

Consumer Code for Home Builder response to New Homes Quality Code Consultation

Established in April 2010 following extensive consultation with the Office of Fair Trading, the Ministry for Housing Communities and Local Government (formerly the DCLG) and the devolved administrations, the Consumer Code for Home Builders (CCHB) 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 bodies (NHBC and MD Insurance Services trading as Premier Guarantee and LABC Warranty and Checkmate), must meet in their marketing and selling of new Homes and their after-sales customer service.

This response (which are indicated by our comments in blue for ease) is provided on behalf of the Management Board of the CCHB and which we trust the New Homes Quality Board will find helpful. However, should there be any queries or concerns in relation to the responses provided, please contact Carol Brady, Chief Executive, at secretariat@consumercode.co.uk

Section One: Creating a New Register of House builders

The new homes quality reforms introduce a new requirement for house builders to become Registered Developers, which means they agree:

1. To be registered with the New Homes Quality Board;
2. To follow the new mandatory principles and requirements of the New Homes Quality Code; and
3. To be subject to the remit of the independent New Homes Ombudsman in relation to complaints which arise in the first two years of purchase

There is an identified gap in complaints redress in the first two years as 2-10 years are addressed through a home warranty that is subject to Financial Services regulation, with redress to the Financial Services Ombudsman.

How important is it that there is a register identifying those house builders who agree to the requirements and principles of the New Homes Quality Code?

- Not at all important
- Slightly important
- Important
- Fairly important
- **Very important**
- No opinion

We believe it is important for new home buyers to have access to information via way of a public register, in respect of those developers that fall within the scope of the Code and therefore the Ombudsman Scheme.

However we have some reservations as to what happens to those developers who either choose not to register and/or fail to understand the need to register (many smaller developers, by way of example, fail to understand that it is a current requirement of their warranty provider to comply with the Code despite the terms and conditions and the auditing work undertaken).

We are concerned that failure to register may leave some home buyers exposed and without Code protection.

In addition, while most (though not all), of the home warranty providers undertake both financial and technical capability checks to assess the insurance risk, if registration is to be direct with the NHQB, there is the potential reputational risk to the Code and its Board if a developer, for whatever reason, dissolves their business and starts up another without any liability to their existing customers - by way of possible phoenix companies. This is something which has already been cited in relation to the cladding issues whereby home buyers are left without a business to sue for recompense.

Furthermore, the NHQB will need to consider how any associated companies of a company Group will be registered. It can often be unclear to a consumer who the legal entity is that they are purchasing the new home from, particularly prior to completion, and some companies can “hide” behind a change in company name to try and avoid liabilities.

In other instances, some developers will set up companies and/or enter into a joint venture with a housing association for a particular development and then dissolve that company once the development is complete. While the warranty providers may seek indemnities from the parent company for guarantees, the NHQB may wish to consider how this affects their proposals for direct registration. In particular, they may wish to consider whether some sort of bonding scheme, that developers have to pay into, offers consumers protection for those companies that attempt to avoid their liabilities. This could be akin to the Motor Insurance Bureau who compensates victims of uninsured and untraced drivers, or the Solicitors Regulation Authority’s compensation fund which provides compensation to people who are owed money by a regulated law firm and who have suffered a loss where a professional indemnity insurance is unable to cover it (usually due to the solicitor no longer being in business) or where they have suffered loss due to a solicitor's personal dishonesty.

Suitable auditing, enforcement and sanctions will therefore be key here.

Section Two: The Fundamental Principles of the New Homes Quality Code

The New Homes Quality Code contains ten overarching mandatory principles (the Fundamental Principles). These are:

1. Fairness: treat Customers fairly throughout the home buying and after-sales process.

- 2. Safety:** carry out and complete works in accordance with all requisite Building Regulations and as set out by the Building Safety Regulator.
- 3. Quality:** complete all works to a good quality standard and in accordance with the specification for the New Home and ensure that Legal Completion only takes place when a home is complete (as defined in section 2 of this Code).
- 4. Service:** have in place systems, processes and training of staff to meet the customer service level requirements of the New Homes Quality Code and not use high-pressure selling techniques to influence a Customer's decision to buy a New Home.
- 5. Responsiveness:** be clear, responsive and timely in responding to Customers' issues by having in place a robust after sales service and effective complaints process as required by the Code.
- 6. Transparency:** provide clear and accurate information about the purchase of the New Home, including tenure and potential future committed costs such as those relating to leasehold or management services.
- 7. Independence:** make sure that Customers are aware that they should appoint independent legal advisors when buying a New Home and that they have the option of an independent accredited pre-completion inspection before Legal Completion takes place.
- 8. Inclusivity:** take steps to identify and provide appropriate support to Vulnerable Customers as well as to make the Code available to all Customers, including in appropriately accessible formats and languages.
- 9. Security:** ensure that there are reasonable financial arrangements in place, through insurance or otherwise, to meet all obligations under the Code, including timely repayment of financial deposits when due and any financial awards made by the New Homes Ombudsman service.
- 10. Compliance:** be subject to, co-operate and comply with the requirements of the New Homes Quality Board, the New Homes Quality Code and the New Homes Ombudsman service.

