisations are aware of the requirement to belong to a New Homes Ombudsman?**

We believe that the requirement to belong to a New Homes Ombudsman should flow through the registration with the home warranty providers under the Code of Practice (see question 20 below). As such, it will form part of the terms and conditions of registration of all the home warranty providers and it will be mandatory therefore that they belong to the requisite New Homes Ombudsman attached to that Code. There will be no option other than to automatically belong.

The home warranty providers therefore play an integral role and will often provide material and support to assist the developer and the home buyer. This is of course but one source.

Many developers will belong to trade bodies such as the Home Builders Federation, Homes for Scotland, Federation of Master Builders and the House Builders Association. They too provide a lot of information for their members and can assist in disseminating information.

The governing body(ies) overseeing the relevant Code of Practice also provides support and information and not just to those organisations who will fall under the auspices of the New Homes Ombudsman but to the home buyers too. Any New Homes Ombudsman will only be successful if home buyers are aware of its function and one of the activities of our Code is to engage directly with home buyers. We have approximately 5,000 users to our website each month with over 14,000 page views and in 2018-19, dealt directly with over 700 enquiries in relation to our Code, with another 800 being dealt with by our supporting home warranty providers.

Home buyers also turn to other organisations when purchasing a new home such as their solicitor/licenced conveyancer and their mortgage provider. Organisations such as Law Society England and Law Society Scotland, Council for Licenced Conveyancers, UK Finance

and the Building Societies Association, should all be informed to brief their members and ultimately their clients.

When things go wrong, home buyers will often turn to third sector agencies for guidance and support and we see Citizens Advice having a pivotal role to play here in being made aware of where consumers can go to seek redress. Other privately funded bodies such as Which? And the Home Owners Alliance have voices in this market place too and can provide a wealth of useful information.

Finally, 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.

### **Q9a. Should there only be a single New Homes Ombudsman?**

A: Not sure.

There is an argument that a single New Homes Ombudsman is more straightforward for consumers and it may address issues of variance in standards; either in terms of quality of decision or time taken for decisions to be made. However, there are other downsides.

As evidenced by research conducted by the Money Saving Expert:

<https://images6.moneysavingexpert.com/images/documents/MSE->

[Sharper teeth interactive.pdf](#) and a Channel 4 Dispatches programme:

<http://www.channel4.com/info/press/news/investigation-at-fos-finds-staffwith-severe-lack-of-training> there are issues in relation to performance of an Ombudsman.

Many current Ombudsman schemes are known to have a backlog in the number of complaints they are trying to handle and this can only further exacerbate consumers' problems.

Having a single Ombudsman in the market place creates difficulties in trying to tackle such concerns and perhaps it would need some form of regulation whereby any failure in the delivery of service, such as delays, is managed through a fining regime.

A more radical way of addressing the prevalent problem of unacceptable standards of ombudsman service could be by consumer choice. If consumers were able to elect which Ombudsman Scheme to use as opposed to businesses having that choice, they could take into account service standards, time taken for decisions to be made, number of successful Judicial Reviews etc. Needless to say this approach, fine in principle, could be hard to implement.

This is why we believe the next best option is for fully independent Code bodies to invite tenders for ombudsman services in an open and transparent way, keep performance under review and retendering as appropriate. This approach should not only drive quality standards in the Ombudsman's own performance, and also encourage competition in terms of cost, but will also provide options should there be seen to be failure as steps could be taken to move

the decision making process to an alternate provider, providing greater resource flexibility and contingency so that there is no detriment to the consumer.

We believe the key to consistency is to have any New Homes Ombudsman Scheme underpinned by both by home warranty standards across the market place that conforms to mandatory best practice standards and a unified Code. A decision an Ombudsman then makes will be against the same set of criteria, as opposed to now where, as highlighted, there are variations in the protection afforded.

**Q10a. How long after the initial complaint should a purchaser of a new build home be able to access a New Homes Ombudsman?**

A: Other

We believe that access to the New Homes Ombudsman should mirror that which is already provided under the Alternate Dispute Resolution Regulations i.e. after 56 days have passed. To consider differing timescales complicates the consumer landscape further and provides little time for a developer to address any concerns raised.

