

The Chartered Institute of Building

submission to the

All Party Parliamentary Group for Excellence in the Built Environment

on the inquiry into

a New Homes Ombudsman

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APPG for Excellence in the Built Environment: Inquiry into a New Homes Ombudsman

Introduction

The Chartered Institute of Building (CIOB) is at the heart of a management career in construction. We are the world's largest and most influential professional body for construction management and leadership. We have a Royal Charter to promote the science and practice of building and construction for the benefit of society, which we have been doing since 1834.

Our members work worldwide in the development, conservation and improvement of the built environment. We accredit university degrees, educational courses and training. Our professional and vocational qualifications are a mark of the highest levels of competence and professionalism, providing assurance to clients and authorities who procure built assets.

We welcome the opportunity to respond to this inquiry and are happy to be involved in the debate as it develops.

General comments

House building is affected by some significant factors that distinguish it from other sectors of the construction industry. To name three of the more noticeable variances:

- Housing operates in a different regulatory environment, both in terms of building regulations and the planning system;
- The high-demand nature for housing in some areas of the country means land prices have a larger impact on costs than that of many other types of construction;
- Housebuilders who sell to the private market function as business-to-customer operations, rather than the business-to-business operation practiced in the rest of the industry. This disaggregated client base typically means that consumers may not be as concerned or knowledgeable about build quality or efficiency of performance as a business client might be, instead prioritising location and/or other factors.

As highlighted in the APPG's more homes, fewer complaints report¹:

- Housebuilder's own quality control systems are not fit for purpose;
- There needs to be an industry aspiration to achieve a zero-defects culture;

¹ APPG Excellence in the Built Environment, [More homes, fewer complaints](#), July 2016

- Good practice should be seen as building a new home that is defect-free.

The CIOB hold the view that a fully independent New Homes Ombudsman, by its very existence, would drive housebuilders to reflect on the work they carry out and drive them to aspire to ‘do better’ in the knowledge that their customers can complain to an independent ombudsman.

The ombudsman would provide a voice for consumers, investigating claims and awarding compensation based on the quality of workmanship or any found defects. Cases would be publically available, enabling greater visibility of the best and worst offenders as well as build a greater understanding of the satisfaction rates of homebuyers. This should lead to improvements in both the quality of the new homes they build and their responses when buyers report problems in their new homes as they seek to avoid the costs associated with going through the ombudsman.

Current complaints procedures for purchasers of new homes, including how they work, what works well and their limitations

The procedure for complaining about defects in new homes is by far the most common complaint received by housebuilders. Both housebuilders and warranty providers have complaints procedures for purchasers of new homes that are meant to work in the consumer’s best interests.

Most major housebuilders publish complaints procedures on their website and the majority work in the same manner. The Consumers’ Association, Which?, have published guidance on consumer’s rights regarding building work. Although not specific to new homes, it does cover the typical steps that should be taken by purchasers and this can be accessed: www.which.co.uk/consumer-rights/advice/how-to-complain-if-youre-unhappy-with-building-work

If purchasers are unsatisfied with the housebuilders’ steps to rectify the issue then they may be referred to a home warranty provider, such as the NHBC, who will conduct an ‘independent’ review of the complaint and how it has been handled.

Typically, if the purchaser’s home is less than 10 years old it will be covered by warranty. Most housebuilders struggle to sell a property without a warranty, as mortgage-lenders will insist on this. In the large majority of cases this will be the Buildmark policy provided by NHBC. Other policies also include BLP, LABC, Premier Guarantee and Checkmate and the majority of these policies work on the same principles

- During the first two years, policies typically cover most defects, except for matters of wear and tear and minor defects such as plaster drying cracks. During this period consumers are recommended to contact

their builder directly in the first instance. If the builder is no longer in business, however, they are referred to the NHBC.

- In years 3-10, the policy will only cover major defects, such as structural or weatherproofing problems. During this period the minor defects are excluded – anything which would cost less than £1500 to fix, in the case of the NHBC.
- From year 11 onwards consumers will have to rely on their own insurance policy.

There is also a Consumer Code for Home Builders² which came into effect in April 2010. This applies to all Home Builders registered with the UK's main new home warranty bodies; NHBC, Premier Guarantee and LABC Warranty and consists of 19 requirements and principles that Home Builders must meet in their marketing and selling of homes as well as their after-sales customer service.

The purpose of the Code is to give protection and rights to purchasers of new homes. It requires that all new home buyers are treated fairly and are fully informed about their purchase before and after they sign the contract. Its intention is to reinforce best practice among housebuilders to encourage a consistently high level of information and customer service. However, in reality the Code itself gives no protection or rights to purchasers of new homes and it is merely the industry's interpretation of requirements of existing laws that housebuilders who are registered with warranty providers agree to comply with.