If you are answering this consultation as a consumer who has not bought a new build home to date or other respondents, please go to question 2C

2C: Consumers/other respondents who have NOT purchased a new home:

How important is it that The Fundamental Principles are brought in under the new Code to improve the home buying experience:

- Not at all important
- Slightly important

- Important
- Fairly important
- **Very important**
- No opinion

We fully support these principles which are in line with our own whereby our Code requires Home Buyers are treated fairly and are fully informed about their purchase before and after they sign the contract and which was developed to make the home buying process fairer and more transparent for customers.

However, it is unclear as to who sets the “good quality standard” and the specification for the new home. If this relates to the warranty providers technical and finishing standards will they be common across all warranty providers? We understand that some warranty providers do not have such standards and which may lead to inconsistencies in the quality provision for home buyers.

In addition, and unintentionally, it may make the job of the Ombudsman difficult when considering decisions as they will need to know and understand the requirements/standards for each individual home and it may lead to a perception of inconsistency in their decision-making, potentially undermining their reputation.

To avoid this we would hope that the Ombudsman will take account of standards that are commensurate with best practice in the new home cover market, so that the continuation to drive up quality standards for new home buyers, remains.

Section 3: Scope of the application of New Homes Quality Code (The Code) – consumer purchasers

The Code and the New Homes Ombudsman service has been developed to create a new independent redress for a consumer who purchases a home they will live in, not as an investment or with another party (who is not part of the household). This means new homes purchased directly from the Registered Developer (including their sales agent) by a consumer purchaser.

This means that it will not apply to certain purchases which are set out in more detail in Section 2 of the Code, including:

1. Homes purchased from a builder who is a not a Registered Developer

This is because the Code and the New Homes Quality Board applies only to sales by Registered Developers and their agents.

2. Homes purchased under a shared ownership arrangement with a Registered Provider of Social Housing (e.g. a housing association) who is not the Registered Developer for the property

This is because the Registered Provider is the party who contracts with the developer, not the consumer. So they should be dealing with the builder to deal directly with any issues arising and should take responsibility to do so. There is a separate ombudsman and regulator for Registered Providers. A shared ownership sale will be between the housing

association/ Registered Provider and the Consumer. The developer is not a party to it. A Registered Provider who builds property for outright sale should apply to be a Registered Developer under the Code and will be subject to the same standards and provisions with regard to the Code and the New Homes Ombudsman Service.

3. Self-build properties

This is because self-build properties are under a bespoke commercial agreement between the builder and the self-build consumer, who is much more involved in the building process.

4. Properties purchased for rent.

Properties purchased for rent are outside the scope of these provisions, which are intended to better regulate the relationship between a consumer purchaser and a builder, not someone who purchases as a landlord or for primarily for investment purposes.

3: Thinking about the scope of the Code, which of these most closely matches your view (please tick all that apply):

- The Code should apply to every newly built home
- The Code plugs the gap in existing consumer protection for homeowners and is a step in the right direction. It should be reviewed within 12 months of starting to see whether it needs to be extended further.
- The Code plugs the gap in existing consumer protection for homeowners but should be extended to shared ownership properties
- The Code plugs the gap in existing consumer protection for homeowners but should be extended to self-build projects
- The Code plugs the gap in existing consumer protection for homeowners but additional measures are needed for renters.

We believe that the new Code should apply to all developers as set out above albeit please see response to Q1 in relation to those who may fail to register.

In relation to shared ownership – we are seeing more new homes being sold this way and while developers may not be held accountable for the marketing of the home, there is a potential gap in relation to the quality of the homes built whereby the housing association may not be directly responsible and cannot themselves remedy the defect. While home buyers may be able to utilise the Housing Ombudsman, it is unclear how well versed they are in issues of new build and quality. To not include homes sold via shared ownership continues to create a gap in consumer protection.