In the nine years of operating our Code, there has not been one instance raised which has been so urgent as to need a quicker escalation. The key of course, will be how quickly and efficiently the Ombudsman then deals with the complaint once received.

That said, there may be instances where both parties agree that the complaint can be brought to the Ombudsman sooner and in such circumstances, we see no reason why those complaints cannot be considered before the 56 days have elapsed.

**Q10b Are there any other circumstances that a purchaser of a new build home should be able to access a New Homes Ombudsman?**

A: Not sure

There are none that we are aware of.

**Q11. Are there any other specific standards to the new build sector that a New Homes Ombudsman should meet?**

A: No

**Q12. Should a New Homes Ombudsman be delivered by a public sector body?**

A: Not sure

Having a public sector body delivering a new Homes Ombudsman has several benefits:

- It would ensure complete independence from the sector;
- Be accountable to Government for operational performance
- Be accountable to Government for financial probity and
- Open to Judicial Review.

However, as mentioned under our answer to question 9, unless there is some sort of penalty for under performance, this option leaves Government with very little by way of action that can be taken should the organisation fail in its performance/delivery either by way of the quality of its decisions, its timeliness or its value for money (which ultimately the consumer will no doubt end up paying for). All of which would undermine the credibility of the Ombudsman and the Government's initiative.

Having a scheme delivered by one (or more) private sector bodies, with appropriate skills and expertise and meeting the defined standards, not only provides greater consumer choice, but would also allow Government greater freedom to take action should the service fail to deliver efficiently and effectively.

**Q13. How should a New Homes Ombudsman be chosen for approval by Government if it is to be delivered by a private sector body?**

A: A combination of Tendering process; Request for proposals; Minimum Scheme Standards

To achieve best value for money and to ascertain what a private sector body can deliver by way of an Ombudsman scheme, we believe that a tendering process should be undertaken. However, as part of that process, the Government should seek proposals from the bidders on the following:

- How Cabinet Office advice on setting up Ombudsman Schemes has been considered: [https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment\\_data/file/61197/guide-new-ombudsman-schemes.pdf](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/61197/guide-new-ombudsman-schemes.pdf)
- How the service will be delivered including (but not exhaustive: governance and staffing arrangements; anticipated cost per case; KPIs; quality monitoring; training; IT infrastructure; and
- How it proposes to engage with consumers and the industry to drive up improvement and satisfaction.

Further, the tendering process should set out the minimum requirements that it expects the private body to deliver against. In short, we believe these must be to meet the standards as set by the Ombudsman Association with regards to:

- Service standards: [https://www.ombudsmanassociation.org/docs/OA17\\_Service\\_Standards\\_2017\\_Final.pdf](https://www.ombudsmanassociation.org/docs/OA17_Service_Standards_2017_Final.pdf)



- Governance: <https://www.ombudsmanassociation.org/docs/BIOAGovernanceGuideOct09.pdf> and
- Case Worker competency: <https://www.ombudsmanassociation.org/docs/CaseworkerCompetencyFramework2019.pdf>

The Ombudsman Association Framework is a stringent framework against which Ombudsman should be measured and the Local Government and Social Care Ombudsman was one of the first to undertake such a benchmark exercise. The published outcome of that finding can be seen here: <https://www.lgo.org.uk/information-centre/about-us/our-performance/quality-and-service-standards> and demonstrates the degree of complexity required to operate such a scheme that the private (and indeed public) ombudsman would be required to commit to.

**Q14a. Should approval of a New Homes Ombudsman be withdrawn or removed if they fail to deliver effective service standards?**

A: Yes

To have credibility, it is imperative for any redress scheme, to deliver on what is set up to do.

**Q14b. If so, what should count as shortcomings in service standards to merit disapproval, how can this be verified and by whom?**

As referenced at question 13, the Ombudsman Association has a Service Standards Framework and first and foremost, we believe delivery of the service should be against this. The Ombudsman Association should verify whether the service is meeting these standards or not.