The voluntary, industry-led consumer code for home builders states that complaints need to be made within two years after legal completion, and disputes are referred to an independent resolution service. This resolution service sets an unfair and unreasonable time limit for homebuyers to respond to the housebuilder's defence. This, in turn, prevents buyers from recovering legal costs in disputes which, if they had been pursued through the courts, may have been recoverable from the builder and thereby deters homebuyers from seeking legal advice. This could also lead to private awards being made meaning no legal precedents are set which could be of potential value to future claimants raising similar issues. Stories such as these are becoming common place, for example where Bovis was pressuring customers to complete the purchase on unfinished homes with the offer of cash incentives³. This particular example also raised questions about the NHBC, which provided completion certificates on homes which were not complete.

Additionally, the NHBC, who are one of the founding members of the Consumer Code for Home Builders, have been found to pay around £10m to £15m every year to housebuilders through what is effectively a profit-share agreement. Given that they are said to hold around an 80% share of the warranties market (though this figure is disputed), this must be viewed as a

² Consumer Code for Home Builders, www.cosnumercode.co.uk

³ The Guardian, [How buying a Bovis home came with hundreds of snags](#), 28 January 2017

conflict of interest, paying both compensation to consumers and returning cash to housebuilders.

This differs from the newly created Consumer Code for New Homes which aims to improve standards of construction in the UK. It also ensures that best practice is followed by registered Developer members in respect of the marketing, selling and purchasing of New Homes and to set expected standards for after sales customer care service, providing consumers with access to low-cost and effective dispute resolution⁴.

Despite there being a number of avenues to explore for complaints and dispute resolution there is no clear 'independent' party in place and clearly this is where the opportunity for a New Homes Ombudsman to work. One of the major issues remains that many existing policies and procedures to deal with claims only centre on the building's *structure* as opposed to the *quality* of build.

The potential scope for a New Homes Ombudsman and how it could work in practice
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The New Homes Ombudsman should be fully independent and it should hold the following powers:

- Oversee the Consumer Code for Home Builders and investigate customer complaints when all existing complaints processes have been resolved.
- Set timescales for responses from house builders and warranty providers that are fair to purchasers.
- Order housebuilders and/or developers to carry out remedial action if in the opinion of the New Homes Ombudsman that any previous remedial action has been proved to be either inadequate or poorly executed.
- Where appropriate, to order the reversal of the property transaction with all the buyers initial costs being reimbursed. The reversal being valued at what would be deemed the current market value for a non-defective house or cost, whichever is greater.
- In the event of systemic failures on a development, the New Homes Ombudsman may order inspections and surveys of other properties (particularly in the case of apartments/flats) to determine whether other property owners are similarly affected to the original complaint.
- To review the terms of all leasehold agreements for unfair terms and conditions as well as maintenance agreements and make orders as their amendment.

⁴ Consumer Code for New Homes, www.consumercodefornewhomes.com

- Where failings have been uncovered, the New Homes Ombudsman should make findings publically available to assist buyers who face similar issues.

How could a new position be funded by the home building sector and what would be the alternative?

The New Homes Ombudsman could be funded from 3 sources:

- On developers building more than 50 units per year but less than 1,000, a levy of, for example, 0.5% of turnover could be applied. On developers building more than 1,000 units per year the levy could be 0.25% of turnover.
- In cases taken on by the New Homes Ombudsman, the respondent housebuilder/developer will make a deposit (exact amount to be determined) towards the costs of running the case. In the event that the developer loses the case than the developer will be required to pay the full costs of the case.
- The New Homes Ombudsman will also have the power to fine developers for breaches to the Consumer Code for Home Builders to the value of the property in question.

What could a New Homes Ombudsman learn from similar schemes already in operation, including for example, The Property Ombudsman, The Housing Ombudsman, The Financial Ombudsman and The Energy Ombudsman, amongst others.

We are unable to comment about the operation of other ombudsman but believe best practice can be sought from discussions with relevant ombudsman and the APPG inquiry sessions.

Reflecting on the impact of Ombudsman's in other sectors, public reporting of complaints statistics has clear benefit to not only complainants but to promoting continuous improvement in the sector. For instance the Parliamentary and Health Service Ombudsman publishes reports on the number of referrals to Ombudsman from hospitals, percentages of referrals to the ombudsman upheld and analysis of core themes of complaints⁵. This has helped improve transparency in our health service and enabled trusts to learn and improve the care they provided, particularly in handling their complaints.

⁵ Parliamentary and Health Service Ombudsman, [Complaints about acute trusts 2014-15](#), September 2015