In relation to those who rent; while they should have redress through other schemes against their landlord and are not party to the contract, if the home buyer is buying one property for investment purposes, and are not a commercial organisation and could not be classed as a commercial business, then we consider they should be afforded protection under the Code for their purchase, despite the fact they may rent it out. Our Code currently covers such purchases and to exclude would be a reduction in the existing consumer protection.

Section 4: New measures to stop poor sales practices and ensure inducements are declared:

The Code includes new measures to put an end to poor sales practices including High-Pressure Selling and requires Registered Developers to declare hidden inducements (payments to connected parties for recommendations). These include:

1. A prohibition on making a sale or an incentive conditional on using a specific solicitor, conveyancer or mortgage advisor
2. A prohibition on requiring an immediate decision to reserve a property in order to secure a reduction in price
3. A prohibition on pretending that there is another buyer or that the price is about to be increased unless the purchaser reserves the property immediately
4. Requiring builders to provide buyers with fair and clear information about any part-exchange scheme
5. Requiring builders to inform the buyer if the builder would receive commission for recommending certain products or services, including legal and financial services.

4: How important are these changes to tackle poor sales practices:

- Not at all important
- Slightly important
- Important
- Fairly important
- **Very important**
- No opinion

We fully support this and requirements which prevent high pressure sales tactics, by way of example, are already covered in our Code and are also a requirement under the Chartered Trading Standards Institute's Consumer Codes Approval Scheme.

Key to this, as with many parts of compliance with the Code, will be the enforcement of it and sanctions applied where home builders persistently, or deliberately, fail to comply. While an Ombudsman may determine there has been a breach of the Code's requirements, they will not be able to prevent a reoccurrence and we encourage the NHQB to consider what appropriate action will be taken in such circumstances.

Section 5: A new right for buyers to carry out a Finishing Check before completion to identify any finishing issues

Not all developers currently allow buyers to check and inspect a home before the legal completion date in order to check for any finishing issues. The new Code includes a new right for a buyer or a suitably qualified representative to carry out a check of a new home before legal completion in order to identify any minor defects or incomplete items (Required

Finishing Items) under a new Pre-Completion Check Protocol. The Protocol will set out the following conditions to the inspection:

1. the appointment for the Finishing Check must be agreed with the house builder and can be carried out by the buyer or a suitably qualified representative on their behalf, where a suitably qualified representative means a professional registered with or otherwise accredited by RICS or RPSA or another appropriate professional body
2. all health and safety requirements required by the Developer must be complied with at the property and in relation to the site as a whole
3. the finishing check shall cover those items set out in the standard finishing check guidance provided by the relevant professional body of that qualified representative
4. the finishing check is to take place when the home is near legal completion
5. the builder will aim to remediate required finishing items prior to completion or set out to the buyer the timescales for completion of these finishing items.

5A: Do you think that a pre-completion check will help buyers identify issues before they move into their new home?

- Strongly agree
- **Agree**
- Neutral
- Disagree
- Strongly disagree

5B: How important is a compulsory right to pre-completion check to ensure that builders finish homes to a high standard?

- Not at all important
- Slightly important
- Important
- Fairly important
- **Very important**
- No opinion

We agree that home buyers should have the opportunity to inspect the home prior to completion and early identification of any minor defects should help with the resolution of issues. However we believe that the Code should make it clear that a home buyer does not have to incur additional expense by having a professional undertake this and that it is something they should be capable of undertaking themselves.

However, there appears to be nothing in the Code as drafted which indicates there is an **agreed** pre-inspection checklist and it is also silent on what happens if there is a disagreement about what is a perceived snag/defect. We wonder how such instances will get resolved and if it is anticipated this will be through the Ombudsman Scheme, we would

be concerned that this may lead to a delay in the completion of the home and/or give the home buyer the right not to complete.

Additionally there doesn't appear to be anything to suggest the developer **has** to comply with the findings of the consumer and/or their appointed representative. To add, in the drafted Code, the legal completion talks only about the developers final quality assurance inspection and doesn't link back to the independent inspection carried out by the consumer/appointed representative. Is this one and the same and/or does it need clarifying?

Finally, we would advocate that any known/agreed defects prior to completion should not invalidate or undermine the rights of the consumer to make a claim on their home warranty policy.

Section 6: A new obligation to inform buyers of known and additional costs.

Not all developers have let buyers know what costs they have in relation to their new home, leading to hidden costs and unplanned bills. The new Code provides an obligation for Registered Developers to inform buyers of types of known and anticipated additional costs including fees for management services or maintenance costs.