Secondly, we would expect the board of the New Homes Ombudsman, under its governance arrangements, to be held to account by MHCLG, as its sponsor department, on the delivery of its KPIs; which will include the time taken to deal with a case and value for money, primarily around the cost per case. Ongoing failure to meet these standards should be considered as shortcomings of the service.

Most Ombudsman Schemes will have an external reviewer that considers escalated service complaints against the organisation and/or where an Ombudsman decision is challenged. A high percentage of these which show the complaint was justified, or that the decision was not appropriately taken, would also be an indicator of service failings within the organisation. These should be reported to MHCLG as part of its oversight and scrutiny arrangements under governance.

Finally, if a public sector body, there should be a consideration of any successful Judicial Reviews. While Ombudsman schemes are prone to the threat of legal challenge, by either of the parties involved, a high percentage that are deemed successful in the High Court would be an indicator that due process is not being followed within the service leading to unsatisfactory

outcomes, which again undermines the credibility of the scheme. As above, the reporting of this would fall under MHCLG's oversight and scrutiny arrangements.

**Q15. 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?**

None that we are aware of.

**Q16. Should access to a New Homes Ombudsman be free for purchasers of new build homes to access?**

A: Yes

**Q17. What would be the most appropriate way for a New Homes Ombudsman to charge property developers?**

A: A pay per complaint system

As referenced in the consultation, the majority of home buyers are satisfied with their new home and to charge all developers a fee, based on the price per unit they build, has the disincentive of "penalising" those where a complaint may never be brought. This type of charging system does not incentivise developers to get it right first time as they are already paying for the use of the scheme. That said, we would expect that the new Code Body overseeing the Code of Practice to be funded by industry on a price per unit basis, collected by the home warranty providers, so that the whole industry contributes to the overall running of the scheme.

A "membership" rate infers that the developer is a member of the New Homes Ombudsman scheme which, for independence, they cannot be. This may lead to perverse consequences such as the Ombudsman negotiating membership fees, perhaps for the larger/major developers who build volume homes, and destroys both the integrity and the credibility of the Scheme. There will be perceived bias on the part of the consumer.

A pay per complaint system (defined as a case that is accepted by and decided upon by the New Homes Ombudsman) in effect means that the "polluter" i.e. those against whom complaints are raised, have to bear the cost. We believe there are two benefits to this type of funding arrangement; firstly, the developers who do respond to their customer needs and don't have complaints made against them do not lose out financially. Secondly, it incentivises those developers where complaints are being brought to improve their service standards as there is a financial liability if they don't (on top of any award an Ombudsman may or may not make).

**Q18. Would any of these models have an adverse impact on smaller housebuilders?**

A: Not sure

Please see comments under question 17 in respect of penalising those builders which may not generate complaints.

**Q19a. Should smaller housebuilders pay a smaller fee than larger housebuilders?**

A: No

We consider there should be a flat charging structure regardless of size of builder on a cost per complaint. By their very nature, larger home builders will engender more complaints simply because of the volume and therefore pay more. However, the fact that a home builder may be smaller in size does not make the service provided by the New Homes Ombudsman Scheme any different. The infrastructure and standards are the same and should be costed as such. To charge a differing fee on size may provide an unconscious bias which indicates otherwise and undermine the integrity and credibility of the service.

A home buyer should be provided with the same standard of service whether from a small developer or a large developer and the costs therefore to have a complaint considered by the New Homes Ombudsman, should be the same.

**Q19b. If so, how should this be achieved/calculated?**

As referenced above, we do not believe that there should be a variation in the fee paid. However, if Government determine this should be the case, then the fees paid could be broken down dependent upon the number of units built in any particular year. For example:

- 1-100 units = £x
- 101-5000 units = £x
- 5001 – 10,000 units = £x
- And so forth

**Q20. 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? (Tick all that apply)**

- A:
- Different levels of financial award to the consumer;
  - Expulsion from 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, for example: that the developer purchases the property back; reviews the terms of leasehold agreement and amends them; and to review the terms of estate maintenance fees and amend them;
  - Set timescales to rectify faults/defects with a property.

Firstly, we believe the use of the term “sanctions” when referring to an Ombudsman is inappropriate. As referenced in the consultation, it is not the role of an Ombudsman to act as a regulator and as such, they are not in a position to impose sanctions on the developer. Their role is to determine if there is a justified complaint and if so, to put the consumer back in the position they would have been in had the complaint not incurred. As such, the role of an Ombudsman is to consider what “remedies” are available to enable them to do just that.

Furthermore, while we do not oppose any of the suggestions to the remedies as set out above, they continue to suggest that a developer should be a direct “member” of the New Homes Ombudsman scheme. We have grave concerns in relation to the perception of this and as noted in our answer to question 17. A developer should be subjected to an Ombudsman Scheme but not be deemed a member.

An Ombudsman should not therefore be able to suspend or expel a developer from its Scheme as that in itself implies it is a membership scheme.

We also firmly believe that the home warranty providers are integral to the operation of the New Homes Ombudsman. They can, and under our Code do, write into their terms and conditions that failure to comply with an Adjudicator’s decision (as per our current scheme) means that sanctions can be applied.

These sanctions include the removal of the developer from the supporting home warranty providers’ register (and of those supporting our Code – which covers 95% of the market) which in effect prevents them from trading. Under our Code, between April 2018 and March 2019, there were four occasions whereby the home builder failed to comply with the Adjudicator’s decision, all of which were remedied upon the intervention of either the Code and/or the home warranty provider.

As at end of June 2019, two developers have been suspended by the Code’s home warranty providers for failure to comply. This suspension prevents them from registering with four of the UK’s largest home warranty providers.

We therefore advocate, with the support of the home warranty providers through any agreed mandatory standards, a similar condition being attached whereby a registered developer must comply with an Ombudsman’s decision. Failure to do so would see a range of sanctions applied by the home warranty provider as opposed to the Ombudsman. This clarifies the role of the Ombudsman but the outcome and impact would have the same effect.

However, should Government consider that suspension from the Ombudsman Scheme is the most appropriate course of action, there are also further considerations to be taken into account. What, for instance, happens to other home buyers who have paid a reservation fee or exchanged contracts with that developer on a home either on the same or different development? Will the suspension impact those purchases, which may have other contractual bearing, or is the suspension only from the date of issue and on any new homes on which a reservation fee or deposit hasn’t been taken?

If the Ombudsman is to suspend the developer, questions arise as to how this will be enforced and by whom? How will the home warranty providers know not to issue a certificate of insurance on a particular property or for a particular developer?

Suspension of course cannot be taken in isolation. While a powerful deterrent, and not withstanding we do not consider the Ombudsman to be a regulator and therefore to have such sanctions, to suspend a home builder will not only impact the developer financially. In the case of a major developer, for example, the thousands of people it may employ, sub-contractors, suppliers, the home warranty providers who provide certificates of insurance on each home, and other potential home buyers, could be impacted, as indicated. There must be safeguards put in place to ensure that any such action is proportionate.

In addition, an Ombudsman determining that the rectification of work should be carried out may not be as straightforward as first anticipated. Consideration must be given to the home warranty policy that is in place and whether the Ombudsman's decision will do anything that may invalidate that cover i.e. such as determining a third party repair to the property without approval of the insurer; or altering the external cosmetic look or feel of a property which may go against the local authority planning consent and therefore is simply not achievable. Further, whether the work being requested encroaches on third parties such as neighbouring properties.

We do however support that the Ombudsman should be able publish the decisions that they have made, albeit anonymise the home buyers' details so that they cannot be identified. In doing so however, there should be consideration as to the context behind the information. For example, we anticipate a developer building 10,000 homes per year are likely, by their very nature, to receive a higher volume of complaints than a developer who builds just five. However, if the developer building just five homes has three cases go to an Ombudsman for decision, that may be disproportionately high and of concern.

We would suggest that the contextual information may, for example, group developers into categories of small (building xx number of units), medium (building between xx and xx number of units) and large (building over xx number of units).