6: Thinking about the obligation to inform buyers of costs, which of the following most closely matches your view:

- **This is a welcome and necessary obligation that will bring greater peace of mind and confidence to home buyers**
- It's a good idea but will be difficult to include all costs in practice
- This will provide more transparency but won't tackle wider issues around the fairness of any additional costs for home buyers
- It is too onerous on developers and will be difficult to satisfy.

We are supportive of this and believe home buyers should be fully informed of all known and likely costs prior to purchase. In addition to those set out in the Code and guidance, we are, for example, increasingly seeing additional costs associated with heating and mechanical recovery systems.

Section 7: After sales service and dealing with complaints

Under the new code all developers must have an effective after sales service where they will be expected to deal with issues that arise post occupation, such as snagging.

In addition new standards processes are being introduced to deal with complaints.

Complaints Handling can be of varied quality in the housebuilding industry. The new Code looks to set out a customer journey* that brings in set time periods and consistent expectations for dealing with complaints as follows:

1. the complaints process must be provided to the buyer so that the buyer knows how any complaints can be made;

2. complaints must be acknowledged **within 5 days** of being received;
3. **by 10 days** a written initial response must be sent setting out how the complaint will be investigated;
4. **by 30 days** a written detailed response must be sent setting out:
 - (a) which complaints are accepted, whether they have been fixed; if not, how they are going to be fixed, and by when, including any further investigations required to resolve the matter;
 - (b) which complaints have been rejected and why;
 - (c) whether the complaint is one where the consumer may be able to access an additional complaints service provided with their warranty and details of the process for that;
 - (d) information about how to use the New Homes Ombudsman Service;
 - (e) where complaints have not yet been fully resolved and have not been rejected, information about how regularly the consumer can expect to have an update about the complaints.
5. **by 56 days** from the date of the complaint being received, a written response updating the consumer on the progress of their complaint. From the 56 day point the consumer can apply to the New Homes Ombudsman Service to investigate the complaint.
6. The New Homes Ombudsman Service will, other than in exceptional situations, require the builder's published complaints process to be completed by all parties before accepting a complaint.
7. The New Homes Ombudsman Service will be free to consumers.

If you are answering this consultation as a consumer who has not bought a new build home to date or other respondents, please go to question 7C

7C: Consumers who have not purchased a new home/other respondents:

This new complaints and Ombudsman service would give me a greater confidence in buying a new home

- **Strongly Agree**
- Agree
- Neutral
- Disagree
- Strongly Disagree

We are very supportive of having a defined complaints handling process and believe that this will help drive up standards across the industry. We are aware from the complaints adjudicated upon from our own Code that problems arise when there is a breakdown in the complaints handling process.

However, we do wonder whether, in stating that the Ombudsman will require the builder's complaints process to be **completed** (point 6 above), there may be an unintended consequence in as much as some builders may argue that their process has not been completed despite the timescales setting out that a complaint can be brought after 56 days. We suggest that the complaints process must be 'followed'.

Further, we are aware that some Ombudsman schemes require the parties to agree that they are at deadlock and such a letter is sent. This can make the jurisdiction of the Ombudsman to make a determination on any issue(s) clearer.

Section 8: About Me

Please complete one or more of the following to help us understand your answers best:

- I am a builder/ developer
- I have professional interests in the development industry (lawyer/ surveyor/ conveyancer/ architect/ etc)
- I work in a business that supplies goods or services to the building industry (including connections and utilities as well as materials or services)
- I have bought a new home during my lifetime
- I have bought a new home within the last 2 years
- I am a homeowner
- I am a shared homeowner
- I do not own my home
- I am a member of the public interested in this work
- I work for a public department (local authority, devolved or central government)
- I or the organisation I work for represents tenants or consumers
- I or the organisation I work for represents house builders or lenders/ financial services providers
- I or the organisation I work for is an lender, warranty provider or existing developer code body
- Other (please specify):

If you have any further comments, or wish to leave your contact details please put them here:

We remain supportive of the new Code to bring about less confusion in the market place for home buyers and agree with the additional amendments being made to plug any gaps identified under the existing Code schemes.

We understand that much work is being undertaken to develop both the new Code and the New Homes Ombudsman Scheme and we remain committed to working with the NHQB in relation to this and the transitional arrangements.

While we appreciate therefore that there is still much to be done in respect of the detail, we thought the NHQB may find some additional, broader observations helpful and which are in addition to the above which are in direct response to the consultation.