**Q21. Are there any other powers or sanctions a New Homes Ombudsman should have?**

A: No

Please see previous comments above about the role of an Ombudsman. We do however believe that an Ombudsman should have a suite of remedies available to them in respect of any awards they make, many of which have been considered already in this consultation and should include (but not limited to):

- Providing the home buyer with an apology or explanation;
- Taking some practical action that will put right the matters complained of (within agreed timescales);

- Paying the home buyer the cost of putting right the matters complained of;
- Paying the home buyer the expenses reasonably incurred as a result of the home builder not resolving the issue complained of;
- Paying the home buyer an amount for inconvenience (in line with best practice used amongst many Ombudsman Schemes);
- Taking steps to improve systems and processes.

**Q22. If a New Homes Ombudsman offers awards, what should the maximum amount be?**

Up to £25,000

We consider an Ombudsman should be a suitable alternative to taking action in the civil courts and, in the main, are far cheaper and quicker. They operate on an inquisitorial basis and reach conclusions on the evidence in front of them on the balance of probabilities; usually all done via documentation.

We consider that for sums up to £25,000 this is a fair and reasonable process. However, for claims which exceed this amount, it is not inconceivable to think that matters will be of a more serious nature and therefore more highly contested. A document only basis may not work and the Ombudsman may find themselves having to conduct more formal hearings to fully ascertain the issues. This not only builds in costs to the process, but delay which will undoubtedly have a knock-on effect for the effective operation of the business.

The £25,000 limit would mirror other Schemes, such as the Property Ombudsman. While underpinned by statute, the Property Ombudsman, deals in the second hand homes and estate agency market and is therefore of a comparable market size. It only has a £25,000 financial limit and it is felt that there should be parity across the sectors so as not to disadvantage consumers in a particular sector.

Over the nine years of running our Code, we have only had two cases where the maximum amount of £15,000 has been awarded by an Adjudicator under our own Independent Dispute Resolution Scheme. As at end of June 2019, there has been one instance where the Adjudicator would have awarded more but this was up to £38,500. Notwithstanding our comments for parity with other Ombudsman schemes in a similar sector, we do not believe from our experience that raising the limit higher than £25,000 is necessary or appropriate.

**Q23. What information should be published by a New Homes Ombudsman to empower consumers?**

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 and the latest results can be seen here:

<https://www.hbf.co.uk/policy/policy-and-wider-work-program/customer-satisfaction-survey/>

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:

<http://www.newhomesreview.com/media/1123/nhr-annual-report-2018.pdf> in which 687 home owners participated.

Despite this information already being available, we do believe home buyers would benefit from having further information to help them make an informed buying decision. As suggested in our response to question 20, we believe all Ombudsman decisions should be published (albeit anonymising the home buyer's details). From this, the Ombudsman could publish a table showing number of decisions made; against whom; whether found to be justified or unjustified; what remedy was awarded (if any) and whether the award has been satisfied. However, this data should be put into context and alongside this, the data should reveal the number of new homes (or units) that the developer builds per annum.

Further, as also referenced in response to question 20, we believe the information could be triangulated with that of the home warranty providers where they have taken any sanctions against a developer for non-compliance with an Ombudsman's decision. The information should state what action i.e. suspension or removal from their register, has been taken and when, if appropriate, the suspension/removal was lifted.

**Q24. What is the best way to publish complaints data so that it incentivises developers to improve their service? (Tick all that apply)**

A:

- Complaints data provided to the Ministry of Housing, Communities and Local Government
- Data published in an annual report
- Case studies on their website.

**Q25. What data from a New Homes Ombudsman would be useful for consumers when they are making a decision about purchasing a new home?**

All of the above. However, as already cited in our response, we do believe that there should be some context and so the number of homes/units built per developer per year should sit alongside any published information for balance.

**Q26. Should a New Homes Ombudsman remit be UK-wide?**

A: Yes

**Q27. 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?**

A: No

While practices in selling and buying new homes do not differ, there is a difference in terminology which will need to be taken into account. For instance; Contract of Sale, Contract Exchange, Legal Completion – the terms employed in England and Wales for the legal document used and the formal stages that occur during the sale of a property are known in Scotland as Missive (or Builder's Missive), Conclusion of Missive and Settlement. In Northern Ireland they are known respectively as Contract of Sale, Formation of Contract and Completion.

**Q28. What should be included in a Code of Practice for developers of new build homes? Tick all that apply:**

- 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
- Specifications that new homes should meet (see further note below)
- 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 home buyers to carry out surveys before final completion

In relation to deposit protection, we believe that the Code of Practice should require home builders to protect all pre-payments. Quite often deposits will be protected by the home warranty policy but for reservation fees that are paid, this may not be the case. We consider



such payments should also be afforded protection if paid in advance to the home builder or their agent.

With regard to the minimum warranty standards, as these vary considerably across the market place at present and affords the home buyer differing degrees of protection, for instance, not all home warranty providers have a two-year developers defect liability period and the policy cover varies widely. We are therefore keen to see a mandatory best practice standard applied across the industry and the removal of a minimum warranty standard, which infers there may be a “race to the bottom”.

However, while we support the information on the warranty standards should be provided and the requirement to do so form part of the Code of Practice, we consider the mandatory best practice warranty standards should be a matter for the Code Body to maintain and use. It should be for that Code Body to make sure that the home warranty providers are meeting those standards. Furthermore, developers will need to select a code compliant warranty so that they are selling homes covered by the New Homes Ombudsman.

Should the warranty standards themselves form part of the Code, it is not inconceivable to think that it could present a situation whereby the New Homes Ombudsman is dealing with complaints against home warranty providers which already fall to the Financial Ombudsman Service.

Furthermore, consideration needs to be given to Architect's Certificates. Mortgage lenders accept Architects Certificates which can often fall short in respect of the consumer protection afforded home buyers when compared to the warranty provisions outlined. However, as cited in relation to the mandatory best practice standards, we believe this is a matter which should be reviewed and overseen by the Code Body. Should Architects Certificates not be considered as part of these deliberations, then this is another avenue a developer could choose if removed from a home warranty provider's register as set out under question 20, albeit we accept that the market here is more limited.

In relation to the specifications that the home should meet, we don't believe that the Code of Practice should actually set the standards, but rather require that the home builder meets the relevant UK standards and informs the home buyer as to what these are, for example, the relevant Building Regulations, Planning conditions and home warranty provider's technical requirements.

We consider that matters relating to quality of build and compliance with technical standards are best left to the home warranty providers to deal with albeit the New Homes Ombudsman should of course address complaints that may be brought if such matters are not appropriately dealt with where issues arise.

We have reservations in relation to the standardising of contracts. Contracts need to be flexible enough to accommodate for the complex processes and factors that are involved in the sale of new homes, for example to be able to cover flatted developments, new villages,

refurbishments and conversion and everything in between. Additionally, further clauses would be required within a contract to cover areas such as non-standard transactions through schemes such as Help to Buy, Open Market Shared Equity and others. Therefore the drafting of a contract that can cater for all these different variables would be a near impossible task in that it would become so rigid that it would lengthen the sales process with the possibility of adding further confusion to the consumer or alternatively have clauses so anodyne that the contract loses sight of its overall purpose.

In cases where developers choose not to use a standardised contract it may be because they are catering for the specific demands of the home or development to ensure it meets both the needs for the consumer and developer.

Instead of standardised contracts, we would advocate that contracts should be clear and fair; comply with all relevant legislation and clearly state the contract termination rights.

**Q29a. Should a Code of Practice for developers of new build homes be underpinned by statute?**

A: Not sure

If the Code of Practice is to be underpinned by statute, then there needs to be the flexibility for it to be easily adapted to either the changing market circumstances and/or the lessons learned from the Ombudsman decisions.

Our Code is in its fourth iteration since its launch in 2010. These revisions have all been to strengthen the protection afforded home buyers and have come about due to a number of reasons:

- Learning lessons from the Adjudicator’s decisions (under our Independent Dispute Resolution Scheme) where a common theme or gap has been identified
- Results from our compliance auditing and/or mystery shopping
- Direct feedback from home buyers and
- Changes to legislation.

It is imperative therefore that while the Code of Practice itself may be underpinned, there is flexibility which enables the content to be constantly refined and developed, to strengthen consumer protection, without recourse to Government for any legislative consideration, which can cause unnecessary delay and cost to the tax payer.

**Q30a. How should failure to belong to a New Homes Ombudsman be enforced?**

We support the need to improve quality standards in the new homes sector, albeit we believe there is little to suggest that the market suffers from “rogue traders”, unlike in the home improvement sector as identified by Government’s Green Paper: Modernising Consumer Markets. The reason being is that, as stated, nearly every developer building a new home has

to be registered with a home warranty provider. Those home warranty providers carry out assessments on all new applicants and a further annual assessment which typically comprises:

- **a commercial assessment:** This involves taking up financial and other references of the home builder, as well as carrying out company and/or personal searches via credit reference agencies. Any adverse information may affect the application.
- **a technical assessment:** For those applying to register as a builder. An assessment may be made of the technical ability to build to the home warranty provider's standards. This may involve carrying out a site based assessment, consideration of previous history and the builder's general construction experience. If a site-based assessment is undertaken the builder typically has to put forward at least one new build home for inspection at key stages in the build, from foundation level up until sufficient work has been seen to be able to decide on the suitability for registration, usually by first fix. As part of the technical assessment, the builder may be required to attend a presentation.

As set out in our response to question 20, we believe the home warranty providers are integral to the New Homes Ombudsman Scheme. Those supporting our Code require, as part of their rules of registration, for the developer to comply with our Code of Practice which in turn, provides access to a free Independent Dispute Resolution Scheme.

This is non-optional, and to obtain warranties on the properties to be sold, the developer has to comply. If the same was to be replicated with the New Homes Ombudsman, the developer will not be in a position to choose to belong to a New Homes Ombudsman or not, it is simply a requirement of the home warranty provider, underpinned by a mandatory best practice warranty standard.

As we have already referenced, we believe that it is inappropriate for a developer to have a direct "membership" with an Ombudsman on grounds of actual or perceived impartiality and this solution removes any bias, unconscious or otherwise.

Furthermore, it provides a direct route for sanctions to be applied should the developer fail to comply with an Ombudsman's decision as set out in our response to question 20.

### **Q30b. Who should enforce this?**

A: Other

We believe that if the method outlined in our previous answer is adopted, there will be no need for enforcement, reducing costs and burdens for business and consumers alike. As stated, the option to "belong" to a New Homes Ombudsman would be removed as it would simply be in place under the Rules of Registration of the home warranty provider.

How we believe this would work in practice is that the mandatory home warranty standards,

which home warranty providers wishing to provide warranties on new homes offer, will require any registered developer to firstly comply with the Code of Practice (whether underpinned by statute or otherwise).

Written in to that Code of Practice will be a route for the home buyer to escalate their complaint against the developer to the New Homes Ombudsman.

This would be non-negotiable and a fait accompli for the developer.

There is a further vital role for organisations such as UK Finance, the Law Societies, the Council for Licenced Conveyancers and the Building Societies Association to play here by way of setting strict rules for their members so as to ensure that the home buyer clients are properly covered by the correct code compliant warranty.

The Ombudsman would then notify the organisation(s) operating the Code of Practice of any non-compliance with an Ombudsman decision. In turn, the organisation(s) can seek compliance and/or escalate for sanctions to be taken by the home warranty provider.

This reduces the need for any other body to have to undertake enforcement activities where resources and budgets are already stretched.

**Q31. What should the penalty for non-compliance be?**

A: Other

Ombudsman primarily deal with civil disputes and therefore to make it a criminal offence where there is non-compliance, we believe to be disproportionate.

We do however believe the solution, as suggested, would close any loopholes and prevent any non-compliance.

Should Government consider this to not be an appropriate or viable option, then we believe that developers should be prevented from selling any new homes until such times they comply. However, as referenced in our response to question 20, the home warranty providers remain integral to this as there will need to be a process of informing them so that certificates of insurance are not issued on properties and perhaps mortgage lenders so that funds are not released.